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However and *therefore* – their occurrence and use
in official documents of the EU

Bakalářská práce

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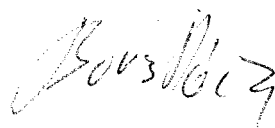
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I declare that the following baccalaureate thesis is my own work for which I used only the sources and literature mentioned.



podpis

V Praze dne 20. ledna 2006

Boris Dóža

PODĚKOVÁNÍ

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S O U H L A S

Souhlasím se zapůjčením bakalářské práce ke studijním účelům.

U S E A P P R O V A L

I agree that the baccalaureate thesis may be borrowed and used for study purposes.

MOTTO

“To write simply is as difficult as to be good.” (W Somerset Maugham)

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Introduction

This thesis aims at discussing two connectives *however* and *therefore*. It focuses on their occurrence use in legal and official materials. The main reason why this topic was chosen is the frequent occurrence of these connectives in the language of law and political diplomacy and the fact that the use of these connectives does not always facilitate the reception of the texts and may be confusing at times.

The materials used for the following analysis are taken from documents that the Council of the European Union has made available on its websites. These materials include treaties, agreements, legislation in force, preparatory acts, or case law. Treaties and agreement may include annexes and protocols, legislation in force may include acts of law as well as their amendments and addenda, and case law may include judgements, opinions, official speeches, statements, and so on. All these materials have to do with law, business, economy, and all represent a formal or very formal style.

The aim of this thesis is to survey the occurrence and use of *however* and *therefore* in the particular register. In order to do so, the items under discussion are examined in respect of their formal characteristics and classifications, structure and syntactic description, position in the clause, punctuation, semantics, and functions. In other words, this thesis tries to describe how the two connectives are used in the chosen material and what tendencies can be observed. In addition, an attempt will be made to note whether the two connectives are used efficiently or not.

This thesis focuses exclusively on the two connectives *however* and *therefore*, and avoids any deliberations on their synonyms, such as *nevertheless*, *even though*, *though*, *thus*, and the like.

1 THEORY

This chapter summarizes the main formal, syntactic, semantic, and functional characteristics of *however* and *therefore*.

At the outset, it ought to be mentioned that the two items *however* and *therefore* have been variously labelled, and that different authors refer to them as to *intersentential connectives* (Pípalová 2000), *connectors*, *conjuncts* (Quirk et al. 1985; CGEL henceforth), *conjunctives*, *conjunctive adjuncts*, or *discourse adjuncts* (Halliday and Hasan 1976: 228-31), *connective adjuncts* (Huddleston and Pullum 2002: 775), *linking sentence adverbials* (Leech and Svartvik 1994: 180), *discourse markers* (Swan 1996: 151, Schiffrin 2003) and so on, depending on the focus or the theoretical framework of their descriptions. This chapter provides a survey of terminological issues with the aim of clarifying and delimiting the syntactic and functional properties of the two items under discussion. As a result, *however* and *therefore* will be referred to as *conjuncts* when discussing their syntactic features, or as *connectives/connectors* when dealing with their function. Alternatively, this thesis may treat *conjuncts* or *connectives/connectors* as synonymous when needing to use a general term.

1.1 Formal characteristics and classifications

1.1.1 Form

The class of conjunctive expressions (conjunctive adjuncts), as defined by Halliday and Hasan (1976: 230-31) subsumes three broad sources of connective expressions: (a) simple adverbs (coordinating conjunctions), eg: *but, so, then*; and adverbs derived by *-ly*, eg: *accordingly, subsequently, actually*; (b) compound adverbs in *there-* and *where-*, eg: *whereat, thereupon*; other compound adverbs, eg: *furthermore, nevertheless, anyway*; and (c) prepositional phrases, eg: *on the contrary, as a result, in addition*; and prepositional expressions with *that* or other reference item, eg: *as a result of (that)* or *in spite of (that)*.

Using the above classification, the items *however* and *therefore* are compound adverbs formed by entire words. Namely, *however* consists of one one-syllable item *how* and one two-syllable item *ever*, and *therefore* consists of one one-syllable item *there* and one one-syllable item *fore*.

1.1.2 Syntactic description

However and *therefore* are compound adverbs, performing the syntactic function of adverbials within a clause. “We can think of a clause – the unit which may express a statement – as the basic unit of meaning in a discourse. Grammar provides three main ways of putting such units together: a) coordination..., b) subordination..., c) adverbial link: You can connect the two ideas by using a linking sentence adverbial...” (Leech and Svartvik 1994: 180). These items serve to provide textual links between sentences/clauses or propositions. Their function is clearly distinct from the adverbials functioning as integrated clause elements. Adverbials are thus divided according to the extent to which they are integrated into the clause structure; they may be either integrated or non-integrated (*CGEL*: 613). The integrated items are referred to as *adjuncts* (and *subjuncts*), the non-integrated are termed *disjuncts* and *conjuncts*. *Disjuncts* “have a superior role as compared with the sentence elements; they are syntactically more detached ... they seem to have a scope that extends over the whole sentence” (ibid). Adverbials with connective function are also grammatically distinct and are classified as *conjuncts* (*CGEL*: 631). “Conjuncts are more like disjuncts than adjuncts in having a relatively detached and ‘superordinate’ role as compared with other clause elements ... Conjuncts, as part of their even greater distinctness from the closely interrelated clause elements such as S, C, and O, often have semantic roles that are conjunct-specific. That is, they have the function of conjoining independent units rather than one of contributing another facet of information to a single integrated unit.” (ibid)

The above-mentioned distinction is important mainly in the case of *however*, because this adverb is found in two syntactic functions, as adjunct and conjunct

(examples of the adjunct function are discussed in the section dealing with meaning of the adverbs).

Despite the syntactic differences between adjuncts and conjuncts, the semantic role of expressing relation between two units can often be conveyed by an adjunct, *eg* the concessive meaning of *however* can be expressed by a subordinate concessive clause, or temporal meaning of sequence can be integrated into the clause, or the beginning of a new clause can signal a temporal relation with the previous sentence (*cf* Halliday and Hasan 1976: 228).

Conjuncts are sentence modifiers and operate as a means of expressing textual links. (Dušková a kol. 1994: 482; *MSA* henceforth)¹ The function and the syntactic properties of this type of adverbials are the crucial features in the classification, since in different classifications different features are taken into account. *The Cambridge Grammar of the English Language*, *eg* terms this type of adverbials as *connective adjuncts* (Huddleston & Pullum 2002: 775).

The features listed by *CGEL* (p. 504) to distinguish between integrated and non-integrated clause elements include the ability to be the focus of a cleft sentence, contrast in alternative interrogation or negation, ability to be elicited by question forms. Moreover, *CGEL* (pp. 646-7) lists the following additional syntactic features specific to conjuncts, including the items *however* and *therefore*:

(a) Both items can appear in questions, *eg*:

“Will they *however* know how to do it?” / “Will you *therefore* resign?”

(b) Conjuncts that are not restricted to the initial position in a sentence can appear in indirect questions, *eg*:

“He asked whether *therefore* they would stay.”

¹ “Větné modifikátory sloužící jako prostředky textové návaznosti (spojovací prostředky)” (*MSA*: 482)

(c) Both items can appear in imperatives, *eg*:

“*However*, be nice to me.” / “*Therefore*, explain the situation to them.”

(d) Conjuncts in general are restricted in terms of gradability, as distinct from disjuncts, and thus do not accept modification, *eg*:

? *Very however*” / ? *Heavily therefore*”

(e) Unlike enumerative and additive conjuncts (such as *fifthly and finally*, *first and most important*), both items cannot be coordinated due to the clashing nature of their meaning, *eg*:

? “*however and therefore*”, or vice versa

(f) Both items appear in dependent finite clauses, which are (i) adverbial, (ii) restrictive, (iii) non-restrictive:

(i) Adverbial finite clauses, *eg*:

“I met him in the park, when, *however*, it was raining heavily.”

(ii) Restrictive relative clauses, *eg*:

“He was a supporter of the government, but he made a speech that constituted, *however*, an attack on the Prime Minister.”

(iii) Non-restrictive relative clauses, *eg*:

“I’m inviting Peter, who is a student, and who *therefore* cannot afford to spend too much money”.

In addition to the above properties, conjuncts can be described also in terms of co-occurrence with other items and their position in the sentence (*CGEL*: 642-646):

1.1.3 Co-occurrence with conjunctions

Conjuncts in general co-occur with and can immediately follow conjunctions *and*, *or*, *but* (*ibid*: 645). This feature is important as it allows for a clear distinction between conjuncts as a class of adverbials from conjunctions as word-class. On the other hand, not all conjuncts co-occur with all coordinating

conjunctions. *Though* and *however*, for many speakers cannot follow a conjunction immediately (? but *however*). Moreover, some speakers object to the co-occurrence of *but* and *however* even when they are not in immediate sequence.

? “You can phone the doctor if you like, *but* I very much doubt, *however*, whether you will get him to come out on a Saturday night.”

“You can phone the doctor if you like. *However*, I very much doubt whether you will get him to come out on a Saturday night.” (CGEL: 646)

On the other hand, *therefore* can be found in combination with coordinating *and*.

“Vitamin B12 helps to produce red blood cells which carry oxygen, *and therefore* prevents anaemia and tiredness.”

The fact that conjuncts and conjunctions have similar textual function is reflected in the use of the term *conjunctive*, eg by Halliday and Hasan (1976: 227-8), who use it to refer to the textual function of these items, regardless of the syntactic properties. In Halliday and Hasan’s view, the term *conjunctive* is purely functional, encompassing all items that serve a connective function, including the word class of conjunctions. (cf above)

1.1.4 Co-occurrence of conjuncts

As exemplified above, conjuncts often co-occur with conjunctions, in which cases the conjuncts provide a more explicit orientation to the general meaning of conjunctions (CGEL: 642). Similarly, conjuncts of different classes can co-occur without necessarily being tautologous, contradictory, or ungrammatical, eg:

“*And so* [resultive] *all in all* [summative] you think that despite her ill health she has *nonetheless* [concessive] made a good impression at the interview.” (ibid)

In a formal style of writing, the correlation is usually between a conjunction introducing a preceding subordinate clause and the conjunct introducing the main clause:

“*Because* Jennifer foresaw this well in advance, she *therefore* had the necessary time to take preventive action.” (ibid: 643)

It is believed that the accumulation of conjuncts is stylistically objectionable.

1.1.5 Correlatives

As indicated above, *however* and *therefore*, as well as some other conjuncts, can correlate with the subordinator of a preceding clause. This serves to reinforce the logical relationship between the parts of a sentence or proposition (CGEL: 644-5). This is also due to the fact that there may be a similar relationship between the subordinator and the conjunct. The main difference is that a subordinate clause may either precede or follow a superordinate clause, but a conjunct always operates anaphorically. In instances of concession, *however* correlates with *although*, *even though*, *while*, *even if* or *granted (that)* and so on, and in instances of cause, *therefore* correlates with *because* or *seeing that*.

Although the redundancy of connective devices is often objectionable, “formal correlation contributes both to stylistic elegance (through rhetorical balance...) and to textual clarity (especially where two parts to be connected are long and complex” (ibid: 644).

1.1.6 Position

As mentioned in Section 1.1.2 above, the items *however* and *therefore* act as adverbials. According to CGEL (p. 490), there is a sharp difference between adverbials and other elements in the relative freedom with which adverbials can be put in different positions in a clause/sentence. Moreover, one of the distinctive syntactic features of conjuncts (including *however* and *therefore*) is their positional mobility within a clause/sentence. The following section, based on the account in CGEL (pp. 490-9), surveys the word-order possibilities of adverbials in general.

[I] “*By then* the book must have been placed on the shelf.”

[iM] “The book *by then* must have been placed on the shelf.”

[M] “The book must *by then* have been placed on the shelf.”

[*mM*] “The book must have *by then* been placed on the shelf.”

[*eM*] “The book must have been *by then* placed on the shelf.”

[*iE*] “The book must have been placed *by then* on the shelf.”

[*E*] “The book must have been placed on the shelf *by then*.”

The “initial position” (symbol *I*) is that preceding any other clause element. In effect, this generally means the position immediately before subject. In direct questions, it is the position immediately before the operator or a *wh*-element. In subordinate or coordinated clauses, it is the position following a conjunction.

The “medial position” (symbol *M*) can be generally described as that between subject and verb or after the subject and the operator, where there is one. There are three variants of *M* related to the complexity of the verb phrase (auxiliary verbs and negation): A “fronted medial” or “initial medial position” (symbol *iM*) is the position between the subject and the operator. Another, rare, variant depends on the occurrence of a verb phrase with three or more auxiliaries (*ie* the adverbial is placed between the second and the third auxiliary verb). This position is identified by symbol *mM*. In the last variant, “end medial position”, marked by symbol *eM*, the adverb appears after subject, operator, another auxiliary, and immediately before the main verb.

The “end position” (symbol *E*) is after all obligatory clause elements in the clause. Symbol *iE* denotes a variant of this position, occurring especially when the last obligatory element is a clause.

Although not all adverbial elements have the same range of possible positions, conjuncts, by definition, display a considerable positional mobility. Non-integrated adverbials realized by *however* and *therefore* can, in general, occur at *I*, *M*, or *E*. It is one of the aims of this thesis to comment on the actual occurrence of conjuncts in the respective positions (see Section 2.2.1). Following are examples to illustrate the fact that the placement of *however* and *therefore* is indeed relatively flexible, though not covering all the positions.

I (initial):

“*However*, I left thinking that I had created quite an impression.”
(Collins Cobuild English Language Dictionary: 708)

iM (initial medial):

“Losing at games doesn’t seem to matter to some women. Most men, *however*, can’t stand it at any price.” (Collins Cobuild English Language Dictionary: 708)

“Those countries *therefore* have to make the leap from the command economy to the market economy, ...”

M (medial):

“They may *however* have achieved a realization of theoretical proposals: ...”

“I have *therefore* been considering the case for taking the initiative and disclosing details of the Committee structure.”

E (end):

“Most people think, David is really nice. Not me, *however*.” (Collins Cobuild English Language Dictionary: 708)

“It is not surprising, *therefore*.”

According to *CGEL* (p. 643), the initial position is the normal position for conjuncts. “The normal place for most sentence adverbials is front-position.” (Leech and Svartvik 1994: 232) Since *however* and *therefore* cannot be misinterpreted in the *M* position, this position is also quite normal. As far as the negation is concerned and in contrast to *thus*, *therefore* can both precede and follow a negative (*CGEL*: 643), but no mention is made about *however* in this respect.

“Rationalization will not/never *therefore* be without difficulties.”

“Rationalization will *therefore* not/never be without difficulties.”

Most frequently, *however* appears in a new sentence, eg:

“This is the original formulation as it appeared in the first edition. In later editions, *however*, it was changed.” (*MSA*: 591)

Reflecting the function of conjunctive elements, Halliday and Hasan (1976: 232) also believe that conjuncts, including the items *however* and *therefore*, usually take the first position in the sentence since they have as their domain the whole of the sentence in which they occur. Nevertheless, according to the *American English Heritage Dictionary*, forty-two percent of Usage Panellists say they do not follow the rule in their own writing, nineteen percent say they observe it only sometimes, and thirty-six percent say they usually observe it.²

1.1.7 Punctuation

The word-order position of conjuncts may affect punctuation. According to *CGEL* (643), “conjuncts at [I] are often followed by a comma, and those at [E] are often preceded and/or followed by one; such a comma is used especially when *however* or *therefore* would have a separate intonation nucleus in speech”, eg:

“The situation is very grave, *however*, we shall overcome.”

As mentioned in Section 1.4 below, the meaning of *however* and *therefore* extends over the entire sentence in which they occur, unless this is repudiated. In addition, the conjuncts express a relation to a preceding sentence. The position of a conjunct within a sentence may not be as straightforward matter “since the sentence itself is a very indeterminate category” (Halliday and Hasan 1976: 232), as evidenced by the indeterminacy (or, flexibility) of the punctuation system. From this point of view, a sentence is a highly indeterminable category, and, consequently, it is common for *however* and *therefore* to appear after a colon or semicolon, *ie* not in a new sentence. Since punctuation may correspond to the position of the conjunct within a sentence, it will be included in the analysis.

² *The American Heritage® Dictionary of the English Language*: 4th ed. 2000. <http://www.bartleby.com/61/58/H0305800.html>, 2000, visited 11 November 2005

1.2 Semantics

This part of the thesis describes the lexical meaning of *however* and *therefore*. Since the semantic meaning is closely related with the syntactic and textual function, the semantic considerations are further developed in Section 1.3 below, which deals with functions of the two items.

As mentioned above, *however* is found in two syntactic functions: as a conjunct or as an integrated adverbial.

1.2.1 *However* as integrated adverbial

In this function, which is not the subject matter of this thesis, three semantic ranges can be identified:

However expresses a concessive relationship and is used to indicate it does not matter in what way somebody does something.³

“*However* he did it, it was very clever.” or “Prepare the potatoes *however* you like.”

However expresses an extent/degree and is used to indicate that no matter what happens, a situation remains the same. In this “degree” function it precedes an adjective or an adverb.

“[They] have begun, *however* reluctantly, to acknowledge the legitimacy of some of the concerns” or “*However* much we disagree about the details, the basic facts remain the same.”

