



**The case law of the European Court of Justice has had a far greater impact on the development of EC law than any of the various treaties.**

**Discuss**

by

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In 1957 six countries<sup>1</sup> signed the Treaty of Rome<sup>2</sup> to form the European Economic Community. These countries had previously been allied as members of the European Coal and Steel Community (ECSC), an organisation established in order to promote political and industrial re-building in Europe after the Second World War<sup>3</sup>. It was also hoped that by involving West Germany and Italy in such collaboration that their opportunity for future war mongering would be diminished<sup>4</sup>. The Treaty of Rome established the creation of a `common market`, with Article 3 specifically conferring Community freedom to develop such a market with no “obstacles to the free movement of persons, services goods and capital”<sup>5</sup>. In order to achieve this aim, there was a need to promote further an idea of “political co-operation through economic integration”<sup>6</sup>, necessitating the creation of a new administrative infrastructure for the European Economic Union<sup>7</sup>. This comprised an Assembly (European Parliament), a Council, a Commission and a Court of Justice<sup>8</sup>.

The Treaty of Rome therefore not only outlined the scope of European Economic Union activities, but also provided a blueprint for the role and function of the four organisational institutions given the task of ensuring that the member states successfully achieved the objectives agreed in the Treaty<sup>9</sup>. Article 164, for example states that the European Court of Justice “shall ensure that in the interpretation and application of this Treaty the law is observed”<sup>10</sup>.

A number of other European Treaties have followed in the forty-eight years since the ratification of the Treaty of Rome<sup>11</sup>, and each of these has resulted in some amendment

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<sup>1</sup> France, Holland, Belgium, Luxembourg, Italy and West Germany were the founder members of the European Economic Community.

<sup>2</sup> EC Treaty (Treaty of Rome, as amended) (<http://www.bmdf.co.uk/rometreaty.pdf> last accessed 14 November 2005)

<sup>3</sup> Fairhurst, J. *Law of the European Union* Pearson (5<sup>th</sup> Ed. Longman, Harlow, Essex 2006)

<sup>4</sup> Loveland, I., *Constitutional Law, Administrative Law and Human Rights*. (3<sup>rd</sup> Ed Oxford University Press, Oxford 2004)

<sup>5</sup> *op.cit* no 2, Article 3, p.4 as outlined by Fairhurst (note 3 above)

<sup>6</sup> *op.cit* no 4 at p.360

<sup>7</sup> *op.cit* no 2 at pp 4-5

<sup>8</sup> *ibid*

<sup>9</sup> *op.cit* no 2

<sup>10</sup> *ibid.* at p. 54

<sup>11</sup> These include the Treaty on European Union; the Treaty of Amsterdam and the Treaty of Nice Refer to Fairhurst

to the law outlined in the Treaty of Rome<sup>12</sup>. However, this paper will explore and discuss the suggestion that it is the case law of the European Court of Justice (ECJ) which has had a far greater impact on the development of European Community (EC) law than any of these treaties. This will be achieved by exploring both the scope and impact of European law in relation to the Treaties and to the case law of the ECJ.

It is suggested that the Treaties provide “a framework of broad policies, which are to be supplemented by further *measures* by certain Community organisations”<sup>13</sup>. In other words, the Treaty will provide an outline of the legislation, with detailed guidelines for the enactment and implementation of that legislation provided by further legislation issued by the Council and the Commission. This will be in the form of regulations, directives, decisions, recommendations and opinions<sup>14</sup>, and each will impact on the national law of member states in different ways<sup>15</sup>. Regulations, for example are deemed to be “directly applicable in all Member States”<sup>16</sup>, meaning that as soon as a regulation is made by the European Council<sup>17</sup>, it becomes directly applicable within the national law of all member states<sup>18</sup>. Directives however are usually addressed only to relevant individual Member States, and although the result or outcome is specified, the means of accommodating this is left to the individual national authorities. Further measures include legislative decisions, which are binding on the individuals or Member States to whom they are addressed – for example in the case of *Grad v Finanzamt Traunstein* 9/70<sup>19</sup>, and recommendations and opinions, which have no legally binding force<sup>20</sup>. For the purpose of this paper the focus will be on regulations and directives<sup>21</sup>

