REPORT FOR THE HEARING
delivered in Case 152/83 *

I — The relevant rules and the facts of the main proceedings

A — *The relevant rules*

1. On 17 December 1953 the Uniform Agreement between bureaux, a private-law agreement on insurance against civil liability in respect of the use of motor vehicles, was signed, setting up a system conceived by the insurers on mainly practical grounds. The system is otherwise known as the green card system and is based on a standardized green insurance card. It is a cooperative system, whereby each national central bureau, an association composed of all or the majority of insurance companies, agrees to settle claims concerning accidents caused by vehicles which are registered in other Member States and have a green card, and to reimburse foreign bureaux which have settled claims relating to accidents caused by vehicles insured in its own country. The operation of the system was wholly based on the possession of the green card, which was checked at the frontier. A detailed summary of the rules in question is contained in the 'Facts and issues' of the Court's judgment in Case 90/76 *Van Ameyde* v *UCI* [1977] ECR 1091.

2. Article 13 of the agreement provides as follows:

'... any dispute between bureaux regarding the interpretation and effects of this agreement shall be submitted to arbitrators appointed according to a procedure determined by the Council of bureaux.

The decision of the arbitrators shall be final and binding on the bureaux.

Any decision of the arbitrators on a question which has been submitted to them shall be communicated to all the bureaux ...'.

3. Council Directive 72/166/EEC of 24 April 1972 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles, and to the enforcement of the obligation to ensure against such liability (Official Journal, English Special Edition 1972 (II), p. 360) is intended to facilitate further the movement of persons travelling between Member States. It sets up a system the essential characteristics of which are set out in the last three recitals in the preamble and may be summarized as follows:

(a) Provision is made in the national law of every Member State for compulsory insurance on vehicles against civil liability and, therefore;

(b) There is a presumption that all Community motor vehicles travelling in Community territory are covered by insurance;

(c) Checks on green cards are abolished for vehicles normally based in one Member State entering the territory of another Member State;

(d) This system can function only if, by means of an agreement between the six national insurers' bureaux, each national bureau guarantees compensation in

* Language of the Case: French.

accordance with the provisions of national law in respect of any loss or injury giving entitlement to compensation caused in its territory by a vehicle normally based in a Member State, whether or not it was insured; each national bureau has a right of recovery from the person responsible or his insurer.

4. In view of the latter necessity, Article 2 (2) of the directive provides as follows:

'As regards vehicles normally based in the territory of a Member State, the provisions of this Directive, with the exception of Articles 3 and 4, shall take effect:

after an agreement has been concluded between the six national insurers' bureaux under the terms of which each national bureau guarantees the settlement, in accordance with the provisions of its own national law on compulsory insurance, of claims in respect of accidents occurring in its territory caused by vehicles normally based in the territory of another Member State, whether or not such vehicles are insured;

from the date fixed by the Commission, upon its having ascertained in close cooperation with the Member States that such an agreement has been concluded;

for the duration of that agreement.'

5. On 19 December 1972 the directive was amended by Council Directive 72/430/EEC (Official Journal, English Special Edition 1972, 28-30 December, p. 77) solely as regards the number of Member States to which it was addressed, following the first enlargement of the Community.

6. In the light of the first directive, on 16 October 1972 the national bureaux of the Community countries and of Switzerland and Liechtenstein concluded an agreement supplementing the 1953 agreement which was to be brought into force on the date provided for by the second indent of Article 2 (2) of the Council directive, that is to say on the date fixed by the Commission. Article 1 (c) of the agreement states that the contracting parties base themselves on the directive. Article 2 refers to the expression 'normally based' and lays down a definition of it.

7. Article 2 (d) provides as follows:

'Any dispute between bureaux regarding the interpretation of the term "normally based" in so far as it is not defined above, shall be submitted to a court of arbitrators . . . '

and Article 2 (e) states that

'The arbitrators thus appointed shall decide by a majority of votes finally and without appeal.'

8. Article 3 further provides that

'This agreement amends *pro tanto* the existing agreements in the form of the Uniform Agreement between bureaux . . . '.

9. On the basis of the second indent of Article 2 (2) of Directive 72/166/EEC, the Commission ascertained that the agreement concluded on 16 October 1972 between the national bureaux fulfilled the conditions set out in the first indent of Article 2 (2) and on 15 May 1973 issued Recommendation 73/185/EEC (Official Journal 1973, L 194, p. 13), fixing 1 July 1973 as the date from which the original Member States were to refrain from making checks at the frontier on insurance against civil liability in respect of the use of vehicles normally based in the

European territory of another Member State.