However, expresses surprise or emphatic meaning and is used as an intensive or emphatic form of “how” in interrogative sentences:

“*However* did you get here so soon?” or “What a surprise to see you!
However did you find us?”

³ “Zvláštní typ podmínkové přípustkových vět tvoří souvětí vyjadřující realizaci obsahu věty hlavní za libovolných (jakýchkoli) okolností. Vedlejší věta je v tomto typu uvozena výrazem *wh-ever* (-koliv), s níž je spojena antepozice slovesného doplnění (předmětu, jmenné části přísudku, příslovecného určení).” (MSA: 644)

1.2.2 *However* as conjunct

In the syntactic function of conjunct, OALD (4th ed.: 606) describes the meaning of *however* as an item that comments on a previously stated fact; although something is, was, or may be true.

The meaning can be reformulated with the following expressions: *in spite of that, nevertheless, yet*, used as *despite anything to the contrary* (usually following a concession), eg:

“The book is expensive; *however*, it's worth it.”

On the other hand; by contrast, used to introduce a restricting or counterbalancing consideration, eg:

“The first part was easy; the second, *however*, took hours.” or “I can come; *however*, I may have to leave early.”

1.2.3 *Therefore* as conjunct

The second adverb of interest, *therefore*, functions univocally as a conjunct. According to OALD, its definition is: *for that reason, accordingly, consequently*. It follows some form of cause or reason and introduces the consequent action as a logical result (“Adverb used to introduce the logical result of something that has been just mentioned” (OALD, 6th ed.: 1347).

The item *therefore* has several synonyms, such as *thus, for that, by reason of that, in consequence of that, consequently* or *hence, and so, because of that, accordingly, or to that purpose*.

It is used to express a logical conclusion, eg:

“This statement is true; *therefore* that statement must be false.” or
”We were forbidden to attend and *therefore* stayed at home.”

1.2.4 Semantic classification of conjuncts

It is the role of conjuncts to express explicitly the semantic/logical relation of what follows to what precedes. "...the conjunct function entails a conjunct-specific set of relations." (CGEL: 634).

According to CGEL (ibid), there are seven principal conjunctive roles: (a) listing, (b) summative, (c) appositional, (d) resultive, (e) inferential, (f) contrastive, and (g) transitional. Listing conjuncts can further be divided into (i) enumerative and (ii) additive. Additive conjuncts are further broken down to equative and reinforcing. Contrastive conjuncts are divided into (i) reformulatory, (ii) replacive, (iii) antithetic, and (iv) concessive. Transitional conjuncts are further divided into (i) discorsal, and (ii) temporal.

Based on this classification, *however* represents the contrastive-concessive role, and *therefore* assumes the summative and resultive roles.

Contrastive-concessive role: "where one unit is seen as unexpected in the light of the other..." (CGEL: 639)

Summative conjuncts: "they precede an item which is to be looked at in relation to all the items that have gone before... they introduce an item that embraces the preceding ones". (ibid: 637)

Resultive conjunct: "The more structured a list of items is, the more the final item will tend to be a conclusion in more ways than one: a mere termination, a reinforcement, a summary, a result, and a basis for further inference." (ibid: 638)

It follows from the preceding description that there is no sharp difference between the summative and resultive meaning. Consequently, in other sources, the conjuncts are divided differently from the semantic point of view.

Swan (1996: 151-159) classifies the meaning of *however* in group (3) (out of 21 semantic categories), namely as emphasising a contrast. "*However* and *nevertheless* emphasise the fact that the second point contrasts with the first." (ibid: 152). This adverb is also placed in group (5) *concession and counter-argument*, with *however* expressing a counter-argument. According to Swan,

“these expressions are used in a three-part structure: (1) the writer mentions facts that point in a certain direction; (2) it is agreed (the concession) that a particular contradictory fact points the other way; (3) but the writer dismisses this and returns to the original direction of the argument.” (ibid)

Swan places *therefore* in group (14) *logical consequence*.

Obviously, there is no single, uniquely correct inventory of the types of conjunctive relations and functions. Halliday and Hasan (1976: 242-3) adopt a scheme of just four broad categories of conjunctive relations: (i) additive, (ii) adversative, (iii) causal, and (iv) temporal. Despite the broad simple scheme, Halliday and Hasan expand the classification, and describe *however* as: (a) adversative ‘proper’ (in the sense of *nevertheless, despite this*); or (b) adversative contrastive (in the sense of *on the other hand* or *at the same time*); (c) open-ended dismissal (in the sense of *in any case, anyhow, at any rate, however it is*). Halliday and Hasan classify *therefore* as (a) causal simple (in the sense of *so, then, or hence*).

The syntactic function and the semantic meaning of *however* and *therefore* have been outlined above, and since they are closely linked, it is now convenient to regard them from the point of view of their overall connective function.

1.3 Functions

As the classification and name of the two items *however* and *therefore* suggest, they serve to join or to conjoin ideas. As a special type of sentence modifiers, they serve as tools of textual interconnection (connective tools). The items specify the manner in which what follows is linked to what precedes.

Therefore is limited to the connective (conjunct) function; *however* can function as an integrated element, introducing a special type of subordinate adverbial concessive clause, (“It is my duty, *however* unpleasant I may find it” (MSA: 644)). As has been mentioned, this function is not of interest for the present study.

Having described the syntax and the semantics of the connectives, it is fitting to dwell briefly on their function. The principal function of any connective is to set out relations. These relations are cohesive in nature. According to Halliday and Hasan (1976), there are four main linguistic means of expressing cohesive relations in a text, namely reference, substitution, ellipsis, and conjunction. They all contribute to the “textual/cohesive” character of a text, which does not express only a sequence of events or ideas, but also a relation between them, which results in a special kind of a structure. Such structures contain connective as well as adverse elements that all keep them together. The more appropriate the individual elements of the structures, the more solid the structures become. Arguably, the more solid structures mean the better effects and communication. Though the co-occurrence of the two items may appear tautology at first sight, *however* and *therefore* are used with other connectives to achieve a kind of emphatic endorsement. The result is often undesirable to some readers, because the relation is clear from one of the conjuncts (connectives).

Regarding the above listed inventory of means to express cohesion, conjunction (the term used to refer to the cohesive function, not to the word class) is different in nature from reference, substitution and ellipsis. “Conjunctive elements are cohesive not in themselves but indirectly, by virtue of their specific meanings; they are not primarily devices for reaching out into the preceding text (...), but they express certain meanings which presuppose the presence of other components in the discourse.” (Halliday and Hasan 1976: 226)

The textual role of adverbials is described in *CGEL* (pp. 1468-72), and again, the functional difference between disjuncts and conjuncts is highlighted; the former interpret the text to the reader (*eg* in encouraging a particular attitude), the latter express the relevant connection between one part of a text and another.

Some interesting points regarding the function of connectives are presented in Pípalová (2000), who tested the function of the connectives in an experimental

manner, by leaving them out and asking her informants to fill them in. When faced with texts without the connectives, the informants “believed that although composed of well-formed sentences, the respective texts without connectives turned out to be rather cumbersome, rudimentary, and pedantic in character” (ibid: 92). The experiment also shows that there are stylistic and semantic reasons for keeping a connective in a text. According to Pípalová, connectives differ in the degree of contiguity, *ie* closeness/looseness of linkage. Interestingly, *however* represents a looser connection, *therefore*, on the contrary, the closest way of linking (ibid: 95-96).

This last characteristic seems to be related to the distinction between pure and impure connectives, mentioned in Huddleston and Pullum (2002: 777-9)⁴. A pure connective has no other function than that of connecting a clause to the surrounding text (*Jill was the only one with a Ph.D. Moreover, she had considerable experience*). Impure connectives, on the other hand, may combine the connective function with other functions. This impure function is illustrated by the item *therefore*:

- (a) “Because his son had been charged with importing illegal drugs, Ed has decided to resign from the School Board.”
- (b) “His son had been charged with importing illegal drugs, and for this reason has decided to resign form the School Board.”
- (c) “His son had been charged with importing illegal drugs, and Ed had decided to resign from the School Board.”
- (d) “His son had been charged with importing illegal drugs; Ed had therefore decided to resign from the School Board.”

These sentences show how differently relations can be expressed. Sentence (a) has the form of a single clause, the underlined sequence serves as adjunct of reason within the sentence. Sentence (b) consists of coordinated clauses, with

⁴ Pure connectives can be broadly divided into (a) ordering (*firstly, finally*), (b) addition and comparison (likeness and contrast) (*in addition, however*), (c) elaboration and exemplification (*for example*), and (d) markers of informational status (*by the way*).

the information about the son being charged expressed in a main clause. The phrase “for this reason” is interpreted anaphorically to the first main clause. Sentence (c) omits the reason adjunct and the clauses are linked by coordination, the cause-effect relation being implicit. Sentence (d) contains no coordinator, although “and” could easily appear in front of *therefore*. *However*, on the other hand, is listed among pure connectives.

1.4 Scope

The two items discussed in this thesis are easy to identify in a text at first sight but to define exactly the portion of text they relate to is another matter. Since the interpretation is not automatic, it is the source of difficulties when determining which sentences/ideas are being connected.

“Connective elements often link units smaller than the clause ... The link may be with a preceding sentence ... or with a preceding stretch of text of indefinite length. It can equally be between a clause and a preceding clause in the same sentence, or between a clausal residue and a preceding element in the same clause.” (Huddleston and Pullum 2002: 775-6)

When identifying the portion of a preceding text to which the clause containing the connective relates, the term “scope” may be used. “Scope is the general term that we shall use to describe the semantic ‘influence’ which such words have on neighbouring parts of the sentence.” (CGEL: 85) Because the connectives refer to a preceding part of the text, the term ‘antecedent’ may also be used.

1.5 Language of legal documents

The last part of the theoretical section comments briefly on legal language as a variety.

As Crystal and Davy (1969) point out “...whoever composes a legal document must take the greatest pains to ensure that it says exactly what he wants to say and at the same time gives no opportunity for misinterpretation.” (ibid: 193) This kind of efforts results in many oddities of legal language as compared

with natural language. Only those features mentioned in Crystal and Davy will be mentioned here, which are relevant for this analysis.

The first point concerns the development of punctuation in legal writing. Originally, punctuation was not used, but “the tendency nowadays is to recognise the usefulness of punctuation as a guide to grammatical structure” (ibid: 201).

The second point concerns the way sentences are linked together. “...in those documents which have been composed as one very long sentence, the question of sentence linkage does not arise – and features that elsewhere operate as sentence connectors can be considered only for the part they play in joining together clauses. The same holds true ... for most written legal language, since even in documents which are divided into sentences the sentences tend to be extremely long. As a result, legal sentences are usually self-contained units which convey all the sense that has to be conveyed at any particular point and do not need to be linked closely either to what follows or to what has gone before.” (ibid)

Another feature Crystal and Davy mention in the chapter on legal writing relates to the sentence complexity in that all clauses are likely to contain adverbials. “It is perhaps the frequency of these adverbial elements that is the most notable feature; but almost of equal importance is the variety of positions they would adopt. Legal draftsmen take full advantage of adverbial mobility, but always as a means of clarifying meaning and avoiding ambiguity: they seldom seem to move adverbials around, as is done in some written varieties, simply as a means achieving greater elegance of expression. The result of this primary concern with meaning is that adverbials are put in positions which seem unusual by more normal standards.” (ibid: 204)

This introductory section has surveyed the nature of connective devices. The practical part, which follows, will apply some of the above observations on the authentic material, drawn from legal documents. It will focus mainly on the position of the adverbial, punctuation, and the scope of the connector.

2 ANALYSIS

2.1 Method and material

The material for the practical analysis has been drawn from legal texts, as they are described in the introduction. The objective was to obtain forty examples of each conjunct.

The documents were searched either from the beginning, or from the beginning of some formally distinguishable section, part, chapter, etc. Together with the sentence containing a conjunct, a portion of the preceding text was excerpted. Thus, in collecting examples, care has been taken to select a paragraph, a section, or an article, its length depending on the need to demonstrate their use. All eighty examples were obtained in this manner.

Appendix 1 to this thesis contains a complete list of occurrences of *however* and *therefore* (hereinafter also referred to as the “Corpus”). For the sake of convenience, each occurrence is highlighted and marked. Headings above excerpts contain exact names of the documents used including their website reference.

Each example is labelled according to the following key:

The first place of the abbreviation gives the serial number of the excerpted text.

The second place of the abbreviation states the number of the example within the excerpted text (there may be more conjuncts within one paragraph).

The third place of the abbreviation either contains *H*, which stands for *however*, or *T*, which represents *therefore*.

The fourth place of the abbreviation specifies the word-order position of the connector. As will be discussed in greater detail below, these positions can be expressed as *I*, which stands for the *initial* position, *iM* for the *initial-medial* position, *M* for the *medial* position, *mM* for the *medial-medial* position, *eM* for the *end-medial* position, and *E*, which stands for the *end* position.

The fifth place of the abbreviation shows the presence or absence of a comma separating the conjunct. Thus, *C* stands for *comma* and *noC* stands for *no comma*.

The sixth place of the abbreviation indicates the scope of the conjunct, *ie* where its antecedent is positioned within the text. The procedure is explained the relevant section.

Based on this, the abbreviation “1.1.H.I.C.a” will stand for the document entitled CONSTITUTION FOR EUROPE, PAGE 17. It is the first text in the Corpus, the first occurrence of this item in the given text, the item is *however*, and it appears in this example in the initial position, followed by a comma, with the antecedent interpreted as to be found in the immediately preceding clause.

2.2 Usage

This part of the thesis focuses on several areas discussed in the previous section and gives examples of how the items *however* and *therefore* are used in the Corpus. Some of the examples are included in the analysis, other examples are incorporated by reference.

2.2.1 Position

One of the features to be tested in this thesis is an assumption that the placement of the conjuncts in the sentence depends on the scope of the conjunct, *ie* the further to the right the conjunct is positioned, the more limited its scope. Also, there may be a relation between the position and punctuation.

2.2.1.1 Word-order formulas

As has already been mentioned in Section 1.1.6 above, the connectors may occupy various positions within a clause. The following positional variants are distinguished in this thesis. They are based on the *CGEL* account presented above, with one minor modification (the *mM* position, *cf* below):

I (initial)

adverbial		subject		verb		other parts of the clause
-----------	--	---------	--	------	--	---------------------------

iM (initial medial)

subject | **adverbial** | operator | verb | other parts of the clause

M (medial)

subject | **adverbial** | verb | other parts of the clause

mM (medial medial)

subject | auxiliary auxiliary | **adverbial** | auxiliary | verb | other parts of the clause

It has been noted in the theoretical survey that the *mM* position is fairly rare since it depends on the occurrence of highly complex verb phrases. Moreover, not all types of adverbials are found in that position (only emphasers and intensifiers). For the purposes of this thesis, the descriptive formula *mM* is applied in a different manner, namely to refer to adverbials situated after an operator or auxiliary and with no auxiliary verb following the adverbial, *ie* in the regular *M* position in a complex verb phrase. The rationale behind this adjustment is to distinguish between the *iM* position and *mM* position, where in the latter case the adverbial is situated between an operator and the main verb. “A simple verb phrase neutralizes the distinction between *M*, *mM*, and *eM*, and reference is usually made only to *M*.” (*CGEL*: 495). Nevertheless, this simplified account does not allow to distinguish explicitly between conjuncts placed before and after the operator in a complex verb phrase. For this reason the label *mM* has been used. The pure *M* position has been reserved to situations where the adverbial stands only between subject and main verb with no other auxiliary before and after the adverb, that is, in a simple verb phrase.

mM (medial medial) – the modified formula (the regular *M* in a complex VP)

subject | auxiliary | **adverbial** | (auxiliary) | verb | other parts of the clause

E (end)

subject | verb | **adverbial** | other parts of the clause |

2.2.1.2 Occurrences

The Corpus contains forty occurrences of *however* and forty occurrences of *therefore*. Tables 1 and 2 below show occurrences of *however* and *therefore* divided according to the above formulas. The percentages in parenthesis in Tables 1 to 3 below indicate the proportion of the particular occurrence to the overall number of all occurrences of *however* or *therefore*.

Table 1

Occurrences of *however*

Occurrences in total	Initial (<i>I</i>)	Medial			End (<i>E</i>)
		initial medial (<i>iM</i>)	medial medial (<i>mM</i>)	medial (<i>M</i>)	(<i>E</i>)
		1 (2.5%)	10 (25%)	3 (7.5%)	
40 (100%)	18 (45%)	14 (35%)			8 (20%)

Table 2

Occurrences of *therefore*

Occurrences in total	Initial (<i>I</i>)	Medial			End (<i>E</i>)
		initial medial (<i>iM</i>)	medial medial (<i>mM</i>)	medial (<i>M</i>)	(<i>E</i>)
		1 (2.5%)	19 (4.7%)	7 (17.5%)	
40 (100%)	9 (22.5%)	27 (67.5%)			4 (10%)

Tables 1 and 2 show that *however* appears more often at the beginning of sentences (45%) than *therefore* (22.5%) and that *therefore* appears more often

in the medial position (67.5% vs 35%). *However* is also used more frequently at the end of sentences (20%) than *therefore* (10%). Table 3 below shows the overall occurrence of both items.