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<sup>12</sup> *op.cit* no 3

<sup>13</sup> Fairhurst p.55

<sup>14</sup> Article 249 EC Treaty (previously Article 189 Treaty of Rome) – Consolidated Version of the Treaty Establishing the European Community. Official Journal C 325 , 24 December 2002 (<http://www.europa.eu.int/eur-lex/lex/en/treaties/dat/12002E/htm/12002E.html>) – last accessed 5 January 2006)

<sup>15</sup> *op.cit* no 3 and 4.

<sup>16</sup> *op.cit* no 14

<sup>17</sup> *ibid*

<sup>18</sup> *op.cit* no 3

<sup>19</sup> *ibid*

<sup>20</sup> *op.cit* no 14

<sup>21</sup> It is usually left to the discretion of the institution identified by the Treaty to decide which to operationalise. For example: “The appropriate regulations or directive to give effect to the principles set out in Articles 85 and 86 shall be laid down by the Council, acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament.” Article 6, The Treaty of Amsterdam.

However, by 1984 the initial aims of the Treaty of Rome had still not been achieved, for example, the freedom of movement of persons, services goods and capital<sup>22</sup>, originally expected to have been established by 1970, and one of the primary reasons for this is thought to be the barriers imposed by national laws on the creation of the common market<sup>23</sup>. It is possible that this was due to the combined effect of individual nations working to protect their legislative processes, and what Loveland describes as the “limits of the ECJ’s supra-nationalist competence”.<sup>24</sup> In addition, the creation of this market required significant legislation, the passing of which was effectively limited by the small size of the European Commission. This was compounded by the difficulties encountered in obtaining agreement from all member states for legislative details,<sup>25</sup> possibly due to reluctance by Member States to agree to any reforms that they regard as “too radical”<sup>26</sup>.

This is important, because without ratification, there can be no new law based on the Treaties<sup>27</sup>, therefore the legislative powers of the Treaties will be limited by the willingness of Member States to ratify them. Indeed, the 2006 deadline for ratification of the Treaty Establishing a Constitution for Europe<sup>28</sup> was discarded due to collective dissatisfaction with it<sup>29</sup>. Indeed, only twelve of the twenty-five member states have actually ratified it, and the electorate in both the Netherlands and France voted to reject it<sup>30</sup>. Some of the concerns have related to the potential effect of the Treaty on national social policies, for example the issue of abortion in Ireland<sup>31</sup>.

So, although a large body of law is contained within the Treaties and secondary legislation arising from them, it could be argued that it is the case law of the ECJ that plays the greatest role in the interpretation and implementation of this law. For example, in *Allonby v Accrington and Rossendale College*<sup>32</sup> the ECJ made a preliminary ruling on

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<sup>22</sup> *op.cit* no 4 at p.390

<sup>23</sup> *ibid*

<sup>24</sup> *ibid* at p.390

<sup>25</sup> *ibid*

<sup>26</sup> *ibid* at p.393.

<sup>27</sup> *op.cit* no 3 and 4

<sup>28</sup> Treaty Establishing a Constitution for Europe. Official Journal of the European Union. C310, Volume 47, 16/12/04

<sup>29</sup> BBC News, “EU Constitution: Where Member States Stand”  
<http://newsvote.bbc.co.uk/mpapps/pagetools/print/news.bbc.co.uk/2/hi/europe> (last accessed 15 November 2005)