10. Following the first enlargement of the Community, the Commission, by Decision 74/166/EEC of 6 February 1974 (Official Journal 1974, L 87, p. 13), fixed 15 May 1974 as the date for the abolition of checks on insurance. The wording of this decision is identical to the abovementioned recommendation.

11. Following the subsequent accession of non-member countries and East European countries to the abovementioned system by the conclusion of new supplementary agreements between national bureaux, the Commission has always issued decisions on the same legal basis and in the same form as its first recommendation, fixing in each case the date from which Member States are to refrain from making checks on insurance against civil liability in respect of vehicles which are normally based in the territory of the country in question. The Supplementary Agreement of 12 December 1973 was annexed to Commission Decision 74/167/EEC of 6 February 1974 (Official Journal 1973, L 87, p. 14).

B — *Facts of the main proceedings and the preliminary question*

12. On 22 August 1973 Mr Demouche, a French national, was injured at Neuf-Brisach (France) by a motor vehicle registered in Germany, insured with the Allianz company (Munich), the driver of which did not have a driving licence. By judgment of 25 January 1978, the criminal division of the tribunal de grande instance, Colmar, ordered the driver (who in the meantime had died) to pay Mr Demouche FF 34 175.79 with statutory interest as compensation for the physical injury which he had suffered. The judgment was declared to be given jointly against the Fonds de garantie automobile, an agency which is responsible for compensation due to victims of car accidents where such compensation is not the responsibility of the Bureau central.

13. The Fonds de garantie automobile refused to pay compensation to Mr Demouche, and he sued it for payment of the amount due. The Fonds de garantie automobile pleaded Article R 420-1 of the French insurance code, and the tribunal de grande instance by judgment of 19 May 1982 invited Mr Demouche to join the Bureau central français in the action.

14. By writ of 25 May 1982 Mr Demouche summoned the Bureau central français to appear, and it in turn joined the Allianz insurance company and the German central bureau, the HUK-Verband, as third parties.

15. By judgment of 6 July 1983 the tribunal de grande instance, Colmar, ordered the Bureau central français to pay compensation to Mr Demouche, in accordance with its interpretation of Directive 72/166/EEC.

16. The German central bureau, the HUK-Verband, pleaded that the tribunal de grande instance, Colmar, had no jurisdiction, on the basis of the arbitration clause in Article 13 of the Agreement between bureaux of 17 December 1953, which provides that 'any dispute between bureaux on the interpretation and effects of this agreement shall be submitted to arbitrators . . . '. The Bureau central français claimed that that clause was amended by Article 2 (c) of the Supplementary Agreement between bureaux of 16 October 1972, which had the effect of limiting the

application of the arbitration clause from that date to cases in which there was a dispute over the interpretation of the expression 'normally based'.

17. The tribunal de grande instance, Colmar, clearly considered that this case concerned the interpretation of acts which could be treated as equivalent to 'acts of the institutions of the Community' within the meaning of Article 177 of the EEC Treaty and in its judgment of 6 July 1983 it stayed the proceedings on the third-party claim and referred to the Court the following question:

'Did the Supplementary Agreement of 16 October 1972 restrict the application of the arbitration clause, which the Agreement of 17 December 1953 had provided as being of general application, to cases in which there is a dispute between bureaux on the interpretation of the term "normally based"?'

18. The order making the reference was lodged at the Court Registry on 26 July 1983.

19. On 16 September 1983 the Bureau central français lodged an appeal against the national court's judgment. Because in France an appeal has suspensory effect, by order of 9 November 1983 the Court ordered the suspension of the procedure for a preliminary ruling. After an order concerning the withdrawal of the appeal was made by the tribunal de grande instance on 14 January 1987, by order of 25 February 1987 the Court ordered the resumption of the procedure for a preliminary ruling.

II — Written procedure

1. In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations were submitted on 3 October 1983 by the Commission of the European Communities, represented by Jacques Delmoly, a member of its Legal Department, acting as Agent, on 17 October 1983 by the HUK-Verband, represented by C. Hootz, Rechtsanwalt, Stuttgart, on 19 October 1983 by the Bureau central français, represented by L. Funck-Brentano, of the Paris Bar, on 20 October 1983 by the United Kingdom, represented by C. P. J. Muttukumaru, of the Treasury Solicitors' Department, acting as Agent, and on 26 October 1983 by the Danish Government, represented by Laurids Mikaelsen, Legal Adviser with the Ministry of Foreign Affairs, acting as Agent.

2. Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory enquiry.