Table 3

Occurrences of *however* and *therefore*

Occurrences in total	Initial (I)	Medial			End (E)
		initial medial (iM)	medial medial (mM)	medial (M)	(E)
		2 (2.5%)	29 (36.25%)	10 (12.5%)	
80 (100%)	27 (33.75%)	41 (51.25%)			12 (15%)

Table 3 shows that, disregarding the type of conjunct, the medial position is the most frequent. Out of forty-one medial occurrences, ten conjuncts occupy the *M* position in the simple verb phrase, that is, between subject and verb. As far as the complex verb phrases are concerned, the regular placement after the operator prevails for both conjuncts, with only two instances of the *iM* position.

2.2.1.3 Positions of conjuncts in the Corpus

The placement possibilities outlined in Section 2.2.1.1 above are illustrated by examples (1) to (10) below.

Corpus reference

- (1) [I] “*However* the EU establishes the general framework within which the funds must be used, with strict conditions applying ...” (1.1.H.I.noC.b)
- (2) [I] “*Therefore* Denmark shall not participate in their adoption.” (28.1.T.I.noC.b)
- (3) [iM] “The latter, *however*, may address the Court only through their representatives.” (3.1.H.iM.C.b)
- (4) [iM] “We *therefore* have to find more effective ways of listening to people:” (31.3.1.H.iM.C.b)

Corpus reference

- (5) [M] “The European Union, *however*, hopes to have formal consultations with the Government before appropriate measures are taken.” (33.1.T.iM.noC.d)
- (6) [M] “The Union *therefore* recognises the rights, freedoms and principles set out hereafter.” (21.1.H.M.C.d)
- (7) [mM] “They may *however* be applied beyond the period specified in the first paragraph as long as the relevant commitments have not been fulfilled.”(10.4.H.i)
- (8) [mM] “The Agreement should *therefore* be approved.” (32.1.T.mM.noC.d)
- (9) [E] “When such revision is made, *however*, equivalent preferences shall in any case be maintained in favour of the Netherlands Antilles ...” (12.1.H.E.C.d)
- (10) [E] “The Court of First Instance cannot but find *therefore* that since the image of a strawberry contained in the application for registration represents only the fruit which emits a smell supposedly identical ...” (38.11.T.E.noC.b)

Example (3) is the only instance of *however* preceding the auxiliary in the Corpus. In example (3), the adverbial could as well take the *mM* position or the *I* position. Nevertheless, it appears that its placement closer to the preceding sentences indicates the relationship between the court on the one hand and the experts, witnesses and the parties themselves (the latter in our sentence) on the other. More specifically, it indicates primarily a contrast between the powers of the court and the latter and, secondarily, the difference between the powers, namely that the court may examine directly, whereas the latter may only address the court indirectly. Example (3) could have two more variants:

Text

- [mM] “The latter may, *however*, address the Court only through their representatives.”
- [I] “*However*, the latter may address the Court only through their representatives.”

When comparing other instances of *may* followed by *however* in the Corpus (eg 7.1 and 10.4), one difference is observed. Where *however* follows *may*, the subject of the clause containing *however* is identical in reference with the subject of the preceding clause, while in the case of the *iM* placement the subject is co-referential with the object of the preceding clause. This indicates

that when *however* follows the subject, it expresses a contrast between the “entities”, such as example (3), and when it follows a modal verb, it expresses a contrast between the “activities”:

“It may, *however*, in any contract, specify a particular address for service...” (7.1.H.mM.C.b)

Example (4) is the only case in the whole Corpus containing the periphrastic modal form *have to*. The adverbial could take the *I* position; the placement of *therefore* at the *mM* position before the infinitival *to* appears disruptive since the modal auxiliary consists of two words; and the position after *to* intervenes between the lexical verb and the infinitive particle. Thus, in clauses containing the periphrastic *have to*, the position before the modal verb seems to be the preferred *M* option. The specific nature of *have to* can be also demonstrated by the fact that *have* does not function as an operator. For this reason, it is logical that it behaves differently also with the view of the adverbial placement. Following are the examples of other placements possibilities of *therefore*, some of which appear doubtful for the above-mentioned reasons.

[I] “*Therefore*, we have to find more effective ways of listening to people:”

[mM] ? “We have, *therefore*, to find more effective ways of listening to people:”

[mM] ? “We have to, *therefore*, find more effective ways of listening to people:”

Instances (1) to (10) above are easy to identify. However, since one of the features characterizing the language of law is syntactic complexity, in many instances there are more adverbial elements found in various positions, which makes the classification more difficult. While it requires little effort to see which position *however* or *therefore* take in sentences (1) to (10), sentences (11) to (21) below illustrate cases where other adverbial elements intervene, either preceding or following the conjunct.

Corpus reference

(11) [I] “Currently, *however*, there is a great diversity of R&D incentives in Member States which creates a largely uncoordinated situation ...” (36)

Corpus reference

- (12) [I] “**However**, on the day of the appointment of the Union Minister for Foreign Affairs, the term of office of the member having the same nationality as the Union Minister for Foreign Affairs shall end.” (13.1.H.I.C.b)
- (13) [I] “**However**, exceptionally, if the Commission decisions to waive ex-ante control are delayed beyond 1 May 2004 for reasons not attributable to the authorities of a new Member State, the Commission may accept, in duly justified cases, eligibility for pre-accession assistance ...” (10.3.H.I.C.d)
- (14) [I] “**Therefore**, in compliance with Article 96(1a) of the revised Cotonou Agreement, it is not necessary to work out the possibilities ...” (33.1.T.I.C.b)
- (15) [mM] “It may, **however**, in any contract, specify a particular address for service.” (7.1.H.mM.C.b)
- (16) [mM] “The preceding provisions shall not, **however**, in any way impair the right of a State to enforce such laws as it deems necessary to control the use ...”. (14.1.H.mM.C.d)
- (17) [mM] “..., and the rules on confidentiality of Schengen documents should **therefore**, if necessary, be modified or be repealed.” (26.1.T.mM.noC.b)
- (18) [mM] “By 31 December 2004, the Sapard agency had approved 1 909 projects accounting for €285.4 million of EU contribution, and **therefore** almost doubled the number ...” (35.1.T.eM.noC.a)
- (19) [mM] “These initiatives would help to renew growth and **therefore** create more and better jobs.” (36.1.T.eM.noC.a)
- (20) [E] “TAKING ACCOUNT of the desire to use these funds for research in sectors related to the coal and steel industry and **therefore** the necessity to provide for certain special rules ...” (29.1.T.E.noC.a)
- (21) [E] “WISHING **therefore** to establish a legal framework that will provide an option for Denmark to participate in the adoption of measures ...” (27.1.T.E.noC.d)

As a result, in order to capture all variation of the positions in examples above, we would end up with even a more elaborate list of formulas, for example: The *I* position could become the end *I* position marked as *eI* in example (11), or the initial *I* position marked as *iI* in examples (12), (13), and (14). It could further be specified what type of words, phrases or even clauses come before or after adverbials. In example (11) it is a one-word adverb of time, in (12) it is an adverbial of time, and in (13) it is an adverb of manner plus a conditional clause. The *mM* position could become initial medial position marked as *imM* in examples (15), (16), or (17), which could then be classified depending on

whether *however* or *therefore* are followed by an adverb, what type of adverb is used and whether they are followed by a clause. As far as the *E* position is concerned, the item *therefore* in example (19) appears to be quite remote from the verb, while in example (20) it follows it closely. The hypothesis is that the complexity of the construction and the position may be related to the scope of the conjunct. Because the conjunct has a scope over the whole clause, it seems natural that the adjuncts or subordinate clauses usually follow. When they precede (11), they seem to be contrasted with a different clause element in the previous sentence, while when they follow, it seems that it is the whole sentence that is contrasted (12).

Examples (22) to (27) below represent instances of coordinated clauses with identical subject, which is ellipied in the second clauses except example (27). In addition to the subject, other parts may be ellipied as well. It is interesting to note that all these examples have the antecedent (scope) within the clause. It is also interesting to note that although the scope is within the sentence, the use of *therefore* in the resultive role is still subject to the same criteria for interpretation as if it were in the preceding sentence or paragraph. *However* does not appear in this type of clauses without expressed subject.

Corpus reference

- (22) [E] “THE HIGH CONTRACTING PARTIES, ... TAKING ACCOUNT of the desire to use these funds for research in sectors related to the coal and steel industry and *therefore* the necessity to provide for certain special rules in this regard, ...” (29. 1.T.E.noC.a)
- (23) [mM] “By 31 December 2004, the Sapard agency had approved 1 909 projects accounting for €285.4 million of EU contribution, and *therefore* almost doubled the number of approved projects as compared to 2003.” (35.1.T.eM.noC.a)
- (24) [mM] “These initiatives would help to renew growth and *therefore* create more and better jobs.” (36. 1.T.mM.noC.a)
- (25) [M] “By decision of 7 August 2003, the examiner rejected the application pursuant to Article 38 of Regulation No 40/94, on the ground, first, that the olfactory sign applied for was not capable of being represented graphically and *therefore* fell under Article 7(1)(a) of that regulation and, second, that it was devoid of any distinctive character within the meaning of Article 7(1)(b) of that regulation, in respect of some of the goods claimed.” (38.1.T.M.noC.a)

Corpus reference

- (26) [E] “Consequently, since the description ‘smell of ripe strawberries’ could refer to several varieties and therefore to several distinct smells, it is neither unequivocal nor precise and does not eliminate all elements of subjectivity in the process of identifying and perceiving the sign claimed.” (38.9.T.E.noC.a)
- (27) [I] “To that effect, the applicant submits that no other type of sign is subject to an objectivity criterion and that therefore olfactory signs should not be subject to that criterion either.” (38.3.T.I.noC.a)

Examples (28) to (39) below show the placement of *therefore* and *however* in negative sentences. Out of eighty occurrences in the Corpus, there were twelve negative sentences involving *however* or *therefore* (one sentence is included in the Corpus twice for other purposes), out of which the connectives appeared only three times after the negative *not*, see examples (28) to (30) below. Examples cited below do not include sentences where *not* relates to other parts than the main verb, for example “**However**, exceptionally, if the Commission decisions to waive ex-ante control are delayed beyond 1 May 2004 for reasons not attributable to the authorities of a new Member State, ...” (10.3.H.I.C.d) or “regrets *however* that the CoR was not referred to in Title VI” (15.3.H.E.noC.a). In the first example, *however* relates to the verb *are delayed* and not to the phrase *not attributable*. In the second example, *however* relates to the verb *regrets* and not to the phrase *was not referred to*. Overall, there was not an example with the adverb preceding the negative particle.

Corpus reference

- (28) [mM] “The European Union's role is not therefore confined merely to ...”
(25.2.T.mM.noC.b)
- (29) [mM] “The preceding provisions shall not, however, in any way impair ...”
(14.1.H.mM.C.d)
- (30) [mM] “They do not however give rise to direct claims for positive action ...”
(14.3.H.mM.noC.b,c)
- (31) [I] “**However**, pursuant to ... they shall not have the option ...”
(2.1.H.I.C.d)
- (32) [I] “... *however*, the exercise of that competence shall not result in Member States being prevented from exercising theirs.” (5.1.H.I.C.b) 2x

Corpus reference

- (33) [E] “These provisions shall not be applied, *however*, so as to have the effect ...”
(9.1.H.E.C.b)
- (34) [I] “*Therefore*, in compliance with ..., it is not necessary to exhaust the possibilities of political dialogue ...”
(19)
- (35) [E] “In that respect, ... that does not mean *however* that it is required to accept that points put forward by one party ...”
(20.1.H.E.noC.a)
- (36) [I] “*However*, that part of the class title (‘telecommunications’) was not claimed in the earlier right ...”
(20.3.H.I.C.c)
- (37) [I] “*Therefore* Denmark shall not participate in their adoption.”(28.1.T.I.noC.b)
- (38) [I] “*Therefore*, in compliance with Article 96(1a) of the revised Cotonou Agreement, it is not necessary to exhaust the possibilities ...”
(34.1.T.I.C.b)
- (39) [I] “To that effect, the applicant submits that ... and that *therefore* olfactory signs should not be subject to that criterion either.”
(38.3.T.I.noC.a)

2.2.2 Punctuation

Another feature examined concerns the use of correlative commas (CGEL: 1626), *ie* commas marking inclusion. The analysis has revealed that *however* and *therefore* in the *I* position are predominantly followed by a comma (89% of *however* in the *I* position and 67% of *therefore*), whereas in the *M* position there is a sharp difference between the two adverbs. While *however* is separated by a comma in approximately 50% of its occurrences, *therefore* appears usually without a comma (93%). At *E*, *however* appears again separated in 50% of the examples, while *therefore* is not separated. Irrespective of the placements, the Corpus revealed that out of forty occurrences of *however*, fourteen were used without a comma (35%), and that out of forty occurrences of *therefore*, as many as thirty-two (80%) were used without a comma. This shows that *however* is separated by a comma more often than *therefore*. For an overview of these deliberations, see Table 4 below. The percentages in parenthesis indicate the proportion of the particular occurrence to the number of occurrences in the relevant positions.

Table 4

Initial				Medial				End			
<i>however</i> 18 (100%)		<i>therefore</i> 9 (100%)		<i>however</i> 14 (100%)		<i>therefore</i> 27 (100%)		<i>however</i> 8 (100%)		<i>therefore</i> 4 (100%)	
comma	no comma	comma	no comma	comma	no comma	comma	no comma	comma	no comma	comma	no comma
16 (89%)	2 (11%)	6 (67%)	3 (33%)	6 (43%)	8 (57%)	2 (7%)	25 (93%)	4 (50%)	4 (50%)	- (0%)	4 (100%)

The above listed differences between the two adverbs (65% of *however* and only 20% of *therefore* used with a comma) may possibly be explained by the difference in function: *however* as a pure connective is more “loosely linked”, while *therefore* as an impure connective is more closely linked to the meaning of the clauses (cf Pípalová 2000 in the theoretical chapter).

Interestingly, Table 5 below reveals that, in respect of both *however* and *therefore*, the use of comma in the *I* position prevails, while its use declines in the *M* position. In other words, there seems to be a tendency that the commas are used more frequently at *I*, less frequently at *M*, and even less frequently at *E*. Regarding the fact that 65% of *however* are separated by commas, 40% are found at *I*, 15% at *M*, and 10% at *E*. Similarly, for the 20% of *therefore* with commas, the proportions are 15%, 5%, and 0% respectively. Table 5 below indicates the presence of a comma at the respective positions (cf Table 4).

Table 5

	Initial	Medial	End
<i>However</i>	89%	43%	50%
<i>Therefore</i>	67%	7%	0%

2.2.3 Co-occurrences

The items *however* and *therefore* may co-occur in one sentence. Examples (40) and (41) below were obtained from publicly available internet sources that

are not included in the corpus. Although these examples are not very frequent, they do occur. As example (4!) shows, there may be more than one occurrence of *however* in one sentence co-occurring with *therefore*.

Internet reference

- (40) “Irreducibly complex structures, we are told, could not have been produced by evolution, or, for that matter, by any natural process. They do exist, *however*, and *therefore* they must have been produced by something.”

(< <http://www.millerandlevine.com/km/evol/design2/article.html>> visited on 10 January 2006)

- (41) “The initial equipment is expected to be a 10/1 GigE switch, a fiber cross connect, several support servers, and an out of band access device. Note, *however*, that the facility is a testbed, *however*, and *therefore* production services are not expected.”

(<<http://networks.internet2.edu/hopi/hopi-tsc.html>> visited on 10 January 2006)

The examples in the Corpus yielded five co-occurrences in neighbouring sentences. Examples (42) to (46) below show that the co-occurrence in example (42) is less related to the immediately preceding text than in examples (43) and (46). *However* in example (42) sets a contrast between the *account is taken of the view* and *consultation cannot substitute responsibility*, and *therefore* has a resultive role in the relationship between *The regional authorities ... are responsible for ...* and *contribute substantially to the quality of Union legislation*. This means that *however* in the examples links beyond the immediately preceding text, namely to *account is taken of the views*. Examples (43) to (46) below appear to be more related as they include a contrast between *therefore* in the immediately preceding text and *however* in the immediately subsequent text. *However* in example (43) establishes a link between *to have formal consultations* and *the possibilities of political dialogue*, and the next *therefore* connects back to *however* through *to hold consultations*. *However* in example (44) contrasts *the general framework* with *decentralised*. In this particular case, it could be further argued that the scope, or to what exactly *however* in this text relates to, is more complex as *decentralised* is an extension of *the individual regions or countries* in the preceding sentence. The relationships and contrasts in example (45) appear to be even more convoluted. If we follow the argument in the selected text, it could be as follows:

(a) Sentence 1 – The Commission considers something to be urgent and for that reason deems it not necessary to have a *political dialogue* (in other words, action must be taken without it). (b) Sentence 2 – Despite this fact, the European Union would like to have a *political dialogue* (in other words, the Union would like to talk before action is taken). (c) Sentence 3 – Because the European Union hopes to have *consultations*, it proposes to have them.

This goes to show that although *however* and *therefore* co-occur, there may not necessarily be a direct relationship between them. This topic is briefly discussed in Section 2.2.4 below.