<sup>30</sup> *ibid*

<sup>31</sup> *ibid*

<sup>32</sup> Case C-256/01 *Allonby v Accrington and Rossendale College* [2005] All E.R. (EC) 289

the application of Article 141<sup>33</sup> in response to a request from the Court of Appeal. Ms Allonby had brought proceedings in the belief that she had been unlawfully discriminated against in terms of pay and pension entitlement. As part of their adjudication the ECJ defined and gave direct effect to the concept of a `worker` under the terms of Article 141. This means that under certain conditions, United Kingdom (UK) legislation precluding self-employed persons from employment pension entitlements should be regarded as incompatible with Article 141, and therefore “disapplied in view of the primacy of Community law”<sup>34</sup>. So, although the initial legislation was outlined within the Treaty<sup>35</sup>, the interpretation and subsequent application of this was made on the basis of ECJ case law. Furthermore, this ruling<sup>36</sup> was based on previous decisions made by the ECJ<sup>37</sup>, and may have future implications in national administration of statutory pension schemes<sup>38</sup>. Indeed, there is some suggestion<sup>39</sup> that employment tribunals relating to pension schemes for part-time workers in the UK were actually waiting for the decision in cases such as *Allonby*<sup>40</sup> and *Preston and others v Wolverhampton Healthcare NHS Trust and others (No 3)*<sup>41</sup> before arriving at their own conclusions.

The ruling in *Allonby*<sup>42</sup> indicates the multi-dimensional impact of ECJ case law, including the principle of direct effect. This means that individuals as well as Member States could have rights conferred directly by Treaty provisions<sup>43 44</sup>. This is because the European Communities Act 1972 made Community law directly applicable within UK law, and therefore “capable of forming the basis of rights and obligations enforceable by

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<sup>33</sup> *op.cit* no 14

<sup>34</sup> *op.cit* no 32

<sup>35</sup> *op.cit* no 14

<sup>36</sup> *op.cit* no 32

<sup>37</sup> For example, Case 106/77 *Amministrazione delle Finanze dello Stato v Simmental SpA* (No 2) [1978] E.C.R. 629

<sup>38</sup> Equal Opportunities Commission “*Allonby v Accrington and Rossendale College* [2004] IRLR 224 ECJ” <http://www.eoc-law.org.uk/default.aspx?page=3121&lang=en> (last accessed 22 November 2005)

<sup>39</sup> Matineau Johnson, “Part-timer Pension Claims – An Update” Education Bulletin March 2004.

<http://www.educationsolutionsonline.co.uk/links/2004/Part%20Timers%20Update%20March%202004.pdf> (last accessed 22 November 2005)

<sup>40</sup> *op.cit* no 32

<sup>41</sup> [2004] EWCA Civ 1281

<sup>42</sup> *op.cit* no 32

<sup>43</sup> Steiner, J., and Wood, L., *Textbook on EC Law* (6<sup>th</sup> Ed. Blackstone Press Ltd. London, 1999)

<sup>44</sup> *op.cit* no 3 at p.235

individuals before their national courts"<sup>45</sup>. As mentioned previously, regulations were specified within the Treaty of Rome as being "directly applicable"<sup>46 47</sup>, but the principle of direct effect was not enunciated until the case of *Van Gend en Loos v Nederlandse Administratie der Belastingen*<sup>48</sup> where the ECJ held that "A Member State's duty under Art. 12 not to introduce new customs duties or to increase existing duties create a corresponding right upon individual citizens of the Member State, which they can enforce in national courts." This has been described as a "vertical direct effect", in relationships between individuals and the State, for example in the case of *Marshall v Southampton*<sup>49</sup>, where it was held that an employee may rely "on Article 6 of the Directive"<sup>50</sup> against an authority of the State acting in its capacity as an employer in order to set aside a national provision"<sup>51</sup>. This ruling means that a directive may have direct effect in a case brought by a State employee against their employer i.e. the State, or indeed by the State against an individual.

