OPINION OF MR ADVOCATE GENERAL MISCHO
delivered on 22 February 1989 *

Mr President,
Members of the Court,

1. The Commission has requested the Court to annul the inclusion of Article 235 of the EEC Treaty as part of the legal basis of Council Decision 87/327/EEC of 15 June 1987 adopting the European Community action scheme for the mobility of university students (Erasmus) [1] and to annul the last recital in the preamble to that decision, which states the reasons for its inclusion. In the alternative, should a declaration by the Court of partial nullity not be possible, the Commission seeks a simple declaration that the decision is void in so far as it is based on Article 235.

2. The Commission considers that Article 128 of the Treaty, in combination with Council Decision 63/266/EEC of 2 April 1963 laying down general principles for implementing a common vocational training policy, [2] constitutes the sole correct legal basis for the Erasmus decision, so that recourse to Article 235 amounts to an infringement of the Treaty. It adds that recourse to that article is in any case based on an inadequate and imprecise statement of reasons.

3. In its judgment concerning the system of generalized tariff preferences [3] the Court confirmed that 'it follows from the very wording of Article 235 that its use as the legal basis for a measure is justified only where no other provision of the Treaty gives the Community institutions the necessary power to adopt the measure in question'.

4. It should, moreover, be pointed out that in the present case the dispute over the proper legal basis is not a purely formal one, since Articles 128 and 235 contain different rules concerning the manner in which the Council may adopt a decision. The choice of the legal basis could thus affect the determination of the content of the decision challenged.

5. As regards Decision 63/266/EEC I will not touch on the dispute, more apparent than real, which divided the parties on the importance to be attached to it either as a precedent or as the legal basis for the decision in question, since in any case it could not affect the scope and effect of Article 128 of the Treaty. [4]

* Original language: French.

1 — OJ L 166, 25.6.1987, p. 20.

2 — OJ, English Special Edition 1963-64, p. 25.

3 — Judgment of 26 March 1987 in Case 45/86 *Commission* v *Council* [1987] ECR 1493, paragraph 13.

4 — In its 'hormones' judgment of 23 February 1988 in Case 68/86 *United Kingdom* v *Council* [1988] ECR 855, the Court declared that a mere practice on the part of the Council cannot derogate from the rules laid down in the Treaty and create a precedent binding on Community institutions with regard to the correct legal basis (paragraph 24) and that the rules regarding the manner in which the Community institutions arrive at their decisions are laid down in the Treaty and are not at the disposal of the Member States or of the institutions themselves (paragraph 38).

6. Article 128 provides that:

'The Council shall, acting on a proposal from the Commission and after consulting the Economic and Social Committee, lay down general principles for implementing a common vocational training policy capable of contributing to the harmonious development both of the national economies and of the common market'.

7. According to the Council and the interveners, that provision does not constitute a sufficient legal basis for the adoption of a decision such as the Erasmus decision. They claim that the Erasmus scheme includes measures which go beyond the powers granted to the Council by Article 128 and that the scheme covers areas which do not constitute vocational training.

1. The scope of the Council's powers

8. In the event it is not disputed that the Erasmus scheme is, as the title of the contested decision indicates, a 'Community action scheme' which must be put into effect by the Commission in accordance with the annex to the decision (see Article 3 of the decision).

9. The actions defined in the annex involve direct contact between the institution responsible for administering the scheme and:

universities (Actions 1, 3 and 4),

university associations (Action 4),

teaching staff and university administrators (Action 1),

national academic recognition information centres (Action 3),

persons promoting joint curriculum development between universities (Action 3).

10. All those bodies may receive Community aid granted by Commission decision. The Commission may also finance publications designed to enhance awareness of study and teaching opportunities in the other Member States (Action 4) and Erasmus prizes to be awarded to students and staff members (Action 4).

11. It is only the grants awarded by the Community to university students carrying out a period of study in another Member State that are to be administered by the competent authorities in Member States (Action 2).