Corpus reference

- (42) “European integration should entail political decision-making where account is taken of the views of local and regional authorities, ... and are closest to the citizen so can *therefore* contribute substantially to the quality of Union legislation; [Article I-5] *however* states that consultation cannot substitute responsibility and accountability of regions and local authorities within their respective spheres of competence which have to be respected; they must be given the chance to prove that they can, according to the internal provisions of the respective Member State, sufficiently achieve the objectives of the intended action;” (15.4.H.M.noC.a,b)
- (43) “*Therefore*, in compliance with Article 96(1a) of the revised Cotonou Agreement, it is not necessary to exhaust the possibilities of political dialogue as set out in Article 8 of the same Agreement.
- The European Union, *however*, hopes to have formal consultations with the Government before appropriate measures are taken. We are, *therefore*, pleased, on behalf of the Community and of the Member States of the European Union, to invite your country to hold consultations under Article 96 of the revised Cotonou Agreement, ...” (19.1.H.M.C.d)
- (44) “It is not “Brussels” that decides how the cohesion policy funds should be used. Needs are precisely evaluated on the ground, by the individual regions or countries. Implementation is *therefore* decentralised. *However*, the EU establishes the general framework within which the funds must be used, ...” (25.1.T.mM.noC.b)
- (45) “Due to the circumstances in which the change of regime in Mauritania occurred and due to the form of political organisation put in place by the new authorities, the Commission considers this to be a “case of special urgency”. *Therefore*, in compliance with ..., it is not necessary to work out the possibilities of political dialogue as set out in Article 8 of the same Agreement. The European Commission, *however*, hopes to have formal consultations with the government before appropriate measures are taken. The Commission *therefore* proposes that the Council invite the Islamic Republic of Mauritania to hold consultations under Articles 9 and 96 of the revised Cotonou Agreement in accordance ...” (33.1.T.I.C.b)
- (46) “Taking into account the above, the European Commission considers that Bosnia and Herzegovina has made significant progress in addressing the sixteen priorities identified in the framework of the 2003 Feasibility Study. *Therefore*, in line with the FS

Corpus reference

conclusions, the Commission is in a position to recommend to the Council the opening of negotiations for a Stabilisation and Association Agreement with Bosnia and Herzegovina...

However, the opening of negotiations will require that BiH State Parliament endorses the Agreement on Restructuring of Police.” (37.1.T.I.C.b)

2.2.4 Correlations

However can be preceded by *although*, *while (whilst)*, *even if* and so on, in instances of cause, and *therefore* can correlate with *because*. Examples (47) and (48) below show the only two examples of correlation in the corpus.

Corpus reference

- (47) “*However*, whilst the term ‘mobilix’ may readily be perceived as referring to something mobile or to mobility, the term ‘obelix’, even if the name has been registered as a word mark, that is to say ...” (20.5.H.I.C.b)
- (48) “In that respect, whilst it is apparent from Article 74(1) of Regulation No 40/94 that, in the course of opposition proceedings, OHIM cannot examine the facts of its own motion, that does not mean *however* that it is required to accept that points put forward by one party and not challenged by the other party ...” (20.1.H.E.noC.a)

2.2.5 Antecedents - scope

As has been illustrated in the theoretical section, the items *however* and *therefore* interpret the text to the hearer/reader and express the relevant connection between one part of the text and another (CGEL: 1468). Without the adverbials, two parts of the text may offer two pieces of information. In other words, the connection is thematic only and has to be inferred. With the conjunctive adverbials inserted, the second part of each text is shown to be specifically related to the preceding portion of the text, either as a natural consequence (*therefore*) or as a surprising paradox (*however*) (ibid: 1469).

Similarly, responses in dialogue often begin with an adverbial which indicates the direction of transition between what has just been said and what is about to be said (ibid: 1469). The same notion could be applied to written text.

This section will analyse whether the connectives are inserted directly between the sentences/clauses, which are to be linked together, or whether the matter is

more complex, with cases where contrast is not expressed directly with what precedes.

The examples were divided according to the following options: the relevant antecedent part appears [a] in the same sentence, [b] in the immediately preceding sentence, [c] in the same paragraph (the second or third preceding clause), and [d] in the immediately preceding paragraph. This division is illustrated in examples (49) to (52) below. For the sake of convenience, the underlined parts indicate the most likely parts of the text involved in the reason for the use of the item *however* or *therefore*.

Corpus reference

- (49) [a] “... In that respect, whilst it is apparent from Article 74(1) of Regulation No 40/94 that, in the course of opposition proceedings, OHIM cannot examine the facts of its own motion, that does not mean **however** that it is required to accept that points put forward by one party and not challenged by the other party ...”
(20.1.H.E.noC.a)
- (50) [b] “... A Party shall respond within a reasonable period, which shall not exceed 60 days from receipt, to a notification under paragraph 3(a), (b), (d) or (e). **However**, following a request for consultations under paragraph 3(a), the Parties shall meet within 30 days unless the Parties agree otherwise.”
(18.2.H.I.C.b)
- (51) [c] “Paragraph 5 clarifies the distinction between ‘rights’ and ‘principles’ set out in the Charter. According to that distinction, subjective rights shall be respected, whereas ... Principles may be implemented through legislative or executive ...; accordingly, they become significant for the Courts only when such acts are interpreted or reviewed. They do not **however** give rise to direct claims for positive action by the Union’s institutions or Member States authorities.”
(14.3.H.mM.noC.c)
- (52) [d] “1.8 regrets the entrenchment of the national veto in a number of areas, and considers that this will act as an unnecessary impediment to efficient decision-taking;
1.9 **however** welcomes the provision for unanimous action by the Council in concluding international agreements on trade in culture, audiovisual, social, education and health services [Article III-315];”
(15.1.H.M.noC.d)

While analysing the distance of the antecedent, it ought to be mentioned that the immediately preceding sentence sometimes equals the preceding paragraph. Please refer to examples 19.1.H.M.C.d and 34.1.T.I.C.b in the Corpus that contain very similar chunks of text (the former is a communication from the commission to the council on the opening of consultations and the latter is a final proposal for the decision), but are structured differently. One has the

antecedent in the preceding sentence, while the other in the preceding paragraph. The reason for distinguishing between a preceding sentence and a preceding paragraph has to do with the function of these means in dividing a text. “Legal English [does not] any longer consist of undifferentiated masses of print. In general there has been a tendency to make more and more use of layout and other graphetic and graphological devices as a means of revealing structure, content and logical progression.” (Crystal and Davy 1969: 198) In this respect, it seems convenient to distinguish between a sentence (as a self-contained unit) and a paragraph.

The analysis has revealed that it is usually the immediately preceding sentence that contains the antecedent. The Corpus shows that out of eighty occurrences, in thirty-five cases (43.75%) the antecedent appears in the immediately preceding sentence. Table 5 below contains the occurrences of *however* and *therefore* split according to their scope.

Table 5

In the sentence		In the immediately preceding sentence		In the same paragraph (the second or third preceding sentence)		In the immediately preceding paragraph	
[a] 15 (18.75%)		[b] 35 (43.75%)		[c] 8 (10%)		[d] 22 (27.5%)	
<i>however</i>	<i>therefore</i>	<i>however</i>	<i>therefore</i>	<i>however</i>	<i>therefore</i>	<i>however</i>	<i>therefore</i>
6 (7.5%)	9 (11.25%)	22 (27.5%)	17 (21.25%)	4 (5%)	4 (5%)	11 (13.75%)	11 (13.75%)

Despite this division, it is essential to realise that the antecedent may reach farther and may begin earlier than in the immediately preceding sentence, as indicated in examples (49) to (52) above.

As far as the group [a] is concerned, all examples of this kind represent cases of compound or complex sentences. In the case of *therefore*, the conjunct always appears after a coordinating conjunction (*and therefore*), either directly or after an auxiliary verb. It is never separated by a comma. *However* in this function is also rarely separated by a comma. *However* appears either in

compound sentences with *or*, in sentences linked together by a semicolon, or in a dependent clause with a sentential antecedent (20.1.H.I.noC.a, 20.2.H.mM.noC.a).

Group [b] is the most numerous category. This fact is not surprising since it represents cases where two adjacent sentences are logically connected through a conjunct.

Group [c] is the least frequent group, for obvious reasons, since the two arguments that are to be linked do not follow one another. Examples from this group may be regarded as potentially difficult to interpret.

At a closer look, group [d] is a variant of [b], but it is convenient to separate the two groups, because in many cases the logical relation may be found between the whole antecedent paragraph, and a paragraph introduced by a connector, or containing a connector in the first sentence.

In respect of both conjuncts, there seems to be no big difference as far as their scope is concerned. *Therefore* is more frequent in group [a], probably because in these cases it follows *and*, which is the most general coordinator. On the other hand, *however* is slightly more frequent in group [b], probably because in order to be contrasted, the two clauses need to be separate and adjacent. Quite frequent (almost 30%) is also the conjunctive role between paragraphs.

2.2.5.1 Interpretation

Following are several complex examples that were classified above as belonging to the [c] and [d] groups involving *therefore*. As can be seen, it is not unequivocally clear what the connective precisely refers to.

Corpus reference

- (53) [d] "... The levying of capital duty is particularly damaging in connection with restructuring operations and the development of EU companies. It is also disadvantageous for companies starting up and for companies increasing their capital. In recent years, the trend has been towards an elimination of capital duty. This duty is currently levied by just 10 of the 25 Member States. And from next year only 8 Member States will continue to levy it.

Corpus reference

Therefore, the Commission services are now preparing a proposal for a recast of the Capital Duty Directive before the end of 2006. (36.2.T.I.C.d)

- (54) [d] “Tax fraud creates a significant distortion in the functioning of the internal market, prevents fair competition and also erodes revenues that should be used for the implementation of public services at national level. Increased levels of fraud result in increased tax burdens on legitimate companies as governments are forced to make up their revenue shortfalls.

The operation of tax systems is and should remain the competence of Member States. Nevertheless, the Commission believes that more common and coordinated approaches could help and encourage Member States in the fight against tax fraud. The Commission is therefore currently evaluating the need for a new anti-fraud tax policy at European level... (36.3.T.mM.noC.d)

- (55) [c] “European companies are facing an increasing number of international challenges. Ensuring a level playing field for them within and outside the EU would enhance investment in the EU's internal market. Action to improve the international competitiveness of EU firms is therefore essential in order to meet the Lisbon agenda. (36.4.T.mM.noC.c)

In example (53), the text concerns certain indirect taxes that businesses find disadvantageous. Law makers should make Europe more accessible to investors. There have been initiatives to do away with the taxes and out of twenty-five members states only eight continue to apply it. The argument following the item *therefore* refers not only to the fact that *In recent years, the trend has been towards an elimination of capital duty...*, but also (indirectly) to the fact that the law regulating the capital duty is burdensome and prohibits *restructuring operations and the development of EU companies*. The function of *therefore* here appears to go beyond the immediately preceding sentence and the use of *therefore* offers more interpretations.

In example (54), the text concerns tax fraud that is obviously bad for both public and private sector. The affected entities fail to generate corresponding profits. The Commission believes that tax fraud can be fought and has been *evaluating the need for a new anti-fraud tax policy*. The function of *therefore* is to show both that the Commission has been evaluating the need for a new anti-fraud tax policy for the following reasons: primarily because it *believes that more common and coordinated approaches could help* and secondarily because *increased levels of fraud result in increased tax burdens*. The item *therefore* here appears to go beyond the immediately preceding sentence and

the use of *therefore* offers two interpretations as to why the Commission has been evaluating the need.

In example (55), *therefore* refers beyond the immediately preceding sentence. The immediately preceding sentence is linked to the item remotely. *Therefore* serves to give a reason why it is essential *to improve the international competitiveness*. It is essential because *European companies are facing an increasing number of international challenges*. The immediately preceding sentence indicates to the reader what is probably contained in the Lisbon agenda and not the reason why *action to improve the international competitiveness* is needed.

2.2.5.2 Accuracy

Based on the classification in Section 1.2.4, we can agree that *however* represents the contrastive-concessive role and *therefore* assumes the summative and resultive roles. Despite this, as will be seen in examples below, it is not always clear how to understand the role of the two connectives or how to construct the relationship between what precedes them. In example (56), it is difficult to see what exactly *however* relates to; in (57), (58), (59), (60), (61), (62), (63), (64), and (68) *however* is not absolutely necessary; in (65), it is not clear what is actually contracted; in (66) the second *therefore* is not necessary; in (67) the result is not clear; in (70) the use of *therefore* offers various interpretations. Furthermore, examples (59), (60), (62), and (64) below indicate that the presence of a negative statement in one of the parts of the text expresses the contrast without the need to use a contrastive connector. A connector only serves to solidify the relationship, not necessarily to stipulate it. Example (61) may suggest that a partial repetition of the preceding statement (*when such revision is made*, which refers to *may be reviewed by the Council*) also enables the contrast without the need to use a connector.

Corpus reference

- (56) [a] “By way of derogation from Article 244 ..., if an appeal shall have been brought within that period, as from the date of dismissal of the appeal, without prejudice, *however*, to the right of a party to apply to the Court of Justice, pursuant to

Corpus reference

- Articles 242 ...” (4. 1.H.E.C.a)
- (57) [b] “The Bank shall have an address for service in each Member State. It may, *however*, in any contract, specify a particular address for service.” (7. 1.H.mM.C.b)
- (58) [b] “The governments of the Member States shall, wherever possible, take the appropriate measures to remit or refund the amount of indirect taxes ... These provisions shall not be applied, *however*, so as to have the effect of distorting competition ...” (9. 1.H.E.C.b)
- (59) [d] “If these decisions to waive *ex ante* control have not been adopted before 1 May 2004, any contracts signed between 1 May 2004 and the date on which the Commission decisions are taken shall not be eligible for pre-accession assistance.
- However*, exceptionally, if the Commission decisions to waive ex-ante control are delayed beyond 1 May 2004 for reasons not attributable to the authorities of a new Member State, the Commission may accept, in duly justified cases, eligibility for pre-accession assistance of contracts signed between 1 May 2004 and the date of these decisions, and the continued implementation of pre-accession assistance for a limited period, subject to *ex ante* control by the Commission over tendering and contracting” (10. 3.H.I.C.d)
- (60) [a] “TAKING INTO ACCOUNT the fact that Ireland and the United Kingdom of Great Britain and Northern Ireland do not participate in all the provisions of the Schengen *acquis*; provision should, however, be made to allow those Member States to accept other provisions of this *acquis* in full or in part;” (11. 1.H.mM.C.a)
- (61) [d] “1. Articles 2 to 5 may be reviewed by the Council, by unanimous decision, ..., or when decisions are taken within the framework of a common commercial policy for the products in question or when a common energy policy is established.
2. When such revision is made, *however*, equivalent preferences shall in any case be maintained in favour of the Netherlands Antilles in a suitable form and for a minimum quantity ...” (12.1.H.E.C.d)
- (62) [d] “Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
- The preceding provisions shall not, *however*, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest ...” (14.1.H.mM.C.d)
- (63) [d] “1.8 regrets the entrenchment of the national veto in a number of areas, and considers that this will act as an unnecessary impediment to efficient decision-taking;
- 1.9 *however* welcomes the provision for unanimous action by the Council in concluding international agreements on trade in culture, audiovisual, social, education and health services [Article III-315];” (15.1.H.M.noC.d)
- (64) [b] “I think you would agree with me that there is no single explanation of the negative votes, nor there is a single remedy. *However* it is clear that the future of this treaty can only be decided in a democratic way. Undoubtedly, governments

Corpus reference

and parliaments in France and the Netherlands have a special responsibility ...”
(17.1.H.I.noC.b)

- (65) [b] “We have to make sure that we tell people what we do with what we receive from them. *However*, I repeat that people know the general position of the Commission on the Constitution.
(17.2.H.I.C.b)
- (66) [b] “Due to the circumstances in which the change of regime in Mauritania occurred and due to the form of political organisation put in place by the new authorities, the Commission considers this to be a “case of special urgency”. *Therefore*, in compliance with Article 96(1a) of the revised Cotonou Agreement, it is not necessary to work out the possibilities of political dialogue as set out in Article 8 of the same Agreement. The European Commission, *however*, hopes to have formal consultations with the government before appropriate measures are taken. The Commission *therefore* proposes that the Council invite the Islamic Republic of Mauritania to hold consultations under Articles 9 and 96 of the revised Cotonou Agreement in accordance with the attached draft letter”
(33.1.T.I.C.b) and (33.2.T.M.noC.b)
- (67) [a] “In terms of approved projects, the implementation of Sapard in Bulgaria progressed very well in 2004. By 31 December 2004, the Sapard agency had approved 1 909 projects accounting for €285.4 million of EU contribution, and *therefore* almost doubled the number of approved projects as compared to 2003. This figure corresponds to 100% of the Sapard allocation for the years 2000–2004.”
(35.1.T.mM.noC.a)
- (68) [a] These initiatives would help to renew growth and *therefore* create more and better jobs.”
(36.1.T.mM.noC.a)
- (69) [a] “BiH international trade commitments, including its offers within the ongoing WTO accession negotiations, should be fully consistent with the objectives of the future EU-Bosnia and Herzegovina SAA and with Bosnia and Herzegovina’s obligations therein and should *therefore* take fully into account EC own international trade commitments.”
(37.3.T.mM.noC.a)
- (70) [a], “27 As regards, first, the word element, the Board of Appeal held, on the one
[b] hand, that the description at issue was imbued with subjective factors and could *therefore* be interpreted subjectively and, on the other hand, that it would be difficult to describe the sign at issue in a sufficiently clear, precise and unequivocal manner since the smell of strawberries differs according to the variety; therefore there is necessarily a discrepancy between the description itself and the actual smell. The Board of Appeal concluded that a description could not constitute a graphic representation of the smell in respect of which it purports to be the written expression.”
(38.6.T.mM.noC.a) and (7.T.I.noC.b)

As the above examples (66) to (70) show, the use of *therefore* gives rise to questions, mainly because the antecedent appears in the second or third preceding sentence. The fact that the clauses do not follow in the expected order allows more freedom for interpretation.