However, since *Marshall*<sup>52</sup>, the ECJ has made it clear that directives should not have horizontal direct effect; that is, they should not impose obligations between individuals. However, Fairhurst does cite an exception to this in the case of *Criminal proceedings against Rafael Ruiz Bernaldez (Case C-129/94)*<sup>53</sup>, where although it was not made explicit, the ECJ held that the obligations of an unimplemented directive should apply in direct contravention of existing Spanish law, and obligating an insurance company to compensation a passenger injured by a drunk driver.

The ECJ, however, took care to state that the principle of direct effect is not to be generally applied, it being "...necessary to examine in every case whether the nature, general scheme and wording of the provision in question are capable of having direct

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<sup>45</sup> *op.cit* no 43 at p.45

<sup>46</sup> *op.cit* no 3 at Article 249

<sup>47</sup> *op.cit* no 43 at p.46

<sup>48</sup> Case 26/62 *NV Algemene Transport- en Expeditie Onderneming van Gend en Loos v Nederlandse Administratie der Belastingen* European Court of Justice 5 February 1963

<sup>49</sup> *Marshall v Southampton and South West Hampshire AHA (No.2)* [1994] 1 AC 530

<sup>50</sup> European Communities Council Directive (76/207) – 09/02/76

<sup>51</sup> *Marshall v Southampton and South West Hampshire AHA (No.2)* [1994] 1 AC 530

<sup>52</sup> *ibid*

<sup>53</sup> *op.cit* no 3 at p.250

effects on the relations between Member States and individuals.”<sup>54</sup> But again, it is the ECJ who determines the application of this legislation, and by means of this ruling protecting their right to decide when and how legislation is applied. Indeed Hunt argues that in this ruling the ECJ was making “bold and audacious claims, not only about the nature of Community law, but also as regards its own powers, competences and position within the EU polity”<sup>55</sup> Yet it cannot be denied that this interpretative role is conferred within the Treaty<sup>56</sup>, as is the ECJ’s role in implementing Community law and its authority to penalise Member States for non-implementation of Community legislation, or for contravening obligations. However, it could be argued that the ECJ went further than this, and demonstrated what collectively may be regarded as some creative interpretation and application of the law, particularly in relation to directives.

Because directives do not have automatic direct effect, there is a reliance on Member States to implement the legislative means to achieve their intended aim. However, this is not always done, meaning that individuals would be unable to rely on the provisions made within that directive<sup>57</sup>. But in a number of ways, the ECJ has interpreted and upheld the law to protect the rights of individuals<sup>58</sup>. For example, in the case of *Francovich and Bonifaci v Republic of Italy*<sup>59</sup> the ECJ awarded a group of ex workers damages against the Italian state because of its failure to implement Directive 80/987. The Court reasoned that Article 249 obliged States to implement directives within a specified time, and that should they fail to do this, they would be obliged to compensate individuals for losses as a result of this non-implementation, subject to the satisfaction of specified criteria.<sup>60</sup>

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<sup>54</sup> *Yvonne van Duyn v Home Office*. Judgement of the Court of 4 December 1974. Reference for a preliminary ruling: High Court of Justice, Chancery Division - United Kingdom. Public policy. Case 41-74. [1974] ECR 1337

<sup>55</sup> Hunt, J., “The European Court of Justice and The Court of First Instance” in *Understanding European Union Institutions*, Warleigh, A. (Ed) (London, Routledge 2002) pp 103-122 at p.108

<sup>56</sup> Article 220, *op.cit* no 2

<sup>57</sup> *op.cit* no 3

<sup>58</sup> *op.cit* no 43

<sup>59</sup> Case C-9, 9/90 *Francovich and Bonifaci v Republic of Italy* [1991] ECR I 5357

<sup>60</sup> a) The Directive involved rights conferred on individuals.  
b) The content of those rights could be identified on the basis of provisions of the Directive, and  
c) There was a casual link between the State’s failure and the damage suffered by the persons affected.  
*op.cit* no 43 at p.62

So, not only has the ECJ conferred the doctrine of direct effect, to confer individuals rights under EU law, but has also made reference enabling the protection of European laws not yet incorporated into the legislation of member states, whilst effecting punishment for a state's non-adherence to EU law<sup>61</sup>.