12. The question therefore is whether the Council's power to lay down 'general principles for implementing a common vocational training policy' entails the power to adopt a Community action scheme comprising concrete operations of this kind, to be implemented by the Commission

cooperating directly with universities and teachers.

13. The dispute arises from the fact that Article 128 employs concepts which are at first sight difficult to reconcile. On the one hand it is directed towards 'a common vocational training policy', but on the other hand it makes reference to the competence of the Community institutions only in relation to laying down 'general principles for implementing' that policy.

14. The parties attach more or less importance to one or the other aspect of the article according to the argument they are defending. In my opinion, however, those aspects should not be set against each other. The text should be read as a whole. The laying down of 'general principles' must lead to the implementation of 'a common vocational training policy', which constitutes the objective to be attained.

15. However, does it thus follow from Article 128 that that common policy may be implemented directly by the institutions of the Community and, what is more, in the form of concrete measures such as the grant of a subsidy to a particular university association or a particular individual teacher?

16. In order to reply to that question we should first examine Article 128 in the context of the Treaty, concentrating our attention on provisions which concern the 'implementation of a common policy'.

17. Under Article 3 'the activities of the Community shall include, as provided in this Treaty and in accordance with the timetable set out therein

...

(b) the establishment of a common customs tariff and of a common commercial policy towards third countries,

...

(d) the adoption of a common policy in the sphere of agriculture,

(e) the adoption of a common policy in the sphere of transport,

...

(i) the creation of a European Social Fund in order to improve employment opportunities for workers and to contribute to the raising of their standard of living,

...',

18. It seems to me difficult to deny that if the common policy in the sphere of vocational training had the same scope and the same degree of Community involvement as the common policies in the spheres of agriculture, transport or external trade it would have been mentioned in Article 3, which lists the major objectives of the Community.

19. Indeed, the common agricultural policy and the common transport policy form part

of the 'foundations' of the Community (title of Part Two of the Treaty). Although it is true that the common commercial policy like the common vocational training policy, falls under Part Three of the Treaty, entitled simply 'Policy of the Community', a whole separate chapter is allocated to the former, whereas the latter is referred to only in a single article in Title III — which deals with 'Social policy' in general — and in a position which has raised many questions. It is to be found at the end of the chapter dealing with the European Social Fund, only the creation of which is mentioned in Article 3. Stabenow considers,[5] rightly in my opinion, that the position of Article 128 indicates that when the Treaty was being drawn up the promotion of vocational training was regarded as the main task of the Social Fund and that the 'general principles' were to provide a frame of reference ('Bezugsrahmen') for that purpose. In fact vocational training has always been one of the priority activities of the Social Fund.

20. In the second place it should be pointed out that unlike Article 128 Articles 43, 75 and 113 provide, in addition to the laying down of broad lines (Article 43(1)) or the development of uniform principles (Article 113(1)), for the submission by the Commission of proposals directly aimed at the implementation of the common policies in question. In the case of the common agricultural policy and the common transport policy those measures are to be adopted after consultation of the European Parliament.

21. They are to be adopted unanimously during the first two stages of the transitional period and by a qualified majority thereafter (Article 43(2), Article 75(1), Article 111(3), Article 113(4), Article 114). Finally, Article 116 too, which provides that in respect of all matters of particular interest to the common market, from the end of the transitional period onwards, Member States must proceed within the framework of international organizations of an economic character only by common action, states that the Commission is to submit to the Council, which is to act by a qualified majority, proposals concerning the scope and implementation of such common action.

22. To that it may be added that Article 41(a) provides for effective coordination of efforts in the spheres of vocational training, of research and of the dissemination of agricultural knowledge; this may include joint financing of projects or institutions.

23. Even though it is clear that that article, which concerns agriculture, does not refer solely to vocational training, the fact remains that it would not have been necessary for it to provide for the possibility of joint financing of projects if that was already possible under Article 128, the general provision on vocational training.