A brief observation on frequency of the conjuncts stems from the process of selecting examples for the Corpus. The main criterion for the inclusion of a piece of text was for it to contain any of the items *however* and *therefore*. It did not matter whether some examples had one or more occurrences. What mattered was the occurrences as such. Some texts revealed a relatively high number of the items *however* and *therefore* within a limited space.

On the other hand, while examining and selecting the documents, it became clear that texts of law tended to have a low rate of occurrences (*cf* Crystal and Davy 1969 in the theoretical part). A considerable number of texts, which have consequently not been included in the Corpus, displayed no occurrences at all. It is worth noticing that some relatively similar texts of law, as to the content and nature of law, preferred to use the items *however* and *therefore* more often than others. Although this is beyond the scope of this thesis since no frequency counts were carried out, it would be interesting to see whether certain texts of law can work well without the presence of *however* and *therefore* or their synonyms at all.

3 CONCLUSION

The purpose of the thesis was to see how the documents, which form the European legislation framework and should ensure proper communication of all participants, use connectives *however* and *therefore* to express a contrast or consequence, respectively. The study of the examples included in our corpus has revealed that some instances of use are clear and instrumental, while others are open to interpretation or even may delay the perception of the intended message. In order to describe the usage, the analysis has but touched the principal areas of the use of *however* and *therefore* and has shown that two, rather frequently used connectors, are capable of donning two abstract qualities: clarity and ambiguity.

The original assumption was that the position of the conjunct may be related to its semantic scope. In respect of their word-order positions, the analysis revealed that there are differences between the respective conjuncts: *however* appears almost twice as much at the beginning of a clause (45%) than *therefore* (22.5%), and *therefore* appears almost twice as much in the medial position than *however* (68% compared to 35%). Also, *however* takes the end position twice more often than *therefore*. Irrespective of the type of conjunct, the medial position is the most frequent.

The position of a conjunct in clauses containing an auxiliary verb was also examined. It appears that the placement before the auxiliary (*iM*) is marginal. Nevertheless, the placement may be influenced by function: when comparing instances of *may* followed by *however*, it was observed that where *however* follows *may*, the subject of the clause containing *however* is identical in reference with the subject of the preceding clause, while in the case of the *iM* placement the subject is co-referential with the object of the preceding clause. This may indicate that when *however* follows the subject, it expresses a contrast between the “entities”, and when it follows a modal verb, it expresses a contrast between the “activities”.

The second observation was also related to the position of the conjunct and concerned the punctuation. The analysis has revealed that *however* and *therefore* at *I* are predominantly followed by a comma, whereas at *M* there is a sharp difference between the two adverbs: (a) *however* is separated by a comma in approximately half of its occurrences, (b) *therefore* has no comma in almost all its occurrences. At *E*, *however* appears again separated in half of its occurrences, while *therefore* is not separated at all. Irrespective of the placements, the corpus examples revealed that *however* is separated by a comma more often than *therefore*. Interestingly, the use of comma at *I* prevails, while it is less frequent at *M*. Nevertheless, other factors influencing the use of a comma, such as the complexity of the sentence (eg the presence of other adverbials) were not taken into account.

The next issue that was tested was whether the placement of the conjuncts in the sentence depends on the scope of the conjunct, ie the further to the right the conjunct is placed, the more limited its scope. For this purpose, the analysis divided the examples according to where the antecedent part appears: [a] in the same sentence, [b] in the immediately preceding sentence, [c] in the same paragraph (the second or third preceding clause), and [d] in the immediately preceding paragraph. Expectedly, the analysis has revealed that it is usually the immediately preceding sentence (44%) which contains the antecedent, but that the antecedent may reach farther.

The corpus provided instances of compound sentences with *therefore* in which the coordinated clauses had an identical subject and which was usually ellipted in the second clause. Other parts could additionally be ellipted as well. In all these instances, the antecedent (scope) was within the sentence. *However* was less frequent in these sentences.

This type of sentences (group [a]) may be said to display a relation between the position and the scope in the case of *however*, because this adverb does not appear in the *I* position (it cannot follow a conjunction). The *I* position is also relatively rare for *therefore* in these cases (*mM* or *E* being more frequent). The group [c], ie where the scope is not in the immediately preceding sentence, displays one regularity, namely that there is no end position. Group [b] seems to be characteristic for a higher proportion of the medial placement of *however*

(50% as opposed to the overall 35%), and the same applies to the [d] group. For the lists see the Appendix. The results seem to suggest some relation between the distance of the antecedent part of a text and the placement of the adverbial, but more examples would have to be gathered to prove this point.

The placement of the negative particle *not* was also noted. The study showed that out of twelve negative sentences involving *however* or *therefore*, none of the adverbs preceded the negation (*CGEL*: 643).

It is noted that not all examples offered a well-based instances of contrast or result. Some examples remain subject to further interpretation, some show that the connectives could either be replaced or are unnecessary, yet some are, arguably, used incorrectly. Furthermore, the study has indicated that the presence of a negative statement in one of the parts of the text enables to express a contrast without a connector and that in such instances a connector only serves to solidify the relationship, but not necessarily to stipulate it. The study also suggests that a partial repetition of the preceding statement enables the contrast without the need to use a connector.

It would be beyond this thesis to answer whether the writers of English texts use connectives too liberally and why. As the Corpus has revealed, the potential for misuse is noticeable.

While analysing the Corpus, it became apparent that certain types of texts tended to use *however* or *therefore* more often. This is particularly true when comparing texts or treaties, agreements and legislation in force with judicial decisions. In other words, documents, which must be approved by a larger number of reviewers, reveal a less frequent use of the connectives than documents, which were approved by a limited number of reviewers. This conclusion could support the argument that texts of law are a joint effort of a large number of individuals, while texts of judicial decisions are often created on spot, within a shorter period, and undergo less scrutiny. This may indicate a reduced need for causative or adversative argumentation and preference for well-structured statements. When texts of law do contain the items *however*

and *therefore*, it is for the purpose of reinforcing, emphasising, or affirming the relationship or for the avoidance of any doubt.

To conclude, neither of the connectives *however* and *therefore* has been used in this paper to argue a point or to link a statement other than to refer to their occurrence and use.

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RÉSUMÉ

Práce se zabývá použitím větných modifikátorů adverbialní povahy *however* a *therefore* (dále také jen „konektory“, „modifikátory“ nebo „adverbiále“) v textech zveřejněných Evropskou komisí na webových stránkách. Jedná se zejména o texty právního charakteru, jako jsou úmluvy a dodatky k nim, protokoly, rozsudky či prohlášení, tvořící právní rámec Evropského společenství. Práce zkoumá výskyty uvedených modifikátorů, zabývá se popisem jejich syntaktických vlastností, postavením ve větě, interpunkcí a významovou složkou. Kromě toho si všímá, zda užití modifikátorů je opodstatněné, a poukazuje na možnost nejednotné interpretace.

První, přehledová část čerpá ze zahraničních i domácích zdrojů, které se touto problematikou zabývají na teoretické rovině. Z hlediska formy dělí konektory do tří skupin (adverbia jednoduchá, složená a frázová) a zabývá se popisem na syntaktické rovině. Konstatuje, že konektory slouží ke usouvztažnění obsahu vět na rozdíl od začleněných příslovečných určení, které tvoří součást věty. Jak uvádí *CGEL* (613), příslovečná určení mohou být začleněná (adjunktvy a subjunktvy), nebo nezačleněná (disjunktvy a konjunktvy). Podle Prof. Duškové větné modifikátory slouží jako prostředky textové návaznosti specifikující způsob, jímž to, co následuje, navazuje na to, co předcházelo. *CGEL* dále uvádí, že oba modifikátory se mohou vyskytnout v otázkách, nejsou omezeny na postavení na začátku věty, mohou být užity v imperativu, jako takové nepřijímají další modifikaci, neobjevují se ve vzájemné koordinaci, jsou používány ve vedlejších větách. Konjunktvy mohou následovat po spojkách (*and, or, but, although*) a konjunktvy s různou sémantikou se mohou navíc vyskytovat v jedné větě, aniž by nutně docházelo k tautologii. Ve formálním stylu se hlavně jedná o společný výskyt *before* a *therefore*. To ovšem neznamená, že se jedná o výskyt žádoucí, či dokonce nezbytně nutný.

Teoretická část si rovněž všímá postavení konektorů ve větě. *CGEL* poznamenává, že rozdíl mezi konektory a jinými členy věty tkví hlavně v relativní volnosti umístění ve větě. Práce uvádí základní rozdělení pozic na počáteční (*initial*), mediální (*medial*) a koncovou (*end*) i podrobnější dělení mediální pozice (*initial medial, medial medial, a end medial*). Co se týče interpunkce, práce pozoruje relativní svobodu v užití či vynechání čárky před a po konektorech. Je tomu tak i proto, že souvětí je neohraňovaná kategorie a konjunktvy se mohou vyskytnout kromě tečky a čárky i po středníku.

Pozornost je věnována i významové složce dvou zkoumaných konektorů. Práce se nezabývá významem *however* jako integrovaným příslovečným určením. Část o významu dotčených konektorů uvádí, že význam *however* je

komentovat dříve uvedené skutečnosti bez ohledu na její pravost (*in spite of that, nevertheless, yet, despite anything to the contrary* atd.) nebo uvést omezení či protiklad (*on the other hand, by contrast*). V případě konektoru *therefore* se jedná o význam kauzální neboli logický následek či závěr vyplývající z dříve uvedené skutečnosti (*for that reason, thus, for that, by reasons of that, accordingly, consequently, in consequence of that, hence, and so, because of that, to that purpose* atd.). Pokud jde o sémantickou klasifikaci, práce se zmiňuje zejména o klasifikaci podle CGEL, ze které plyne, že konektor *however* vyjadřuje kontrastivně-koncesivní význam a *therefore* má roli sumativní a rezultativní. Podle Swanovy klasifikace patří *however* do kategorie konektorů, jejichž rolí je zdůraznit kontrast, vyjádřit připustku a protiargument, a *therefore* do kategorie konektorů, jejichž rolí je vyjádřit logická následek. Prof. Dušková řadí konektory, jakožto větné modifikátory sloužící jako prostředky textové návaznosti, do kategorie adverzativní a kauzální. Halliday a Hasan rozšiřují klasifikaci u *however* na hlavní adverzativní, kontrastivní adverzativní a otevřené zamítací. *Therefore* klasifikují jako konektor jednoduchý kauzální.

Závěrečné tři oddíly první části pojednávají o funkcích konektorů, jejich užití v právnickém jazyce. Hlavní funkcí konektorů je spojovat myšlenky zprostředkovávat návaznost. Halliday a Hasan uvádějí, že koheze textu je vyjádřena čtyřmi základními způsoby: referencí, substitucí, elipsou a konjunkcí. Výskyt obou konektorů v jednom souvětí není vyloučen a může sloužit jako potvrzení uvedeného. Pro některé čtenáře může být výsledek nežádoucí. Huddleston a Pullum (2002) se zmiňují o tom, že konektory mohou být čisté (*pure*), které kromě své spojovací funkce nemají žádnou jinou, a nečisté (*impure*), které mohou vystupovat v kombinaci s ostatními prostředky sloužícími k vyjádření spojení. Za pozornost stojí zmínka, že dosah konektoru není v některých případech snadno poznatelný, jelikož konektor může odkazovat na skutečnost uvedenou blíže nebo vzdáleněji od svého výskytu. V právnických textech, jak uvádějí Crystal a Davy (1969), je zapotřebí zvýšené pozornosti, jelikož význam musí být jasný a vyloučit možnost nesprávného pochopení. Četné užití adverbialíí nutí autora textu umístit je tak, aby uchoval jasnost sdělení. To má za následek, že adverbialé stojí na místě, kde by v běžném jazyce obvykle nestály.

Druhá část práce obsahuje analýzu 80 příkladů obsahujících konektory a jejich okolí. Jejím cílem bylo sledovat konkrétní užití konektorů v přiloženém materiálu, tj. textech tvořících právní rámec Evropského společenství. Texty byly vybrány náhodně bez předem stanoveného klíče. Jednotlivé výskyty byly řazeny za sebou a označeny šestimístnou zkratkou vyjadřující pořadové číslo

vybraného textu, číslo konektoru, druh konektoru (*however*, nebo *therefore*), pozici ve větě, přítomnost či nepřítomnost čárky, a dosah.

Na základě příkladů uvedených v našem souboru a s ohledem na teoretickou úvodní část bylo možno stanovit několik základních vzorců pro použití konektorů ve větě. Ukázalo se, že konektory se mohou vyskytovat v počáteční (*initial*), mediální (*medial*) a koncové (*end*) pozici nebo podle podrobnějšího dělení mediální pozice v počáteční mediální, střední mediální a koncové mediální pozici (*initial medial*, *medial medial*, *end medial*). Tato část práce obsahuje tabulky s výskytem a poměrem jednotlivých konektorů i konkrétními příklady na každý zmiňovaný jev s odkazy na náš soubor. Lze konstatovat, že postavení konektorů ve větě je poměrně volné s menšími či většími dopady na význam sdělení a celkově převládá výskyt v mediálním postavení ve větě (u *however* převládá počáteční postavení, u *therefore* postavení mediální).

Pozornost je věnována interpunkci opět na konkrétních příkladech. Na počátku věty se oba konektory vyskytují převážně s čárkou a v mediálním postavení naopak bez čárky. Z obou konektorů je čárky využíváno častěji u *however*. Analýza si také všímá výskytu obou konektorů v těsné blízkosti, po spojce či záporu nebo ve spojení s jinými příslovečnými určeními.

Dalším sledovaným aspektem je dosah konektorů (*antecedents*). Práce si všímá vzdálenosti toho, na co konektor navazuje, od samotného konektoru. Byly stanoveny čtyři základní dosahy: [a] konektor odkazuje na sdělení v souvětí samotném, [b] konektor odkazuje na bezprostředně předcházející větu, [c] konektor odkazuje na druhou nebo třetí předcházející větu ve stejném odstavci a [d] konektor odkazuje na bezprostředně předcházející odstavec. Bylo zjištěno, že odkaz na bezprostředně předcházející větu nebo odstavec je kategorie velmi podobná, neboť členění textu mnohdy záleží ryze na autorovi a v některých příkladech nemá jasné opodstatnění. Výsledky jsou vyjádřeny v absolutních číslech i procentech. Ukázalo se, že dosah konektorů nejčastěji končí v bezprostředně předcházející větě (44 %). V těchto případech se *however* vyskytuje častěji v mediální pozici (50 %), než je průměr. V případech, kdy je dosah konektoru relativně velký, případně nenavazuje na bezprostředně předchozí větu (skupina [c]), se nevyskytuje koncová pozice konektoru. V těchto případech dochází rovněž k více možnostem interpretace.

Pokud jde o srozumitelnost, funkci, správnost nebo frekvenci výskytů konektorů, práce poukazuje na několik případů, kdy jejich použití může být předmětem nejednotné interpretace.

Appendix 1 (Corpus)

Examples of *however* and *therefore*

This Appendix contains examples from original sources collected from various official EU websites accessed from November 2005 to January 2006.

All footnotes contained in the original texts of the Appendix have been deleted to allow space for footnotes relevant for the present study.

Examples 1 through 20 contain primarily occurrences of *however* and examples 21 through 40 contain primarily occurrences of *therefore*. Despite this, the examples indicate occurrences of both *however* and *therefore*. This has been done on purpose to demonstrate the frequency of use of the connectors.

Each example has been labelled using the following key:

The first place of the abbreviation gives the serial number of the excerpted text.

The second place of the abbreviation states the number of the example within the excerpted text (there may be more conjuncts within one paragraph).

The third place of the abbreviation either contains *H*, which stands for *however*, or *T*, which represents *therefore*.

The fourth place of the abbreviation specifies the word-order position of the connector. As will be discussed in greater detail below, these positions can be expressed as *I*, which stands for the *initial* position, *iM* for the *initial-medial* position, *M* for the *medial* position, *mM* for the *medial-medial* position, *eM* for the *end-medial* position, and *E*, which stands for the *end* position.

The fifth place of the abbreviation shows the presence or absence of a comma separating the conjunct. Thus, *C* stands for *comma* and *noC* stands for *no comma*.

The sixth place of the abbreviation indicates the scope of the conjunct, *ie* where its antecedent is positioned within the text. The procedure is explained the relevant section.

