CHAPTER THREE

The application of Community law by national courts

Although its origin is independent from them, in its application Community law is closely connected with the legal systems of the Member States. In particular the national courts play an important role in the impact of Community law on the different systems of municipal law. They decide in the first instance whether and under what conditions it will be applied. The Court of Justice has laid stress upon the national courts’ obligation to apply Community law.

1. THE OBLIGATION OF NATIONAL COURTS TO APPLY COMMUNITY LAW


A. THE OBLIGATION IN GENERAL

*EEC Article 5*

Member States shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Treaty or resulting from action taken by the

1. See the charts given in Appendices II and IV.
OBLIGATION TO APPLY COMMUNITY LAW

institutions of the Community. They shall facilitate the achievement of the Community's tasks. They shall abstain from any measure which could jeopardise the attainment of the objectives of this Treaty.

**EEC Article 189**

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

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

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

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

Recommendations and opinions shall have no binding force.

**EEC Article 191**

Regulations shall be published in the Official Journal of the Community. They shall enter into force on the date specified in them or, in the absence thereof, on the twentieth day following their publication.

Directives and decisions shall be notified to those to whom they are addressed and shall take effect upon such notification.

**EEC Article 85 (2)**

2. Any agreements or decisions prohibited pursuant to this Article shall be automatically void.

Note: Reference to the application of Community provisions in national law is also made in ECSC Article 92, EEC Article 192, Euratom Articles 145 and 164.

(1) COSTA-ENEL CASE

Costa v. ENEL, Case 6/64, Preliminary ruling of 15 July 1964 on the request of the Justice of the Peace in Milano.


Facts: Mr. M. Costa, a lawyer and a shareholder in one of the Italian nationalized electrical industries, refused to pay bill for 1925 Lire for electricity supplied by the 'Ente Nazionale per l'Energia Elettrica' (ENEL). Before the Justice of the Peace at Milan (from whom no appeal lay because of the amount involved) he claimed that the Law of 6 December 1962, by which the electrical industries were nationalized, was contrary to EEC Articles 102, 93, 53 and 37. This law, it was claimed therefore, was in conflict with Article 11 of the Italian Constitution.

2. On the concept of preliminary rulings see Chapter Four.