24. In light of the undeniable coherence of that overall picture, it cannot be supposed

5 — Wolfgang Stabenow in Groeben, Boeck, Thiesing, Ehlermann, *Kommentar zum EWG-Vertrag*, 3rd edition, 1983, Vol. 1, commentary on Article 128, p. 2087, No 2.

that the authors of the Treaty forgot or inadvertently omitted, in Article 128, to give the Council the task of adopting, upon a proposal from the Commission, the measures necessary for the implementation of a common vocational training policy. It is not possible to construe that article as conferring by implication a power on the Council to adopt such measures by a simple majority and without mandatory consultation of the Parliament. In the eyes of the authors of the Treaty that implementation was thus to be left to others, that is to say the Member States.

25. As I pointed out above, however, the subject-matter of the Erasmus decision is just such concrete measures. The same is true of the Comett I programme,[6] which is also based on Articles 128 and 235, and of the Comett II programme,[7] which is based on Article 128 alone. The latter programme also permits the Commission to adopt measures 'directed at trainees, including those who have completed their initial training, and at persons in active employment, including employers' and workers' representatives and the training officers concerned' (second subparagraph of paragraph 1 of the Annex to the decision). It allows the Commission to grant financial support of up to 50% of the expenditure eligible, and up to 100% for 'university-industry training partnerships (UITPs)'. In contrast to the Erasmus scheme, the Commission may also award grants directly to students and other persons undergoing periods of from three to 12 months' training in industry in another Member State and to personnel from universities and industry; it may provide support for training courses in technology and for work on devising, developing and testing at European level joint training projects in technology, etc. The Comett II decision is thus of great interest as regards the case before the Court because it enables us to get a better idea of the whole range of powers which Article 128, according to the proponents of a broad interpretation of that provision, confers on the Council and permits it to delegate to the Commission.

26. In support of that broad interpretation the Commission also relies on the principle of 'effet utile' (the need to give full effect to a legislative provision). Even though Article 128 omits to indicate the concrete means whereby the common vocational training policy is to be implemented, says the Commission, it is not right to interpret that provision in such a way that the Community is denied the practical means necessary to conduct the policy effectively.

27. Here the Commission is no doubt referring to the Court's 'migration policy' judgment of 9 July 1987[8] in which it stated that

'where an article of the EEC Treaty — in this case Article 118 — confers a specific task on the Commission, it must be accepted, if that provision is not to be rendered wholly ineffective, that it confers

6 — Council Decision 86/365/EEC of 24 July 1986 adopting the programme on cooperation between universities and enterprises regarding training in the field of technology (Comett), OJ L 222, 8.8.1986, p. 17.

7 — Council Decision 89/27/EEC of 16 December 1988 adopting the second phase of the programme on cooperation between universities and industry regarding training in the field of technology (Comett II) (1990-94), OJ L 13, 17.1.1989, p. 28.

8 — Joined Cases 281, 283, 284, 285 and 287/85 *Federal Republic of Germany, French Republic, Kingdom of the Netherlands, Kingdom of Denmark and United Kingdom of Great Britain and Northern Ireland* v *Commission* [1987] ECR 3203.

on the Commission necessarily and *per se* the powers which are indispensable in order to carry out that task' (paragraph 28).

28. I freely accept that that which is valid for the Commission, in the context of Article 118, is valid generally for the Community institutions. In that respect the Commission is right to say that in Article 128 the Treaty could not set an objective (a common policy) without providing for the practical means necessary to attain that objective.

29. It follows without a doubt that the general principles that the Council may lay down are not simple guidelines but mandatory legal rules.

30. The appeal to the need to give full effect to Article 128 (its 'effet utile') should not, however, result in the practical means of taking action for which it makes express provision being replaced or added to by other means of a different kind, even if the latter would enable the objectives pursued to be attained more easily and more effectively. It is precisely in order to remedy such lacunae and to enable the Community to achieve fully its objectives, even where the Treaty has not invested it with the necessary powers of action, that Article 235 was formulated.

31. That distinction is equally inherent in the 'migration policy' judgment cited above. The need to give full effect to Article 118 led the Court to accept that the Commission had the power to oblige Member States to take part in consultations which it had decided to arrange (paragraph 28), although it could not determine in advance the result to be achieved in those consultations or prevent the Member States from implementing drafts, agreements or measures which it might consider not to be in conformity with Community policies and actions (paragraph 34).