1 CONSTITUTION FOR EUROPE, PAGE 17

http://europa.eu.int/constitution/index_en.htm or

<http://europa.eu.int/constitution/download/brochure_160904_en.pdf>

How does the policy work? It is not "Brussels" that decides how the cohesion policy funds should be used. Needs are precisely evaluated on the ground, by the individual regions or countries. Implementation is **therefore** decentralised. **However**¹ the EU establishes the general framework within which the funds must be used, with strict conditions applying, e.g. development schemes must be environmentally friendly, or must promote equal opportunities. The European Union's role is not **therefore** confined merely to "putting up the cash". Thanks to its cohesion policy, the priorities decided upon at EU level to enable the Union to act in a spirit of solidarity while at the same time being competitive (employment, sustainable development, the information society, services of general economic interest, etc) can be put into practice on the ground. The cohesion policy is thus an indispensable complement to the single European market and to economic and monetary union. Note, though, that whatever the type of operation involved, EU aid does not replace national aid but supplements it. The idea is that the Union 'lends a hand' to good projects which might not otherwise take shape.

And the European Constitution? It consolidates Europe's regional policy, a policy based on solidarity and closeness to the citizen. It promotes "economic, social and territorial cohesion and solidarity among Member States". From now on, this is a fundamental objective of the European Union. It signifies that the benefits of EU solidarity, and in particular of EU financial assistance, are now available to all disadvantaged regions or regions in difficulty, which was not the case in the past.

2 2001/937/EC, ECSC, EURATOM: COMMISSION DECISION OF 5 DECEMBER 2001 AMENDING ITS RULES OF PROCEDURE (NOTIFIED UNDER DOCUMENT NUMBER C(2001) 3714) (ARTICLE 1 AND 4)

¹ I.I.H.I.noC.b

<http://www.eurofound.eu.int/about/publicaccess/documents/pubaccess_implementing_rules_en.pdf>

Article 1 - Beneficiaries

Citizens of the Union and natural or legal persons residing or having their registered office in a Member State shall exercise their right of access to Commission documents under Article 255(1) of the Treaty and Article 2(1) of Regulation (EC) No 1049/2001 in accordance with these detailed rules. This right of access concerns documents held by the Commission, that is to say, documents drawn up or received by it and in its possession.

Pursuant to Article 2(2) of Regulation (EC) No 1049/2001, citizens of third countries not residing in a Member State and legal persons not having their registered in one of the Member States shall enjoy the right of access to Commission documents on the same terms as the beneficiaries referred to in Article 255(1) of the Treaty.

However,² pursuant to Article 195(1) of the Treaty, they shall not have the option of laying a complaint before the European Ombudsman. But if the Commission wholly or partly refuses them access to a document after a confirmatory application, they may bring an action before the Court of First Instance of the European Communities in accordance with the fourth paragraph of Article 230 of the Treaty.

Article 4 - Treatment of confirmatory applications

In accordance with Article 14 of the Commission's Rules of Procedure, the power to take decisions on confirmatory applications is delegated to the Secretary-General. However,³ where the confirmatory application concerns documents concerning OLAF activities referred to in Article 2(1) and (2) of Decision 1999/352/EC, ECSC, Euratom, the decision-making power is delegated to the Director of OLAF.

3 CONSOLIDATED VERSION OF THE TREATY ON EUROPEAN UNION: PROTOCOL ON THE STATUTE OF THE COURT OF JUSTICE (ARTICLE 29)

<<http://europa.eu.int/eur-lex/en/treaties/selected/livre310.html>>

During the hearings the Court may examine the experts, the witnesses and the parties themselves. The latter, however,⁴[bd1] may address the Court only through their representatives.

4 CONSOLIDATED VERSION OF THE TREATY ON EUROPEAN UNION: PROTOCOL ON THE STATUTE OF THE COURT OF JUSTICE (ARTICLE 60)

<<http://www.pravri.hr/hr/zavodi/ielcl/Statute-of-the-E CJ.pdf>>

Without prejudice to Articles 242 and 243 of the EC Treaty or Articles 157 and 158 of the EAEC Treaty, an appeal shall not have suspensory effect.

By way of derogation from Article 244 of the EC Treaty and Article 159 of the EAEC Treaty, decisions of the Court of First Instance declaring a regulation to be void shall take effect only as from the date of expiry of the period referred to in the first paragraph of Article 56 of this Statute or, if an appeal shall have been brought within that period, as from the date of dismissal of the appeal, without prejudice, however,⁵[bd2] to the right of a party to apply to the Court of Justice, pursuant to Articles 242 and 243 of the EC Treaty or Articles 157 and 158 of the EAEC Treaty, for the suspension of the effects of the regulation which has been declared void or for the prescription of any other interim measure.

5 TREATY ESTABLISHING A CONSTITUTION FOR EUROPE (PART I, ARTICLE 3 AND 4)

<http://europa.eu.int/constitution/en/ptoc4_en.htm>

In the areas of research, technological development and space, the Union shall have competence to carry out activities, in particular to define and implement programmes; however,⁶[bd3] the exercise of that competence shall not result in Member States being prevented from exercising theirs.

In the areas of development cooperation and humanitarian aid, the Union shall have competence to carry out activities and conduct a common policy; however,⁷[bd4] the exercise of that competence shall not result in Member States being prevented from exercising theirs.

² 2.1.H.I.C.d

³ 2.2.H.I.C.b

⁴ 3.1.H.I.M.C.b

⁵ 4.1.H.E.C.a

⁶ 5.1.H.I.C.b

⁷ 5.2.H.I.C.b

6 TREATY ESTABLISHING A CONSTITUTION FOR EUROPE (5. PROTOCOL ON THE STATUTE OF THE EUROPEAN INVESTMENT BANK, ARTICLE 18)

http://europa.eu.int/constitution/en/ptoc4_en.htm

2. It shall neither acquire any interest in an undertaking nor assume any responsibility in its management unless this is required to safeguard the rights of the Bank in ensuring recovery of funds lent.

However,⁸[bd5] in accordance with the principles determined by the Board of Governors pursuant to Article 7(3)(b), and where the implementation of operations provided for in Article III-394 of the Constitution so requires, the Board of Directors shall, acting by a qualified majority, lay down the terms and conditions for taking an equity participation in a commercial undertaking, normally as a complement to a loan or a guarantee, insofar as this is required to finance an investment or programme.

7 TREATY ESTABLISHING A CONSTITUTION FOR EUROPE (5. PROTOCOL ON THE STATUTE OF THE EUROPEAN INVESTMENT BANK, ARTICLE 27)

http://europa.eu.int/constitution/en/ptoc100_en.htm

1. Disputes between the Bank on the one hand, and its creditors, debtors or any other person on the other, shall be decided by the competent national courts, save where jurisdiction has been conferred on the Court of Justice of the European Union. The Bank may provide for arbitration in any contract.

2. The Bank shall have an address for service in each Member State. It may, however,⁹[bd6] in any contract, specify a particular address for service.

3. The property and assets of the Bank shall not be liable to attachment or to seizure by way of execution except by decision of a court.

8 TREATY ESTABLISHING A CONSTITUTION FOR EUROPE (5. PROTOCOL ON THE STATUTE OF THE EUROPEAN INVESTMENT BANK, ARTICLE 28)

http://europa.eu.int/constitution/en/ptoc4_en.htm

1. The Board of Governors may, acting unanimously, decide to establish subsidiaries or other entities, which shall have legal personality and financial autonomy.

2. The Board of Governors, acting unanimously, shall establish the Statutes of the bodies referred to in paragraph 1, defining, in particular, their objectives, structure, capital, membership, the location of their seat, their financial resources, means of intervention and auditing arrangements, as well as their relationship with the organs of the Bank.

3. The Bank may participate in the management of these bodies and contribute to their subscribed capital up to the amount determined by the Board of Governors, acting unanimously.

4. The Protocol on the privileges and immunities of the European Union shall apply to the bodies referred to in paragraph 1 insofar as they are incorporated under Union law, to the members of their organs in the performance of their duties as such and to their staff, under the same terms and conditions as those applicable to the Bank.

Those dividends, capital gains or other forms of revenue stemming from such bodies to which the members, other than the European Union and the Bank, are entitled, shall however¹⁰[bd7] remain subject to the fiscal provisions of the applicable legislation.

9 TREATY ESTABLISHING A CONSTITUTION FOR EUROPE (7. PROTOCOL ON THE PRIVILEGES AND IMMUNITIES OF THE EUROPEAN UNION, ARTICLE 3)

http://europa.eu.int/constitution/en/ptoc102_en.htm

The Union, its assets, revenues and other property shall be exempt from all direct taxes.

The governments of the Member States shall, wherever possible, take the appropriate measures to remit or refund the amount of indirect taxes or sales taxes included in the price of movable or immovable property, where the Union makes, for its official use, substantial purchases the price of which includes taxes of this kind. These provisions shall not be applied, however,¹¹[bd8] so as to have the effect of distorting competition within the Union.

No exemption shall be granted in respect of taxes and dues which amount merely to charges for public utility services.

⁸ 6.1.H.I.C.d

⁹ 7.1.H.mM.C.b

¹⁰ 8.1.H.mM.noC.d

¹¹ 9.1.H.E.C.b

10 TREATY ESTABLISHING A CONSTITUTION FOR EUROPE (9. PROTOCOL ON THE TREATY AND THE ACT OF ACCESSION OF THE CZECH REPUBLIC, THE REPUBLIC OF ESTONIA, THE REPUBLIC OF CYPRUS, THE REPUBLIC OF LATVIA, THE REPUBLIC OF LITHUANIA, THE REPUBLIC OF HUNGARY, THE REPUBLIC OF MALTA, THE REPUBLIC OF POLAND, THE REPUBLIC OF SLOVENIA AND THE SLOVAK REPUBLIC, ARTICLE 21)

http://europa.eu.int/constitution/en/ptoc104_en.htm#a575

1. Save as otherwise provided for in this Protocol, no financial commitments shall be made under the Phare programme ⁽¹³⁾, the Phare cross-border cooperation programme ⁽¹⁴⁾, pre-accession funds for Cyprus and Malta ⁽¹⁵⁾, the ISPA programme ⁽¹⁶⁾ and the Sapard programme ⁽¹⁷⁾ in favour of the new Member States after 31 December 2003. The new Member States shall receive the same treatment as the present Member States as regards expenditure under the first three Headings of the Financial Perspective, as defined in the Interinstitutional Agreement of 6 May 1999 ⁽¹⁸⁾, as from 1 January 2004, subject to the individual specifications and exceptions below or as otherwise provided for in this Protocol. The maximum additional appropriations for headings 1, 2, 3 and 5 of the Financial Perspective related to enlargement are set out in Annex XV to the Act of Accession of 16 April 2003. **However**,¹²[bd9] no financial commitment under the 2004 budget for any programme or agency concerned may be made before the accession of the relevant new Member State has taken place.

2. Paragraph 1 shall not apply to expenditure under the European Agricultural Guidance and Guarantee Fund, Guarantee Section, according to Articles 2(1), 2(2), and 3(3) of Council Regulation (EC) No 1258/1999 of 17 May 1999 on the financing of the common agricultural policy ⁽¹⁹⁾, which will become eligible for Community funding only from 1 May 2004, in accordance with Article 2 of this Protocol.

However,¹³[bd10] paragraph 1 of this Article shall apply to expenditure for rural development under the European Agricultural Guidance and Guarantee Fund, Guarantee Section, according to Article 47a of Council Regulation (EC) No 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain regulations ⁽²⁰⁾, subject to the conditions set out in the amendment of that Regulation in Annex II to the Act of Accession of 16 April 2003.

3. Subject to the last sentence of paragraph 1, as of 1 January 2004, the new Member States shall participate in Union programmes and agencies according to the same terms and conditions as the present Member States with funding from the general budget of the Union.

4. If any measures are necessary to facilitate the transition from the pre-accession regime to that resulting from the application of this Article, the Commission shall adopt the required measures

Article 22

1. Tendering, contracting, implementation and payments for pre-accession assistance under the Phare programme, the Phare cross-border cooperation programme and pre-accession funds for Cyprus and Malta shall be managed by implementing agencies in the new Member States as from 1 May 2004.

The Commission shall adopt European decisions to waive the *ex ante* control by the Commission over tendering and contracting following a positively assessed Extended Decentralised Implementation System (EDIS) in accordance with the criteria and conditions laid down in the Annex to Council Regulation (EC) No 1266/1999 of 21 June 1999 on coordinating aid to the applicant countries in the framework of the pre-accession strategy and amending Regulation (EEC) No 3906/89 ⁽²¹⁾.

If these decisions to waive *ex ante* control have not been adopted before 1 May 2004, any contracts signed between 1 May 2004 and the date on which the Commission decisions are taken shall not be eligible for pre-accession assistance.

However,¹⁴ exceptionally, if the Commission decisions to waive *ex-ante* control are delayed beyond 1 May 2004 for reasons not attributable to the authorities of a new Member State, the Commission may accept, in duly justified cases, eligibility for pre-accession assistance of contracts signed between 1 May 2004 and the date of these decisions, and the continued implementation of pre-accession assistance for a limited period, subject to *ex ante* control by the Commission over tendering and contracting.

2. Global budget commitments made before 1 May 2004 under the pre-accession financial instruments referred to in paragraph 1, including the conclusion and registration of subsequent individual legal commitments and payments made after 1 May 2004, shall continue to be governed by the rules and regulations of the pre-accession financing

¹² 10.1.H.I.C.c

¹³ 10.2.H.I.C.d

¹⁴ 10.3.H.I.C.d

instruments and be charged to the corresponding budget chapters until closure of the programmes and projects concerned. Notwithstanding this, public procurement procedures initiated after 1 May 2004 shall be carried out in accordance with the relevant Union acts.

Article 27

If a new Member State has failed to implement commitments undertaken in the context of the accession negotiations, causing a serious breach of the functioning of the internal market, including any commitments in all sectoral policies which concern economic activities with cross-border effect, or an imminent risk of such breach, the Commission may, until the end of a period of up to three years after 1 May 2004, upon the motivated request of a Member State or on its own initiative, adopt European regulations or decisions establishing appropriate measures.

Measures shall be proportional and priority shall be given to measures which least disturb the functioning of the internal market and, where appropriate, to the application of the existing sectoral safeguard mechanisms. Such safeguard measures shall not be invoked as a means of arbitrary discrimination or a disguised restriction on trade between Member States. The measures shall be maintained no longer than strictly necessary, and, in any case, will be lifted when the relevant commitment is implemented. They may **however**¹⁵ be applied beyond the period specified in the first paragraph as long as the relevant commitments have not been fulfilled. In response to progress made by the new Member State concerned in fulfilling its commitments, the Commission may adapt the measures as appropriate. The Commission shall inform the Council in good time before revoking the European regulations or decisions establishing the safeguard measures, and it shall take duly into account any observations of the Council in this respect.

Article 28

If there are serious shortcomings or any imminent risks of such shortcomings in a new Member State in the transposition, state of implementation or the application of the framework decisions or any other relevant commitments, instruments of cooperation and decisions relating to mutual recognition in the area of criminal law under Title VI of the EU Treaty, Directives and Regulations relating to mutual recognition in civil matters under Title IV of the EC Treaty, and European laws and framework laws adopted on the basis of Sections 3 and 4 of Chapter IV of Title III of Part III of the Constitution, the Commission may, until the end of a period of up to three years after 1 May 2004, upon the motivated request of a Member State or on its own initiative and after consulting the Member States, adopt European regulations or decisions establishing appropriate measures and specify the conditions and modalities under which these measures are put into effect.

These measures may take the form of temporary suspension of the application of relevant provisions and decisions in the relations between a new Member State and any other Member State or Member States, without prejudice to the continuation of close judicial cooperation. The measures shall be maintained no longer than strictly necessary, and, in any case, will be lifted when the shortcomings are remedied. They may **however**¹⁶ be applied beyond the period specified in the first paragraph as long as these shortcomings persist. In response to progress made by the new Member State concerned in rectifying the identified shortcomings, the Commission may adapt the adopted measures as appropriate after consulting the Member States. The Commission shall inform the Council in good time before revoking safeguard measures, and it shall take duly into account any observations of the Council in this respect.

11 TREATY ESTABLISHING A CONSTITUTION FOR EUROPE (17. PROTOCOL ON THE SCHENGEN ACQUIS INTEGRATED INTO THE FRAMEWORK OF THE EUROPEAN UNION) (PREAMBLE)

<http://europa.eu.int/constitution/en/ptoc112_en.htm>

THE HIGH CONTRACTING PARTIES,

RECALLING that the provisions of the Schengen *acquis* consisting of the Agreements on the gradual abolition of checks at common borders, signed by some Member States of the European Union in Schengen on 14 June 1985 and on 19 June 1990, as well as related agreements and rules adopted on the basis of these agreements, have been integrated into the framework of the European Union by a Protocol annexed to the Treaty on European Union and to the Treaty establishing the European Community;

DESIRING to preserve the Schengen *acquis*, as developed since the entry into force of the abovementioned Protocol, within the framework of the Constitution, and to develop this *acquis* in order to contribute towards achieving the objective of offering citizens of the Union an area of freedom, security and justice without internal borders;

TAKING INTO ACCOUNT the special position of Denmark;

¹⁵ 10.4.H.mM.noC.c

¹⁶ 10.5.H.mM.noC.b

TAKING INTO ACCOUNT the fact that Ireland and the United Kingdom of Great Britain and Northern Ireland do not participate in all the provisions of the Schengen *acquis*; provision should, **however**,¹⁷[bd12] be made to allow those Member States to accept other provisions of this *acquis* in full or in part;

RECOGNISING that, as a consequence, it is necessary to make use of the provisions of the Constitution concerning closer cooperation between some Member States;

TAKING INTO ACCOUNT the need to maintain a special relationship with the Republic of Iceland and the Kingdom of Norway, both States being bound by the provisions of the Nordic passport union, together with the Nordic States which are members of the European Union;

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty establishing a Constitution for Europe,

12 TREATY ESTABLISHING A CONSTITUTION FOR EUROPE (25. PROTOCOL CONCERNING IMPORTS INTO THE EUROPEAN UNION OF PETROLEUM PRODUCTS REFINED IN THE NETHERLANDS ANTILLES)

http://europa.eu.int/constitution/en/ptoc120_en.htm

Article 6

1. Articles 2 to 5 may be reviewed by the Council, by unanimous decision, after consulting the European Parliament and the Commission, when a common definition of origin for petroleum products from third countries and associated countries is adopted, or when decisions are taken within the framework of a common commercial policy for the products in question or when a common energy policy is established.