Written observations submitted to the Court

(a) *The jurisdiction of the Court*

3. The *Bureau central français* observes essentially that the Uniform Agreement between bureaux of 1953 and the Supplementary Agreement of 1972 are private agreements, since they were concluded between entities governed by private law. They therefore do not have the character of an act of the institutions of the Community as defined in Article 189 of the EEC Treaty. Apart from international agreements, only acts listed in that article may be interpreted by the Court.

4. The Bureau central français claims that although the Supplementary Agreement of 1972 was concluded by the bureaux at the behest of the Commission pursuant to Article 2 (2) of Directive 72/166/EEC and

the Supplementary Agreement of 12 December 1973 was published in an annex to Commission Decision 74/167/EEC, the conditions for the implementation of Directive 72/166, dictated by the existence of the 1953 agreement, are none the less of an exceptional nature, since implementation is carried out by entities governed by private law and not by the authorities of the Member States. Such an exceptional procedure could not therefore confer on the Supplementary Agreement the character of a Community act, which it must be in order for the Court to have jurisdiction.

5. The *German central bureau,* the *HUK-Verband,* acknowledges that the Uniform Agreement between bureaux of 1953 was concluded in its original form as an agreement governed by private law between national associations of insurance companies. Council Directive 72/166/EEC turned that system into an instrument for harmonizing the legislation of the Member States and consequently it has become a Community system. The entry into force of the directive, which was intended to facilitate the movement of travellers between Member States by abolishing frontier checks on the green card, is made dependent on the conclusion of an agreement supplementing the Uniform Agreement between bureaux and, apart from Articles 3 and 4, its provisions are valid only if such a supplementary agreement exists.

6. The Commission established in Recommendation 73/185/EEC that the agreement in question complies with the principles of the directive. That was also established by Commission Decisions 74/166/EEC, 74/167/EEC and 75/23/EEC as regards the subsequent supplementary agreements. Furthermore, the text of the Supplementary Agreement of 12 December 1973 was published in the Official Journal in an annex to Decision 74/167/EEC of 6 February 1974.

7. According to the HUK-Verband, those agreements are based on Council Directive 72/166/EEC and on the decisions adopted by the Commission pursuant to the directive. Since the purpose of the directive would not have been attained without the assistance of those agreements, they are not only recognized in law and supplemented by the Community, as is clear from paragraph 18 of the Court's judgment of 9 June 1977 in Case 90/76 *Van Ameyde* [1977] ECR 1091, paragraph 18, but are also, according to the Opinion of the Advocate General in that case, a component part of Community rules and consequently of Community legislation in the wide sense. For that reason the Court is required to interpret them.

8. The *United Kingdom* observes that the provisions of Council Directive 72/166/EEC do not impose any obligation on national insurance bureaux. The obligations of the bureaux are determined by the supplementary agreements, and non-member countries which adhere to the system assume their obligations by adhering to the Supplementary Agreement, which is not an act of an institution of the Community but a multilateral agreement subject to private law. The interpretation of the agreements therefore does not fall within the scope of Article 177 of the EEC Treaty. Consequently, the United Kingdom claims that the Court should decline jurisdiction to answer the question asked.

9. The United Kingdom claims that its view is supported by the fact that, in plenary session on 17 October 1974, the Council of bureaux passed a resolution which is recorded in the official record of that meeting, relating to Article 2 (e) of the Supplementary Agreement of 12 December 1973. The extract from the minutes reads as follows:

'Article 2 (e) — Arbitration Procedure. The Sub-Committee had noted that the Arbi-

tration Procedure in the Supplementary Agreement was concerned only with the interpretation of the term "normally based" and it therefore recommended that, in the event of a dispute between bureaux on any other matter the Arbitration Procedure under the Uniform Agreement should be applied.

This recommendation was approved.'

According to the United Kingdom, the parties to the Supplementary Agreements must therefore interpret and apply those agreements on this basis.

10. According to the *Danish Government*, the fact that both the Council directive and the Commission decisions presuppose the existence of agreements concluded between the national bureaux and expressly refer thereto does not confer on those agreements the same legal status as acts of the institutions. The adoption of the aforesaid Community acts does not amount to a 'ratification' or 'incorporation' of the agreements between the bureaux, rendering the latter in themselves instruments of Community law. Those Community acts take into account the existence of the agreements and set up a particular system on that basis. If the agreement were to be terminated by the contracting parties, the directive could not operate and the obligation of the Member States to refrain from making checks at frontiers would automatically disappear. The agreements concluded between the national bureaux are therefore purely private agreements (see in this regard the Opinion of Mr Advocate General Reischl in Case 90/76 *Van Ameyde* [1977] ECR 1091, in particular at p. 1129).