Further scope for ECJ jurisdiction comes in the form of `preliminary rulings`. These are issued by the ECJ to give national courts guidance on interpreting both the Treaty and statutes made by Community institutions and also to rule on the "validity and interpretation of acts of the institutions of the Community"<sup>62,63</sup>. Again, although the Treaty provides for preliminary rulings by the ECJ and its other explicit legislative functions, the emergence of a "de facto power of review and control over the acts of national authorities"<sup>64</sup> has been largely at the hand of the ECJ itself.

In addition there is nothing written within the text of the Treaty to confer European law supremacy over national law, instead this position was established by a preliminary ruling<sup>65</sup> made by the European Court of Justice<sup>66</sup>, made in *Flaminio Costa v E.N.E.L. Case 6/64*<sup>67</sup>. This effectively means that by signing the Treaty of Rome, Member States have agreed to comply not only with the legislative requirements of the Community, but the supremacy of Community law over any incompatible domestic law.

This case<sup>68</sup> also signifies a further shift in the development of the Community law making process. This is because although the Treaty<sup>69</sup> gives vague reference to the supremacy of European law, it was not until the ECJ provided case law precedent in *R V*

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<sup>61</sup> *op.cit* no 59

<sup>62</sup> Kuper, R., *The Politics of The European Court of Justice* (Kogan Page Ltd. London 1998)

<sup>63</sup> *op.cit* no 2, Article 177

<sup>64</sup> *op.cit* no 55 at p.109

<sup>65</sup> In the interpretation of Article 234 (formerly Article 177 of the EEC Treaty *op.cit* no 2)

<sup>66</sup> *op.cit* no 4

<sup>67</sup> Case 6/64 *Flaminio Costa v E.N.E.L.*: [1964] ECR 585 at 593, ECJ

"By contrast with ordinary international Treaties, the EEC Treaty has created its own legal system which, on the entry into force of the Treaty, became an integral part of the legal system of the Member States and which their courts are bound to apply...the Member States have limited their sovereign rights and have thus created a body of law which binds both their nationals and themselves."

<sup>68</sup> *ibid*

<sup>69</sup> *op.cit* no 2



*Secretary of State for Transport, ex parte Factortame (No 2)*<sup>70</sup>, that this was established clearly in law. In *Factortame*<sup>71</sup>, the ECJ asserted the provision that national law that conflicts with EC law must be set aside in order to “ensure that domestic legal systems give practical legal effect to directly effective EC rights. Any provision within the national legal system that impairs this effect contravenes EC law.”<sup>72</sup> In their ruling the ECJ supported the United Kingdom courts in permitting the suspension of national law should there be the possibility of that law infringing on rights conferred by EC law<sup>73 74</sup>. This, in effect means that the ECJ has given national courts the authority to suspend application of a national law, which removes the rights conferred by a related EC law, even before the ECJ has decided whether or not the European law supplants the national law. Although Article 5 of the Treaty<sup>75</sup> is used as justification for this, it could again be argued that it is the ECJ that perpetuates not only European Community law, but also national law.

Another example demonstrating the impact of ECJ case law is its response to the reference made by the Court of Appeal in the case *Owusu v Jackson and others (case C – 281/02)*<sup>76</sup>. Article 2 of EU Regulation 44/2001 stipulates that “persons domiciled in a Member State, shall, whatever their nationality, be sued in the courts of that Member State.”<sup>77</sup>, However, there remained some uncertainty regarding whether English courts were still able to use the principle of *forum non conveniens* (the declination “to hear a case on the basis that a court with competent jurisdiction in another country is the most appropriate forum to try the case”<sup>78</sup>) under common law provision if a non-Member State