2. When such revision is made, **however**,¹⁸[bd13] equivalent preferences shall in any case be maintained in favour of the Netherlands Antilles in a suitable form and for a minimum quantity of 2 1/2 million tonnes of petroleum products.

3. The Union's commitments in regard to equivalent preferences as referred to in paragraph 2 may, if necessary, be broken down State by State taking into account the tonnage indicated in the Annex to this Protocol.

13 TREATY ESTABLISHING A CONSTITUTION FOR EUROPE (34. PROTOCOL ON THE TRANSITIONAL PROVISIONS RELATING TO THE INSTITUTIONS AND BODIES OF THE UNION TITLE III PROVISIONS CONCERNING THE COMMISSION, INCLUDING THE UNION MINISTER FOR FOREIGN AFFAIRS)

http://europa.eu.int/constitution/en/ptoc129_en.htm

Article 4

The members of the Commission in office on the date of entry into force of the Treaty establishing a Constitution for Europe shall remain in office until the end of their term of office. **However**,¹⁹[bd14] on the day of the appointment of the Union Minister for Foreign Affairs, the term of office of the member having the same nationality as the Union Minister for Foreign Affairs shall end.

14 TREATY ESTABLISHING A CONSTITUTION FOR EUROPE (12. DECLARATION CONCERNING THE EXPLANATIONS RELATING TO THE CHARTER OF FUNDAMENTAL RIGHTS)

http://europa.eu.int/constitution/en/ptoc146_en.htm

Article 17, Explanation

This Article is based on Article 1 of the Protocol to the ECHR:

'Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, **however**,²⁰[bd15] in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.'

¹⁷ 11.I.H.mM.C.a

¹⁸ 12.I.H.E.C.d

¹⁹ 13.I.H.I.C.b

²⁰ 14.I.H.mM.C.d

This is a fundamental right common to all national constitutions. It has been recognised on numerous occasions by the case-law of the Court of Justice, initially in the Hauer judgment (13 December 1979, ECR [1979] 3727). The wording has been updated but, in accordance with Article 52(3) ⁽¹¹⁾, the meaning and scope of the right are the same as those of the right guaranteed by the ECHR and the limitations may not exceed those provided for there.

Protection of intellectual property, one aspect of the right of property, is explicitly mentioned in paragraph 2 because of its growing importance and Community secondary legislation. Intellectual property covers not only literary and artistic property but also inter alia patent and trademark rights and associated rights. The guarantees laid down in paragraph 1 shall apply as appropriate to intellectual property.

Article 47, Explanation

The first paragraph is based on Article 13 of the ECHR:

'Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.'

However²¹[bd16], in Union law the protection is more extensive since it guarantees the right to an effective remedy before a court. The Court of Justice enshrined that right in its judgment of 15 May 1986 as a general principle of Union law (Case 222/84 Johnston [1986] ECR 1651; see also judgment of 15 October 1987, Case 222/86 Heylens [1987] ECR 4097 and judgment of 3 December 1992, Case C-97/91 Borelli [1992] ECR I-6313). According to the Court, that general principle of Union law also applies to the Member States when they are implementing Union law. The inclusion of this precedent in the Charter has not been intended to change the system of judicial review laid down by the Treaties, and particularly the rules relating to admissibility for direct actions before the Court of Justice of the European Union. The European Convention has considered the Union's system of judicial review including the rules on admissibility, and confirmed them while amending them as to certain aspects, as reflected in Articles III-353 to III-381 of the Constitution, and in particular in Article III-365(4). Article 47 ⁽¹⁰⁸⁾ applies to the institutions of the Union and of Member States when they are implementing Union law and does so for all rights guaranteed by Union law.

Article 52

Explanation

Paragraph 5 clarifies the distinction between 'rights' and 'principles' set out in the Charter. According to that distinction, subjective rights shall be respected, whereas principles shall be observed (Article 51 (1)) ⁽¹³⁴⁾. Principles may be implemented through legislative or executive acts (adopted by the Union in accordance with its powers, and by the Member States only when they implement Union law); accordingly, they become significant for the Courts only when such acts are interpreted or reviewed. They do not however²²[bd17] give rise to direct claims for positive action by the Union's institutions or Member States authorities. This is consistent both with case-law of the Court of Justice (Cf. notably case-law on the 'precautionary principle' in Article 174 (2) TEC (replaced by Article III-233 of the Constitution): judgment of the CFI of 11 September 2002, T-13/99, Pfizer vs. Council, with numerous references to earlier case-law; and a series of judgments on Article 33 (ex 39) on the principles of agricultural law, e.g. judgment of the Court of Justice C-265/85, Van den Berg, 1987 ECR 1155: scrutiny of the principle of market stabilisation and of reasonable expectations) and with the approach of the Member States' constitutional systems to 'principles' particularly in the field of social law. For illustration, examples for principles recognised in the Charter include e.g. Articles 25, 26 and 37 ⁽¹³⁵⁾. In some cases, an Article of the Charter may contain both elements of a right and of a principle, e.g. Articles 23, 33 and 34 ⁽¹³⁶⁾.

15 OPINION OF THE COMMITTEE OF THE REGIONS OF 17 NOVEMBER 2004 ON THE TREATY ESTABLISHING A CONSTITUTION FOR EUROPE TREATY ESTABLISHING A CONSTITUTION FOR EUROPE (REPORT ON THE TREATY ESTABLISHING A CONSTITUTION FOR EUROPE, DECEMBER 9TH, 2004, COMMITTEE ON CONSTITUTIONAL AFFAIRS - RAPPORTEURS: RICHARD CORBETT AND ÍÑIGO MÉNDEZ DE VIGO)

<http://www.europarl.org.uk/constitution/report/opinion_ecor.htm>

b) The Treaty

1.5 considers that the Treaty represents a positive step forward for the European Union and puts in place many necessary arrangements for the effective governance of the Union;

²¹ 14.2.H.I.C.b

²² 14.3.H.mM.noC.c

1.6. considers that both the establishment of an explicit link between the coordination of economic and employment policies [Article I-14 and I-15] as well as the introduction of a horizontal social clause, according to which the Union must take into account, when defining and implementing its policies, requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health [Article III-117], will provide an appropriate legal basis for pursuing the European social model and sustainability as laid down in the preamble of the Charter of Fundamental Rights of the Union and the objectives of the European Union [Article I-3(3)];

1.7. welcomes the inclusion of the text of the Charter of Fundamental Rights into the Treaty, which will give citizens greater clarity and certainty as to their rights arising from citizenship of the Union, and will provide for a more just and social Europe;

1.8. regrets the entrenchment of the national veto in a number of areas, and considers that this will act as an unnecessary impediment to efficient decision-taking;

1.9. **however**²³[bd18] welcomes the provision for unanimous action by the Council in concluding international agreements on trade in culture, audiovisual, social, education and health services [Article III-315];

1.10. welcomes the provisions for applying the normal legislative procedures for part III of the Constitution [Article IV-445];

1.11. considers that the Treaty provides a clearer definition and distribution of powers within the Union, a simplification of its instruments and a strengthening of the democratic legitimacy, transparency of the decision-making process and efficiency of its institutions, and provides the Union with the necessary flexibility to develop in new directions.

(c) Subsidiarity and the role of sub-Member State government

1.12. welcomes the new definition of the principle of subsidiarity and the involvement of the Committee of the Regions in the process of ex-post monitoring of the application of the principle of subsidiarity; [Subsid-Article 8]; welcomes also that it will receive the report of the Commission on the application of Article I-11 of the Constitution (subsidiarity and proportionality) alongside the other institutions and the national Parliaments of the Member States [Subsid-Article 9]; regrets **however**²⁴[bd19] that the provisions governing the principle of proportionality are less comprehensive than the ones concerning subsidiarity;

1.13. welcomes the reference to local and regional self-government [Article I-5 & Part II-preamble], the acknowledgement of the importance of grassroots democracy in the Union [Article I-46.(3)], and the role of representative associations in the democratic life of the Union [Article I-47 (2)]; regrets **however**²⁵[bd20] that the CoR was not referred to in Title VI ("democratic life of the union") [Article I-46] concerning the principle of representative democracy, given that its members represent the democratic principle of proximity at the heart of the Union;

1.14. considers that the fuller recognition of the local and regional dimension within the new architecture of the Union will both improve its effectiveness and its linkages with citizens: European integration should entail political decision-making where account is taken of the views of local and regional authorities, as it is these spheres of governance that are responsible for the transposition and implementation of a large proportion of EU legislation and policy, and are closest to the citizen so can **therefore** contribute substantially to the quality of Union legislation; [Article I-5] **however**[bd21]²⁶ states that consultation cannot substitute responsibility and accountability of regions and local authorities within their respective spheres of competence which have to be respected; they must be given the chance to prove that they can, according to the internal provisions of the respective Member State, sufficiently achieve the objectives of the intended action;

1.15. welcomes the provision that the Union shall respect Member States' national identities and their fundamental structures, including the right to regional and local self-government, and their essential State functions [Article I-5] especially those designed to guarantee territorial integrity, maintain public order and safeguard national security, as this can be the key for maintaining responsibility and accountability of democratically legitimised local and regional authorities;

1.16. welcomes that the Treaty safeguards the right of regional ministers to take part in Council meetings on behalf of their Member State, as it confirms the text of Article 203 of the EC Treaty in Article I-23 (2); calls on Member States to provide internally structures and mechanisms to involve regions and local authorities in shaping Member States'

²³ 15.1.H.M.noC.d

²⁴ 15.2.H.E.noC.d

²⁵ 15.3.H.E.noC.a

²⁶ 15.4.H.M.noC.a

European policies and to safeguard regional participation also in the new regime of Council formations, on issues that fall within their competence;

1.17 welcomes the requirement of fuller consultation in the pre-legislative phase - for local and regional authorities to participate fully in the European decision-making process for which they have responsibility for transposition and/or implementation, they need to be well informed of current developments and adequate prior consultation is essential; this is a two-way process in which consultation may enable the Commission itself to be better informed about the local and regional dimension and thereby lead to more better lawmaking. [Subsid-Article 2];

1.18 calls for a real dialogue to be established and extended into key thematic areas early in the new Commission's term of office;

1.19 urges improved direct consultation at national level between national parliaments and local and regional authorities responsible for transposition and/or implementation of Union legislation;

1.20 welcomes the Treaty requirement for prior account to be taken by the European Commission of the financial and administrative consequences of its legislative proposals, and considers that this must include an evaluation of the impact on local and regional authorities, given that they are often the sphere of governance ultimately responsible for delivery and implementation of new EU initiatives; invites the European Parliament to give similar consideration to the impact of its legislative amendments [Subsid-Article 4];

1.21 acknowledges the broad and valuable debate held at the CoR Berlin conference on Subsidiarity on 27 May 2004; understands that a fuller consideration of the application and assessment of the principles of subsidiarity and proportionality will be undertaken in a forthcoming CoR opinion.

(d) Policies

1.22 welcomes the inclusion of territorial cohesion among the objectives of the Union and the inclusion of regions facing various types of difficulty amongst those to receive particular attention; regrets **however**²⁷[bd22] that the Treaty does not make reference to cross-border, transnational and inter-regional cooperation, nor does it provide a clear legal instrument nor a framework for financial support to town-twinning or other such cooperation [Article III-220-224] - there is a long tradition of trans-border, transnational and inter-regional cooperation in Europe which is one of the socio-cultural foundations of European integration and gains even greater significance in the context of the new neighbourhood policy. A legal base is **therefore** indispensable in order to give the Union the means to enable such cooperation;

1.23 welcomes that the Treaty provides for Member States - and their constituent spheres of governance - to provide, to commission and to fund services of general economic interest;

1.24 welcomes the recognition given to cultural and linguistic diversity, as this will help preserve and promote local and regional heritage and identity, and combat the homogenisation of European culture; [Articles I-3 and III-280];

1.25 takes note of the inclusion of supporting, coordinating or complementary action at Union level in the areas of sport [Article III-282], tourism [Article III-281] and civil protection [Article III-284], where local and regional authorities have important roles and calls on the Commission to generally make use of European framework laws;

1.26 considers the conferral of competences to the European Union in the trade in culture, education, health and social services needs close monitoring of compliance with the principles of subsidiarity and proportionality and recommends that the Commission generally makes use of European framework laws leaving national, regional and local authorities the choice of form and methods in achieving the desired results.

e) Committee of the Regions

1.27 regrets that the IGC did not strengthen the institutional status of the Committee of the Regions in order to firmly establish its areas of mandatory consultation within the constitutional architecture and strengthen its consultative role, for example: in areas of shared competence, for measures to coordinate economic and employment policies, and in areas of supporting, coordinating or complementary action;

1.28 welcomes the granting to the Committee of the Regions of the right to institute proceedings before the Court of Justice to defend its prerogatives and for infringement of the subsidiarity principle; [Article III-365]; regrets, **however**,²⁸[bd23] that the IGC did not give the regions with legislative powers the option to institute proceedings before the Court of Justice in order to defend their legislative powers;

²⁷ 15.5.H.E.noC.b

²⁸ 15.6.H.E.C.b

1.29 welcomes confirmation that the term of office will be extended to five years, which in due course may be co-terminus with that of the Parliament and Commission [Article III-386].

16 IP/05/1272 BRUSSELS, 13 OCTOBER 2005 EUROPEAN COMMISSION LAUNCHES PLAN D FOR DEMOCRACY, DIALOGUE AND DEBATE

<http://europa.eu.int/rapid/pressreleasesaction.do?reference=ip/05/1272&format=html&aged=0&language=en&guilanguage=en>

Stimulating Debate

All Member States have committed to undertake broad ranging national debates on the Future of Europe. These national debates go to the heart of Plan D – here the Commission's clear role is to assist rather than replace Member States. Plan D does, however,²⁹[bd24] seek to provide a common framework for the 25 country debates: providing potential models and structures for national governments (eg, National Forum Ireland), and suggesting certain common processes and key themes.

17 MARGOT WALLSTRÖM, VICE-PRESIDENT OF THE EUROPEAN COMMISSION, RESPONSIBLE FOR INSTITUTIONAL RELATIONS AND COMMUNICATION STRATEGY, OPENING REMARKS AT MEETING WITH THE FEDERALIST INTER-GROUP FOR THE EUROPEAN CONSTITUTION, MEETING WITH THE FEDERALIST INTER-GROUP FOR THE EUROPEAN CONSTITUTION, STRASBOURG, 26 OCTOBER 2005

<http://europa.eu.int/rapid/pressreleasesaction.do?reference=speech/05/650&format=html&aged=0&language=en&guilanguage=en>

So what is the way forward?

After the negative referenda in France and the Netherlands, the Commission has endeavoured to play a constructive role to find a common understanding on the way forward. Member States will have to decide whether they will proceed or postpone the procedure of ratification.

I think you would agree with me that there is no single explanation of the negative votes, nor there is a single remedy. However³⁰[bd25] it is clear that the future of this treaty can only be decided in a democratic way. Undoubtedly, governments and parliaments in France and the Netherlands have a special responsibility in search for a common solution.

Heads of State and Government have called for a period of reflection and a broad debate in each Member State involving citizens, civil society, social partners, national parliaments and political parties. The main responsibility for organising the national debate lies with each Member State, but the Commission and the European Parliament, as two institutions with a Community vocation, should play an active role in the process.

I do not believe that we can be accused of in-action. We have sought to give a structure and momentum to the period of reflection. We seek to provide the key themes for the debate, ensure that we have a proper feedback and push Member States to be pro-active. I see this as the role of the Commission; In identifying both ways of assisting Member states but also suggest activities on the European level.

In this context, the Commission has already expressed its willingness to fully engage in a *Plan D* for democracy, dialogue, debate. The aim is to stimulate a wider debate on the relationship between the European Union's democratic institutions and citizens. It is about reinventing and recreating trust, but also about rediscovering European values, such as solidarity and sustainability, in the new Europe of 25, soon 27.

I will just mention a couple of the specific initiatives.

In agreement with the Member States, the President and Commissioners will visit Member States to stimulate, set off and add momentum to the national debates. We want to see the European Parliament President and MEPs, also former Members, to be involved in these debates.

I would like the European Parliament and Commission to co-operate on looking into ways to increase voter participation in European elections and referenda. This could be a specific joint task.

²⁹ 16.1.H.mM.C.b

³⁰ 17.1.H.I.noC.b

The criticism we have received is that it suggests a wide public debate without setting out the final objective that the Commission supports. I tend to believe that if we are serious about listening then we must be prepared to wait with our proposals for the end of the period of reflection. We have to make sure that we tell people what we do with what we receive from them. **However**,³¹[bd26] I repeat that people know the general position of the Commission on the Constitution.