11. The Danish Government considers that in Case 90/76 the Court did not interpret the 1953 Agreement as an act of Community law but sought to situate it with regard to Articles 85 and 86 of the EEC Treaty. The wording of paragraph 18 of the Court's judgment, which states that the green card system was 'recognized and perfected by Community provisions', wholly reflects the legal opinion of the Danish Government, which therefore suggests that the Court should refuse to answer the question asked by the national court.

12. The *Commission* considers that the agreements of which an interpretation is requested are agreements governed by private law which cannot be claimed to be acts of Community law. They are not 'acts of institutions of the Community' (Article 177 (b)) or 'statutes of bodies established by an act of the Council' (Article 177 (c)). The Commission cites the terms of the Court's order of 12 March 1980 in Case 68/80 [1980] ECR 771, in which the Court stated that 'it is apparent from the grounds and wording of the decision making the reference that the field covered by the question referred to the Court does not in any way relate to the interpretation of the EEC Treaty or to the validity or interpretation of an act of a Community institution'.

13. The Commission leaves the Court to decide whether it has jurisdiction.

(b) *Substance*

14. If the Court should declare that it has jurisdiction, the *Bureau central français* observes that the preliminary question raises the problem of the scope of the arbitration clauses contained in the Uniform Agreement of 1953 and the Supplementary Agreement of 1972, in the light of the rules on motor vehicle insurance resulting from Directive 72/166/EEC.

15. Since neither the harmonization nor the scope of the indemnity obligation towards injured parties is a matter for the bureaux (Article 3 (1) of Directive 72/166/EEC), they may intervene only in regard to problems raised by the settlement of claims in respect of accidents caused by vehicles. Thus the bureaux may not resort to arbitration on the scope of the indemnity as it is defined, however imperfectly, by the directive, which may not in itself be subject to private arbitration.

16. The arbitration clauses in the Supplementary Agreements and the 1953 Agreement are applicable solely in so far as the dispute subject to arbitration does not concern the definition of the scope of the insurance obligation, since that is within the jurisdiction of national courts, which may and even must submit the matter to the Court of Justice under Article 177.

17. That definition entails the problem — resolved in this case by the court which made the reference — whether exclusion clauses may be relied upon, and the question as to who should ultimately pay compensation, on which the national court has not pronounced owing to the reliance on the arbitration clause. The latter problem is closely linked to the problem of the definition of the insurance obligation and the arrangements intended by the directive and is outside the field of application of the arbitration clause.

18. Since the national bureaux are associations without any authorized capital and act in the capacity of agents, final payment must be made by the principals, the bureau in the country in which the vehicle is based or the insurance company. The question of responsibility for the loss therefore cannot be decided by arbitration, since that amounts to determining the 'applicable law' and defining the scope of the guarantee. Therefore only the national courts — and, in appropriate cases, the Court of Justice pursuant to Article 177 — have jurisdiction to decide who should be finally responsible for paying compensation pursuant to national law.

19. If the arbitration clause in the 1953 agreement were applied in disputes concerning the scope of the obligation on the bureaux, as governed by the directive, there would be a danger of the arbitral award, outside the control of the Court, creating an indemnity system different from the system sought by the directive or even contrary to it.

20. The problem actually submitted to the Court is therefore the problem of the scope of the arbitration clauses. The Bureau central français therefore suggests that the Court should rephrase the question asked and reply that the implementation of Directive 72/166/EEC and the Supplementary Agreement of 1972 by which the directive was applied restricted the scope of the general arbitration clause in the 1953 Agreement to cases in which the dispute between bureaux does not concern problems relating to the indemnity obligation and exceptions to that obligation, the interpretation of the directive or the measures by which it is applied.

21. The *HUK-Verband* contends that the close link between Directive 72/166/EEC, the Supplementary Agreement and the Agreement between bureaux requires a uniform interpretation thereof, which may be assured only by arbitral courts composed of members familiar with the problems.

There was never any intention to abandon the procedure under Article 13 of the Uniform Agreement, and the subsequent supplementary agreements were never intended to restrict the field of application of the original arbitration clause. The arbitration clause in the Supplementary Agreement does not restrict the clause in the 1953 Agreement since it refers only to the new term 'normally based'. It therefore merely supplements the 1953 Agreement.

22. Article 3 of the Supplementary Agreement shows that the Uniform Agreement between bureaux was amended only *pro tanto* and otherwise remains unchanged. That is confirmed by the view of the representatives of all the national bureaux, which is clearly set out in the relevant official reports.

C. Kakouris
Judge-Rapporteur