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<sup>70</sup> Case C-213/89 *R V Secretary of State for Transport, ex parte Factortame (No 2)* [1990] ECR I-2433

<sup>71</sup> *ibid*

<sup>72</sup> *op.cit* no 4 at p.406

<sup>73</sup> “In a case concerning Community law in which an application was made for interim relief, if a national court considered that the only obstacle which precluded it from granting such relief was a rule of national law it had to set that rule aside.” *Op.cit* no 70 at p. 604

<sup>74</sup> *op.cit* no 4

<sup>75</sup> *op.cit* no 2

<sup>76</sup> Case C-281/02 *Owusu v NB Jackson (trading as Villa Holidays Bal-Inn Villas) and others* [2005] All ER (D) 47 (Mar)

<sup>77</sup> Council Regulation (EC) No 44/2001 on Jurisdiction and the Recognition and Enforcement of Judgements in Civil and Commercial Matters. Official Journal of the European Communities L12/1

<sup>78</sup> Griffiths, R., “Time to go Shopping” Legal Week, June 23<sup>rd</sup> 2005. [http://www.ffw.com/documents/Publications/Dispute\\_resolution/Legal\\_Week\\_Rhys.pdf](http://www.ffw.com/documents/Publications/Dispute_resolution/Legal_Week_Rhys.pdf) (last accessed 28 November 2005)

were involved<sup>79</sup>. However, the judgment in *Owusu v NB Jackson (trading as Villa Holidays Bal-Inn Villas) and others*<sup>80</sup> stated that the application of Article 2 was not discretionary, and did apply even if a Member State was involved in some judicial dispute with a non Member State<sup>81</sup>. This means that an English court cannot decline to hear a case involving claimants domiciled in England. However, it is contested that whilst the ruling of the ECJ case law may have clipped “the wings of the English courts”<sup>82</sup>, that this is subject to some limitations bound in other legislation (EU and other wise)<sup>83</sup>. For example where there is a binding jurisdiction agreement favouring another court whether it be Member State or not<sup>84</sup>. But Griffiths suggests that the enforceability of such clauses will require submission “to the ECJ for clarification”<sup>85</sup>, effectively meaning that yet again the power to determine legislative scope and thus development is returned to the ECJ.

So, it would appear that the ECJ has mastered its own expanding influence, and that there has been no effective opposition to this. Indeed, national courts usually do abide by the decisions of the ECJ<sup>86</sup>. Although there has been some resistance to ECJ law, for example where Member States have failed to implement legislation (possibly to incur a fine<sup>87</sup>), or where they have demonstrated a lack of deference to European legislation<sup>88</sup>, the position of the ECJ has never truly been refuted.

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<sup>79</sup> *ibid*

<sup>80</sup> *op.cit* no 76

<sup>81</sup> *op.cit* no 78

<sup>82</sup> Halkerston, G., “A Funny Thing Happened on the Way to the Forum” 155 *New Law Journal* 25/03/05

<sup>83</sup> For example see Halkerston, G., and Robert-Tissot

<sup>84</sup> Robert-Tissot, S., “The Battle For Forum” 155 *New Law Journal*, 1496 07/10/05

<sup>85</sup> *op.cit* no 78

<sup>86</sup> *op.cit* no 55

<sup>87</sup> For example, as in the case of *Francovich* (*op.cit* no 59). Member States also ratified the Maastricht Treaty which confers power on the Court to issue fines against any Member State failing to comply with legislation (see *op.cit* no 55)

<sup>88</sup> For example, whilst the Cabinet Office states the need for national implementation of EU Directives, it also urges some caution and the need to “be aware of options which may lead to over-implementing or ‘gold-plating’ EU Directives. This is when implementation goes beyond the minimum necessary to comply with a Directive. It is government policy not to gold-plate Directives unless there are exceptional circumstances” The Cabinet Office (Better Regulation Executive) – “Notes On Implementing European Legislation” [http://www.cabinetoffice.gov.uk/regulation/ria/ria\\_guidance/european\\_implement\\_legislation.asp](http://www.cabinetoffice.gov.uk/regulation/ria/ria_guidance/european_implement_legislation.asp) (last accessed 22/11/05)