32. It is true that Article 118 simply gives the Commission the task of promoting close cooperation between Member States in the social field. Article 128 takes, so to speak, a further step and lays down as its objective '[implementation of] a common . . . policy capable of contributing to the harmonious development both of the national economies and of the common market.' The principle of 'effet utile' therefore means that a result corresponding to that definition must be achieved, but in providing solely for the laying down of general principles Article 128 does not require that the common policy should result in actual harmonization of national provisions concerning vocational training[9] and it does not make the institutions of the Community responsible for implementation of the common policy.

33. That is to say, the objective pursued may be attained by setting out the general principles as precisely as possible, adapting them periodically to new problems which may arise, making comparative studies and organizing regular mandatory consultations during which the experiences of the different Member States are discussed and common conclusions drawn.

34. Moreover, it is the Commission's task to follow attentively the implementation of the general principles by the Member States, to draw their attention to any possible

9 — In this connection see Stabenow in the commentary cited above, at p. 2088.

discrepancies and, if necessary, to commence proceedings under Article 169, since the general principles are binding on the Member States. Article 128, together with Article 155, also enables the Commission to recommend action to be taken by the Member States in a coordinated manner. If the recommended action is chosen carefully the Member States will certainly do all that is necessary.

35. This way of looking at the matter corresponds to the definition which the Council gave to the common vocational training policy in Decision 63/266/EEC. According to the first principle set out in that decision 'a common vocational training policy means a coherent and progressive common action which entails that each Member State shall draw up programmes and shall ensure that these are put into effect in accordance with the general principles . . . and with the resulting measures taken to apply them'.

36. Does the reference to measures taken to apply the principles indicate that in 1963 at least the Council was of the opinion that the general principles could also be implemented by Community action? I do not believe so. The text I have just quoted clearly reflects the view that not only the 'putting into effect' but also the programmes are the responsibility of the Member States alone. I think I may therefore conclude that in the eyes of the Council the 'resulting measures taken to apply' the general principles were to consist solely in the definition of the scope of the general principles in relation to any particular aspect of the vocational training policy.

37. It is true that the last paragraph of the first principle laid down in the 1963 decision states also that 'it shall be the responsibility of the Member States and the competent institutions of the Community to apply such general principles within the framework of the Treaty'. But the addition of the words 'within the framework of the Treaty' would not have been necessary if the Council had been of the opinion that Article 128 itself already permitted the institutions to take all the implementing measures considered necessary. Those words must be interpreted as meaning that the institutions may apply the general principles in so far as other provisions of the Treaty confer the necessary powers on them.

38. The only provisions of any possible assistance in that connection are those concerning the European Social Fund and Article 235. (Possibly Article 100 as well if the differences between national policies were capable of directly affecting the establishment or functioning of the common market.)

39. In the context of this case the Council's agent considered that the Council was also entitled, on the basis of Article 128 alone, to take action designed to guide and encourage the activities of the Member States, at a lower level than Community action the objectives and mechanism of which are determined by a Community legal measure and implemented by the Commission. In my opinion that represents a fairly robust interpretation of Article 128 and very careful case-by-case scrutiny would be necessary in order to determine what such 'action' could consist of. That problem is not, however, one that must be resolved today. Here it is the measures provided for in the Erasmus scheme that call for examination.

40. I cannot agree with the Commission when it maintains that the Community action provided for in the Erasmus scheme constitutes nothing but 'promotional action' providing an incentive to the Member States rather than directly imposing on them new legal constraints, since the proposed measures presuppose the voluntary participation of potential beneficiaries.

41. We are in fact faced with concrete measures which are to be put into effect directly 'on the ground'. The programme is in no way confined to providing incentives for the Member States, but imposes on them direct obligations in relation to those concrete measures. Thus the competent authorities of the Member States are expressly made responsible for administering the grants awarded to students under Action 2 and for cooperating closely in implementing the measures provided for in Action 3 to promote mobility through the academic recognition of diplomas and periods of study.