This may be because those countries joining the EU in latter years would have been both aware and accepting of its legal structure when joining. However, this could not be said for longer standing members. Indeed, it has been suggested that the original writers of the Treaty<sup>89</sup> could never have anticipated the potential for the ECJ to use Article 177<sup>90</sup> in such a “purposive, teleological”<sup>91</sup> way to interpret the Treaty. Furthermore, even those countries joining the EC in the 1970`s may not have understood the implications of cases such as *Van Gend*<sup>92</sup> and *Costa*<sup>93</sup>. Certainly in the case of the United Kingdom, Loveland argues that “many innovative aspects of the ECJ`s own constitutional jurisprudence had appeared after the UK`s accession”<sup>94</sup>, effectively challenging the argument that when the European Communities Act was passed in 1972, there was a voluntary acceptance of the supremacy of EC law over national law, simply because the decisions and interpretations of the ECJ could not have been foreseen<sup>95</sup>. However, it could be said that the actions of the ECJ in cases such as *Flaminio Costa*<sup>96</sup> and *Van Gend en Loos*<sup>97</sup> would negate this argument.

Furthermore, it is argued that the national courts have aided and abetted the developing influence of the ECJ by providing it with references, which it is unable to solicit itself. However, such approaches are not voluntary, as the Treaty<sup>98</sup> does provide some imperative for courts in Member States to address queries to the ECJ, with an approach being compulsory “in a case pending before a court or tribunal of a Member State, against whose decisions there is no judicial remedy under national law.”<sup>99</sup> It might therefore be unfair to suggest that the national courts have knowingly collaborated with the ECJ in the development of their role because whilst the basic premises of law were outlined by the Treaties, the ECJ has worked to establish its considerable power in determining its own position and the scope of Community law<sup>100</sup>.

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89 *op.cit* no 2  
90 *op.cit* no 14, Article 234  
91 *op.cit* no 55 at p.109  
92 *op.cit* no 54  
93 *op.cit* no 67  
94 *op.cit* no 4 at p.407  
95 For example, Lord Bridge as cited *ibid* at p.407  
96 *op.cit* no 67  
97 *op.cit* no 48  
98 *op.cit* no 2  
99 *ibid*, Article 177  
100 *op.cit* no 55

However, regardless of how its powers have been conferred, the accumulated effects of European Court of Justice case law means that although the European Treaty provisions have resulted in a significant body of both primary and secondary legislation, it is arguably the ECJ that has had the greatest impact on the development of European law. Not only does the ECJ interpret and advise on the implementation of all other EU legislation, but it has established an effective position in having a direct impact both on the national law of Member States, and on individuals residing in these States. Whilst it could be contested that making and establishing points of law do not necessarily mean that law will be adhered to, the evidence does suggest that it is. Furthermore, Member States can (and have) refused to ratify new Treaty provisions, but appear to have neither the power nor the will to make an effective challenge on the jurisdiction of ECJ case law.

## **Bibliography**

BBC News, "EU Constitution: Where Member States Stand"  
<http://newsvote.bbc.co.uk/mpapps/pagetools/print/news.bbc.co.uk/2/hi/europe> (last accessed 15 November 2005)

Case 6/64 *Flaminio Costa v E.N.E.L.*: [1964] ECR 585 at 593, ECJ

Case 26/62 *NV Algemene Transport- en Expeditie Onderneming van Gend en Loos v Nederlandse Administratie der Belastingen* European Court of Justice 5 February 1963

Case 106/77 *Amministrazione delle Finanze dello Stato v Simmenthal SpA* (No 2) [1978] E.C.R. 629