42. Moreover, even though the Council resorted to a measure of a special kind, namely a decision *sui generis* ('Beschluß'), which does not appear among those expressly listed in Article 189 of the Treaty, the real nature of the measure strongly resembles that of a regulation, since it confers a direct right on individuals, for example universities, teachers or university students, to apply for certain benefits. The fact that potential beneficiaries do not become actual beneficiaries unless they themselves so wish and their application is then granted is not a characteristic peculiar to action schemes such as Erasmus; it is true of a whole series of aid measures and premiums which are granted in particular within the framework of the common agricultural policy, usually on the basis of regulations.

43. Finally, an additional point which shows that the Erasmus scheme is not confined to 'promotional actions' designed to encourage action on the part of the Member States may be drawn from the fact that the direct administration of the scheme and the award of grants to beneficiaries (except as regards grants for students) are carried out by the Commission.

44. It follows from the foregoing that a 'Community action scheme' such as Erasmus could not be adopted on the sole basis of Article 128 and that the Council was obliged to cite Article 235 as a basis as well.

45. Something remains to be said on the subject of the budgetary expenditure which the scheme involves. In that connection it suffices to state that since Article 128 alone does not permit the institutions of the Community to undertake themselves or to instigate and finance concrete measures with a view to implementing the common vocational training policy 'on the ground', it cannot serve as a justification for the expenditure which those actions entail for the budget.

46. Let us turn now to the second argument relied upon by the Council to justify recourse to Article 235, namely the assertion that not all the measures provided for in the Erasmus scheme fall within the sphere of vocational training.

2. The concept of 'vocational training'

47. According to the Council and the interveners the contested decision covers areas other than that of vocational training, first because not all forms of university teaching necessarily constitute vocational training and secondly because certain objectives pursued by the Erasmus scheme fall outside that area.

48. In that regard it should first be emphasized that it follows from the judgment of 22 February 1988 in *Blaizot*[10] that although in general university studies constitute vocational training, there are certain courses of study which, because of their particular nature, are intended for persons wishing to improve their general knowledge rather than prepare themselves for an occupation.

49. It should next be pointed out that although in its judgment of 13 February 1985 in *Gravier*[11] the Court concluded that 'the conditions of access to vocational training fall within the scope of the Treaty' (paragraph 25), it had earlier been careful to state that

'educational organization and policy are not as such included in the spheres which the Treaty has entrusted to the Community institutions' (paragraph 19).[12]

50. In that judgment the Court referred expressly only to 'access to and participation in courses of instruction and apprenticeship' (paragraph 35) and not to the organization of the courses as such, which falls within the scope of education and training policy.

51. Finally, in its judgment of 3 July 1974[13] in *Casagrande*, the Court declared that

'Although educational and training policy is not as such included in the spheres which the Treaty has entrusted to the Community institutions, it does not follow that the exercise of powers transferred to the Community is in some way limited if it is of such a nature as to affect the measures taken in the execution of a policy such as that of education and training' (paragraph 6).

52. It can be concluded from all those judgments that the determination of education policy, including the organization of education, remains within the powers of the Member States, even if Community law may affect certain 'measures taken in [its] execution'.

53. However, the Erasmus decision makes no distinction between university education according to whether it can be classified as vocational training or general education and lays down measures which directly affect the actual organization of such education in the different Member States.

10 — Case 24/86 *Blaizot* v *Université de Liège and Others*, especially at paragraph 20.

11 — Case 293/83 *Gravier* v *City of Liège* [1985] ECR 593.

12 — See also the judgment of 13 July 1983 in Case 152/82 *Forcheri* v *Belgium* [1983] ECR 2323.

13 — Case 9/74 *Casagrande* v *Landeshauptstadt München* [1974] ECR 773.

54. In Article 1(1) the decision refers not only to increasing significantly the mobility of university students but also to promoting greater cooperation between universities.