Case C-9, 9/90 *Francovich and Bonifaci v Republic of Italy* [1991] ECR I 5357

Case C-213/89 *R V Secretary of State for Transport, ex parte Factortame (No 2)* [1990] ECR I-2433

Case C-256/01 *Allonby v Accrington and Rossendale College* [2005] All E.R. (EC) 289

Case C-281/02 *Owusu v NB Jackson (trading as Villa Holidays Bal-Inn Villas) and others* [2005] All ER (D) 47 (Mar)

Consolidated Version of the Treaty Establishing the European Community. Official Journal C 325, 24 December 2002 (<http://www.europa.eu.int/eur-lex/lex/en/treaties/dat/12002E/htm/12002E.html>) – last accessed 27 November 2006)

Council Regulation (EC) No 44/2001 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters. Official Journal of the European Communities L12/1

European Communities Council Directive (76/207) – 09/02/76

EC Treaty (Treaty of Rome, as amended) (<http://www.bmdf.co.uk/rometreaty.pdf> last accessed 14 November 2005)

Equal Opportunities Commission “*Allonby v Accrington and Rossendale College* [2004] IRLR 224 ECJ” <http://www.eoc-law.org.uk/default.aspx?page=3121&lang=en> (last accessed 22 November 2005)

Fairhurst, J. *Law of the European Union* Pearson (5<sup>th</sup> Ed. Longman, Harlow, Essex 2006)

Griffiths, R., “Time to go Shopping” Legal Week, June 23<sup>rd</sup> 2005.

[http://www.ffw.com/documents/Publications/Dispute\\_resolution/Legal\\_Week\\_Rhys.pdf](http://www.ffw.com/documents/Publications/Dispute_resolution/Legal_Week_Rhys.pdf)

(last accessed 28 November 2005)

Halkerston, G., “A Funny Thing Happened on the Way to the Forum” 155 *New Law Journal* 25/03/05

Hunt, J., “The European Court of Justice and The Court of First Instance” in *Understanding European Union Institutions*, Warleigh, A. (Ed) (London, Routledge 2002) pp 103-122 at p.108

Kuper, R., *The Politics of The European Court of Justice* (Kogan Page Ltd. London 1998)

Loveland, I., *Constitutional Law, Administrative Law and Human Rights*. (3<sup>rd</sup> Ed Oxford University Press, Oxford 2004)

*Marshall v Southampton and South West Hampshire AHA* (No.2) [1994] 1 AC 530

Matineau Johnson, "Part-timer Pension Claims – An Update" Education Bulletin March 2004. <http://www.educationsolutionsonline.co.uk/links/2004/Part%20Timers%20Update%20March%202004.pdf> (last accessed 22 November 2005)

*Preston and others v Wolverhampton Healthcare NHS Trust and others* (No 3 [2004] E.W.C.A. Civ 1281. 7/10/04.

Robert-Tissot, S., "The Battle For Forum" 155 New Law Journal, 1496 07/10/05

Steiner, J., and Wood, L., *Textbook on EC Law* (6<sup>th</sup> Ed. Blackstone Press Ltd. London, 1999)

The Cabinet Office (Better Regulation Executive) – "Notes On Implementing European Legislation"  
[http://www.cabinetoffice.gov.uk/regulation/ria/ria\\_guidance/european\\_implement\\_legislation.asp](http://www.cabinetoffice.gov.uk/regulation/ria/ria_guidance/european_implement_legislation.asp) (last accessed 27 November 2006)

The Treaty of Amsterdam, <http://eurotreaties.com/amsterdamtreaty.pdf> (last accessed 15 November 2005)

Treaty Establishing a Constitution for Europe. Official Journal of the European Union. C310, Volume 47, 16/12/04

*Yvonne van Duyn v Home Office*. Judgement of the Court of 4 December 1974. Reference for a preliminary ruling: High Court of Justice, Chancery Division - United Kingdom. Public policy. Case 41-74. [1974] ECR 1337