55. Article 1(2) gives a very wide definition of the term 'university' under the scheme, and thus of the notion of university education. That term 'shall be used to cover *all* types of post-secondary education and training establishments which offer, where appropriate within the framework of advanced training, qualifications or diplomas of that level, whatever such establishments may be called in the Member States'.

56. That definition therefore encompasses those university studies which, according to the *Blaizot* judgment, do not constitute vocational training.

57. That finding cannot be called in question on the ground, put forward by the Commission, that 'the Erasmus scheme was conceived as a vocational training scheme' and that 'the mobility of students [is] envisaged in the Erasmus scheme in relation to vocational training' (paragraph 37 of the reply). It follows from paragraphs 16 and 20 of the judgment in *Blaizot* that if university studies in general fulfil the criteria of vocational training, they do so 'by their nature' and if certain courses of study fall outside the scope of vocational training they do so 'because of their particular nature'.

58. In order to ascertain whether specific studies constitute vocational training, it is certainly not necessary to take into account whether or not those undertaking such studies do so with a view to entering a specific occupation, or whether measures taken in the area of university education are taken with the future entry of students to occupations in mind, in so far as all courses of study, even those which do not objectively prepare for entry into working life, are likely to be affected thereby.

59. Finally, the interuniversity cooperation which the Erasmus scheme thus seeks to promote, which appears among the objectives listed in Article 2 of the contested decision, is to be achieved under the terms of Action 1 described in the annex by the setting up of a 'European network' composed of universities which have concluded agreements for exchanges of students and teachers with universities of other Member States. Those agreements are to aim 'to give the students of one university the opportunity to undertake a fully recognized period of study in at least one other Member State, as an integral part of their diploma or academic qualification'. In that context priority is to be given to the development of programmes involving an integrated and fully recognized period of study in the universities concerned.

60. Interuniversity cooperation as thus conceived will incontestably lead to changes in the organization of education inasmuch as it is intended to establish special courses of study involving two or more universities belonging to different Member States and to draw up special education programmes for that purpose.

61. From the foregoing it may be concluded that the Council was right to consider, in the last recital in the preamble to the contested decision, that

'this action programme includes aspects relating to education which, at the present stage of development of Community law, may be regarded as falling outside the scope of the common vocational training policy as provided for in Article 128 of the Treaty'.

62. In addition there are other objectives and aspects of the Erasmus scheme which can be considered not to fall exclusively within the scope of Article 128. In any case the wording of the Erasmus decision is not calculated to dispel any doubts in that respect.

63. It is not disputed that the political origins of the Erasmus scheme lie in the work of the *ad hoc* Committee on a people's Europe, especially the report it submitted to the European Council in Milan on 28 and 29 June 1985.[14] The eighth and ninth recitals in the preamble to the contested decision refer expressly to the people's Europe initiative and one of the objectives listed in Article 2 is precisely that of '[strengthening] the interaction between citizens in different Member States with a view to consolidating the concept of a people's Europe'.

64. Chapter 5 of the report in question, entitled 'Youth, education, exchanges and sport' devotes a very succinct paragraph to vocational training (5.7) and contains as its sole proposal that:

'the Member States do their utmost, within national policies, whenever possible in association with enterprises and social partners, to ensure that all young people wishing to do so receive one year's, or if possible two years', vocational training in addition to their compulsory education'.

65. It is precisely those measures on the part of the Member States that Council Decision 87/569/EEC of 1 December 1987,[15] which has been challenged in Case 56/88, was intended to support and supplement.

66. For the rest, the bulk of Chapter 5 of the report in question deals with youth exchanges in respect of schoolchildren (5.2 and 5.3), university students (5.6) and workers (5.8). The proposed interuniversity cooperation (5.6) was itself to revolve around such exchanges.

67. The least that can be said is that the importance thus accorded to exchanges is echoed in the wording of the Erasmus decision, which is defined in its title as a Community action scheme for the *mobility* of university students, which it is intended to 'increase significantly' (Article 1(1)). In Communication 88/C240/03, published in Official Journal C 240, 15.9.1988, p. 3,[16] the encouragement of such mobility is presented as the 'principal objective' of the Erasmus scheme.

14 — See *Bulletin of the European Communities*, Supplement 7/85, p. 19 *et seq.*

15 — Decision concerning an action programme for the vocational training of young people and their preparation for adult and working life, OJ L 346, 10.12.1987, p. 31.

16 — Erasmus, financial support for cooperation and mobility in higher education in the European Community (Academic year 1989/90).

68. Similarly, most of the actions described in the annex to the Erasmus decision are intended to 'stimulate Community-wide exchange of students' (Action 1, paragraph 1).

69. Leaving aside the contacts that the decision aims to establish between university administrators and teachers, so that they may compare their respective methods, it does not seem to me to be an exaggeration to say that the primary and fundamental aim of the Erasmus scheme is not directly to increase the vocational training of university students who might benefit from it but to develop contacts between university students from different Member States and to enlarge their personal rather than vocational knowledge. The Erasmus scheme does not in any case ensure that the acquisition of 'first-hand experience of economic and social aspects of other Member States' (Article 2(i)) should always go hand in hand with improvement in vocational training. It thus does not preclude the possibility that a stay abroad may constitute an end in itself, independent of any consideration of vocational training.

70. Exchanges of persons as such certainly do not fall within the purview of Article 128 and, it would seem, can be promoted only on the basis of Article 235, as is shown by Council Decision 88/348/EEC of 16 June 1988 adopting an action programme for the promotion of youth exchanges in the Community — 'Youth for Europe' programme (Official Journal L 158, 25.6.1988, p. 42).

71. In view of that context, I find it difficult to accept that the direct and immediate objective of the Erasmus scheme is improvement of vocational training at university level and that the encouragement of greater mobility for university students is simply a means of achieving that aim. Without necessarily wishing to go so far as to suggest that the Commission deliberately 'dressed up' the objective of encouraging such mobility as vocational training in order to fit the contested decision into the scope of application of Article 128, I am convinced that the decision pursues an objective of encouraging the mobility of persons quite as much as vocational training of university students. For that reason also I consider that recourse to the dual basis of Articles 128 and 235 was necessary.[17]

3. The statement of reasons in respect of recourse to Article 235

72. In order for the Council to be obliged to have recourse to Article 235 it is sufficient that the act in question should include a single aspect which cannot be based on another provision of the Treaty.

73. As we have seen, the reasons indicated in the final recital (inclusion of matters relating to education which may be regarded as falling outside the scope of the common vocational training policy) relate to such an aspect.

74. The decision must therefore be considered to contain a sufficient statement of reasons, even though reference could also have been made to other aspects of the decision in order to justify recourse to that

17 — In its judgment of 27 September 1988 in Case 165/87 *Commission* v *Council* [1988] ECR 5545, the Court expressly declared that 'in so far as the competence of an institution is derived from two provisions of the Treaty, that institution is bound to adopt the relevant measures on the basis of both provisions'. (paragraph 11)

article. The claim that there is an insufficient statement of reasons cannot therefore be accepted.

75. As a very subsidiary point, that is to say in the event that the Court should not share my view and should decide that the Council could derive the necessary powers to adopt the Erasmus scheme from Article 128, it remains for me to take a position on the question whether it is possible, in accordance with the Commission's principal claim, to 'declare null and void the inclusion of Article 235 as part of the legal basis for Council Decision 87/327/EEC and the last recital in the preamble to that decision stating the reasons for the said legal basis'.

76. Such a solution is not possible in my view, since the inclusion of Article 235, by making the adoption of the decision dependent on the unanimous agreement of all the Member States, could have had an influence on the actual content of the decision. If recourse to Article 235 was not justified, the entire decision must be declared null and void.

Conclusion

77. It follows, however, from the foregoing discussion that in my opinion the Council could not derive from Article 128 all the powers necessary for the adoption of Decision 87/327/EEC and that it was right to base the decision on Article 235 as well. Moreover, the statement of reasons for the inclusion of that article contained in the last recital in the preamble to the decision is sufficient. Consequently, I propose that the Court dismiss the application and order the Commission to pay the costs, including those of the interveners.