So our real difference (if we have one) is that the Commission does not believe that the solution is to find the quickest route back to process. We have already held five Intergovernmental Conferences in twenty years. I think people are sick of us looking inwards – what they really want is to show that we can solve their problems and act with strength on the international stage. We need to show that we are part of the solution to problems by addressing content, and delivery.

It is clear that a very important for the legitimacy of the EU is delivery of results. The Commission will continue to maintain emphasis on its strategy for economic growth and job-creation. We want to help deliver responses on the security threats and the painful problem of youth unemployment. Europe needs to reform, we have 20 million unemployed and that is unacceptable.

It is also simply wrong to think that a single market can be sustained without social cohesion and the respect for our environment. This is what I call a consensus on the European way.

Constitutional reform will continue to be important – but it must be a step by step process. The time for the Constitution will come....but only if we have the people behind it.

In conclusion, let's focus on the policies and on establishing democratic process. Let's accept the situation on the Constitution and aim to go forwards not backwards. Let's convince the people we represent that they need the European Union: that we are the solution not the problem.

I am not sure if I have convinced you. The good news is that at least in Sweden turkeys are now voting for Christmas – we prefer to eat ham!!!!

Thank you for your attention.

18 BRUSSELS, 7.11.2005, COM(2005) 547 FINAL, 2005/0219 (ACC), PROPOSAL FOR A COUNCIL DECISION, ON THE CONCLUSION OF THE AGREEMENT BETWEEN THE EUROPEAN COMMUNITY AND THE UNITED STATES ON TRADE IN WINE
<http://europa.eu.int/eur-lex/lex/lexuriserv/site/en/com/2005/com2005_0547en01.doc>

2. In the present agreement, each Party recognises that the laws, regulations and requirements of the other Party relating to wine making, which are listed in Annex I of the Agreement, fulfil the objectives of its own laws, regulations and requirements. **However**,³²[bd27] those US wine-making practices which are not covered by existing Community authorisations set forth in Council Regulation (EC) No 1037/2001 and prolonged by Council Regulation (EC) No 2324/2003, will only be accepted for wines exported to the Community after the United States has notified the Community of the change of status of the 17 EU wine names which are currently considered as semi-generic terms in the USA. Regarding new wine-making practices that are not covered by the Agreement, the Parties have agreed to a procedure to assess them.

4. A Party shall respond within a reasonable period, which shall not exceed 60 days from receipt, to a notification under paragraph 3(a), (b), (d) or (e). **However**,³³[bd28] following a request for consultations under paragraph 3(a), the Parties shall meet within 30 days unless the Parties agree otherwise.

Article 17

FINAL PROVISION

1. This Agreement shall enter into force upon signature.

2. **However**,³⁴[bd29] the provisions of Article 4 and Article 9 shall only apply from the first day of the second month following receipt by the Community of the written notice referred to in Article 6(3).

19 BRUSSELS, 28.10.2005, COM(2005) 546 FINAL, COMMUNICATION FROM THE COMMISSION TO THE COUNCIL, ON THE OPENING OF CONSULTATIONS WITH MAURITANIA UNDER ARTICLE 96 OF THE

³¹ 17.2.H.I.C.b

³² 18.1.H.I.C.b

³³ 18.2.H.I.C.b

³⁴ 18.3.H.I.C.d

COTONOU AGREEMENT, ANNEX, BRUSSELS, H.E. MR SIDI AHMED OULD ABOUBACAR, PRIME MINISTER OF THE ISLAMIC REPUBLIC OF MAURITANIA, NOUAKCHOTT, MAURITANIA, DRAFT LETTER

http://europa.eu.int/eur-lex/lex/lexuriserv/site/en/com/2005/com2005_0546en01.doc

Dear Prime Minister,

In its statement of 3 August 2005 on the coup in Mauritania, the EU Presidency reiterated its condemnation of all attempts to seize power by force.

On the very same day, the Commission deplored the seizure of power by force and called for respect for democracy and a return to constitutional order.

Due to the circumstances in which the change of regime in Mauritania occurred and due to the form of political organisation put in place by the new authorities, the EU considers there has been a violation of the essential elements of the revised Cotonou Agreement. Furthermore, the EU considers this to be a "case of special urgency". **Therefore**, in compliance with Article 96(1a) of the revised Cotonou Agreement, it is not necessary to exhaust the possibilities of political dialogue as set out in Article 8 of the same Agreement.

The European Union, **however**,³⁵[bd30] hopes to have formal consultations with the Government before appropriate measures are taken. We are, **therefore**, pleased, on behalf of the Community and of the Member States of the European Union, to invite your country to hold consultations under Article 96 of the revised Cotonou Agreement, with a view to carrying out an in-depth analysis of the situation and, if appropriate, of the corrective measures to be taken. For its part, the EU will engage in these consultations in a constructive and open manner.

The consultations should allow the Mauritanian side to be more specific about the transition programme of the new Government and, in particular:

on aspects relating to the organisation of legislative and presidential elections and to the return to constitutional order;

on measures to be taken on economic and political governance, on legal sector reform, and on the promotion of public freedoms and of freedom of expression.

We would like to suggest that these consultations are held in the near future, on a mutually convenient date, in the premises of the Council of the European Union in Brussels.

Yours sincerely,

For the Council For the Commission

Cc : President of the Committee of ACP Ambassadors

Secretary General of the ACP Group

20 OF THE COURT OF FIRST INSTANCE (THIRD CHAMBER), 27 OCTOBER 2005 (*), (COMMUNITY TRADE MARK – OPPOSITION PROCEEDINGS – EARLIER COMMUNITY AND NATIONAL WORD MARK OBELIX – APPLICATION FOR COMMUNITY WORD MARK MOBILIX – ARTICLE 8(1)(B) AND (2) OF REGULATION (EC) NO 40/94), IN CASE T-336/03

<http://europa.eu.int/eur-lex/lex/lexuriserv/lexuriserv.do?uri=celex:62003a0336:en:html>

34 In that respect, whilst it is apparent from Article 74(1) of Regulation No 40/94 that, in the course of opposition proceedings, OHIM cannot examine the facts of its own motion, that does not mean **however**³⁶[bd31] that it is required to accept that points put forward by one party and not challenged by the other party to the proceedings are established. That provision only binds OHIM with regard to the facts, evidence and observations on which that decision is based.

48 The applicant submits that it is above all necessary to take account of the fact that consumers consider the two signs to be trisyllabic trade marks with the accent on the same syllables and in which the sequence of consonants is the same and the sequence of vowels almost so, since the 'e' and 'i' sounds are very similar. The sole difference is the initial 'm' of the trade mark applicant's mark which, by reason of its weak sound, could **however**³⁷[bd32] easily be missed by the listener in circumstances where the noise level is quite high.

³⁵ 19.1.H.M.C.d

³⁶ 20.1.H.E.noC.a

³⁷ 20.2.H.mM.noC.a

62 Furthermore, it is clear from the list of goods and services falling within Class 9 covered by the earlier registration that the sectors covered by that right are photography, cinema, optics, teaching and video games. That list of goods and services is close to that which is claimed in the Community trade mark application, which shows that the sector in question is, almost exclusively, telecommunications of all forms. Telecommunications equipment falls within the category of 'apparatus for recording, transmission or reproduction of sound and/or images', which forms part of the official title of Class 9 of the Nice Agreement. However,³⁸[bd33] that part of the class title ('telecommunications') was not claimed in the earlier right, which implies that telecommunications equipment was not intended to be covered. The applicant registered its trade mark in respect of a large number of classes, but it did not refer to 'telecommunications' in the specification and it even excluded the whole of Class 38 from the registration. Class 38 concerns precisely 'telecommunications' services.

70 Consequently, it must be found that the goods and services in question are not similar. There is however³⁹[bd34] one exception. The 'leasing of computers and computer programs' which appears in the Community trade mark application (Class 42) and the applicant's 'computers' and 'computer programs recorded on data carriers' (Class 9) are similar by reason of their complementarity.

79 Third, as regards the conceptual comparison, it should be noted that the words 'mobilix' and 'obelix' have no meaning in any of the official languages of the European Union. However,⁴⁰[bd35] whilst the term 'mobilix' may readily be perceived as referring to something mobile or to mobility, the term 'obelix', even if the name has been registered as a word mark, that is to say with no visual reference to the comic strip character, will readily be identified by the average member of the public with the copulent character from the comic strip series, widely known throughout the European Union, which tells of his adventures together with Asterix. This specific representation of a popular character makes it extremely unlikely that there could be any confusion in the public mind between words which are more or less similar (*Starix*, paragraph 22 above, paragraph 58).

21 **TREATY ESTABLISHING A CONSTITUTION FOR EUROPE (PART II, THE CHARTER OF FUNDAMENTAL RIGHTS OF THE UNION, PREAMBLE)**

<http://europa.eu.int/constitution/futurum/constitution/part2/index_en.htm>

The peoples of Europe, in creating an ever closer union among them, are resolved to share a peaceful future based on common values.

Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. It places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice.

The Union contributes to the preservation and to the development of these common values while respecting the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States and the organisation of their public authorities at national, regional and local levels; it seeks to promote balanced and sustainable development and ensures free movement of persons, services, goods and capital, and the freedom of establishment.

To this end, it is necessary to strengthen the protection of fundamental rights in the light of changes in society, social progress and scientific and technological developments by making those rights more visible in a Charter.

This Charter reaffirms, with due regard for the powers and tasks of the Union and the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Union and by the Council of Europe and the case-law of the Court of Justice of the European Union and of the European Court of Human Rights. In this context the Charter will be interpreted by the courts of the Union and the Member States with due regard to the explanations prepared under the authority of the Praesidium of the Convention which drafted the Charter and updated under the responsibility of the Praesidium of the European Convention.

Enjoyment of these rights entails responsibilities and duties with regard to other persons, to the human community and to future generations.

³⁸ 20.3.H.I.C.c

³⁹ 20.4.H.mM.noC.b

⁴⁰ 20.5.H.I.C.b

The Union **therefore**⁴¹[bd36] recognises the rights, freedoms and principles set out hereafter.

22 TREATY ESTABLISHING A CONSTITUTION FOR EUROPE (PART II, TITLE VII, GENERAL PROVISIONS GOVERNING THE INTERPRETATION AND APPLICATION OF THE CHARTER, ARTICLE II-111, FIELD OF APPLICATION)

http://europa.eu.int/constitution/en/ptoc21_en.htm

1. The provisions of this Charter are addressed to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall **therefore**⁴²[bd37] respect the rights, observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the other Parts of the Constitution.

2. This Charter does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks defined in the other Parts of the Constitution.

23 TREATY ESTABLISHING A CONSTITUTION FOR EUROPE (PART III, SECTION 5, TRANSITIONAL PROVISIONS, ARTICLE III-197)

http://europa.eu.int/constitution/en/ptoc41_en.htm

1. Member States in respect of which the Council has not decided that they fulfil the necessary conditions for the adoption of the euro shall hereinafter be referred to as 'Member States with a derogation'.

2. The following provisions of the Constitution shall not apply to Member States with a derogation:

(a) adoption of the parts of the broad economic policy guidelines which concern the euro area generally (Article III-179(2));

(b) coercive means of remedying excessive deficits (Article III-184(9) and (10));

(c) the objectives and tasks of the European System of Central Banks (Article III-185(1), (2), (3) and (5));

(d) issue of the euro (Article III-186);

(e) acts of the European Central Bank (Article III-190);

(f) measures governing the use of the euro (Article III-191);

(g) monetary agreements and other measures relating to exchange-rate policy (Article III-326);

(h) appointment of members of the Executive Board of the European Central Bank (Article III-382(2));

(i) European decisions establishing common positions on issues of particular relevance for economic and monetary union within the competent international financial institutions and conferences (Article III-196(1));

(j) measures to ensure unified representation within the international financial institutions and conferences (Article III-196(2)).

In the Articles referred to in points (a) to (j), 'Member States' shall **therefore**⁴³[bd38] mean Member States whose currency is the euro.

24 CONSTITUTION FOR EUROPE, PAGE 13

http://158.169.134.71/constitution/download/brochure_160904_en.pdf

The European flag is the symbol not only of the European Union but also of Europe's unity and identity in a wider sense. The circle of gold stars represents solidarity and harmony between the peoples of Europe. The number of stars has nothing to do with the number of Member States. There are twelve stars because the number twelve is traditionally the symbol of perfection, completeness and unity. The flag will **therefore**⁴⁴[bd39] remain unchanged regardless of future EU enlargements.

⁴¹ 21.1.T.M.noC.d

⁴² 22.1.T.mM.noC.b

⁴³ 23.1.T.mM.noC.e

⁴⁴ 24.1.T.mM.noC.d

25 CONSTITUTION FOR EUROPE, PAGE 17

<ibid>

How does the policy work?

It is not "Brussels" that decides how the cohesion policy funds should be used. Needs are precisely evaluated on the ground, by the individual regions or countries. Implementation is **therefore**⁴⁵[bd40] decentralised. **However**, the EU establishes the general framework within which the funds must be used, with strict conditions applying, e.g. development schemes must be environmentally friendly, or must promote equal opportunities. The European Union's role is not **therefore**⁴⁶[bd41] confined merely to "putting up the cash". Thanks to its cohesion policy, the priorities decided upon at EU level to enable the Union to act in a spirit of solidarity while at the same time being competitive (employment, sustainable development, the information society, services of general economic interest, etc) can be put into practice on the ground. The cohesion policy is thus an indispensable complement to the single European market and to economic and monetary union. Note, though, that whatever the type of operation involved, EU aid does not replace national aid but supplements it. The idea is that the Union 'lends a hand' to good projects which might not otherwise take shape.

26 REGULATION (EC) NO 1049/2001 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 30 MAY 2001 (ARTICLE 1, PARAGRAPH 17)

<http://ue.eu.int/uedocs/cms_data/librairie/PDF/CSGuideINFO.pdf>

In accordance with Article 255(3) of the EC Treaty, each institution lays down specific provisions regarding access to its documents in its rules of procedure. Council Decision 93/731/EC of 20 December 1993 on public access to Council documents (1), Commission Decision 94/90/ECSC, EC, Euratom of 8 February 1994 on public access to Commission documents (2), European Parliament Decision 97/632/EC, ECSC, Euratom of 10 July 1997 on public access to European Parliament documents (3), and the rules on confidentiality of Schengen documents should **therefore**⁴⁷[bd42], if necessary, be modified or be repealed,

27 TREATY ESTABLISHING A CONSTITUTION FOR EUROPE 20. PROTOCOL ON THE POSITION OF DENMARK (PREAMBLE)

<http://europa.eu.int/constitution/en/ptoc115_en.htm>

THE HIGH CONTRACTING PARTIES,

RECALLING the decision of the Heads of State or Government, meeting within the European Council at Edinburgh on 12 December 1992, concerning certain problems raised by Denmark on the Treaty on European Union;

HAVING NOTED the position of Denmark with regard to citizenship, economic and monetary union, defence policy, and justice and home affairs as laid down in the Edinburgh decision;

CONSCIOUS of the fact that a continuation under the Constitution of the legal regime originating in the Edinburgh decision will significantly limit Denmark's participation in important areas of cooperation of the Union, and that it would be in the best interest of the Union to ensure the integrity of the *acquis* in the area of freedom, security and justice;

WISHING **therefore**⁴⁸[bd43] to establish a legal framework that will provide an option for Denmark to participate in the adoption of measures proposed on the basis of Chapter IV of Title III of Part III of the Constitution and welcoming the intention of Denmark to avail itself of this option when possible in accordance with its constitutional requirements;

NOTING that Denmark will not prevent the other Member States from further developing their cooperation with respect to measures not binding on Denmark;

BEARING IN MIND the Protocol on the Schengen *acquis* integrated into the framework of the European Union,

HAVE AGREED UPON the following provisions, which shall be annexed to the Constitution:

⁴⁵ 25.1.T.mM.noC.b

⁴⁶ 25.2.T.mM.noC.b

⁴⁷ 26.1.T.mM.noC.b

⁴⁸ 27.1.T.E.noC.d

28 TREATY ESTABLISHING A CONSTITUTION FOR EUROPE 20. PROTOCOL ON THE POSITION OF DENMARK (PART II, ARTICLE 5)

http://europa.eu.int/constitution/en/ptoc115_en.htm

With regard to measures adopted by the Council pursuant to Article I-41, Article III-295(1) and Articles III-309 to III-313 of the Constitution, Denmark does not participate in the elaboration and the implementation of decisions and actions of the Union which have defence implications. **Therefore**⁴⁹[bd44] Denmark shall not participate in their adoption. Denmark will not prevent the other Member States from further developing their cooperation in this area. Denmark shall not be obliged to contribute to the financing of operational expenditure arising from such measures, nor to make military capabilities available to the Union.

The unanimity of the members of the Council, with the exception of the representative of the government of Denmark, shall be necessary for the acts of the Council which must be adopted unanimously.

For the purposes of this Article, a qualified majority shall be defined as at least 55 % of the members of the Council representing the participating Member States, comprising at least 65 % of the population of these States.

A blocking minority must include at least the minimum number of Council members representing more than 35 % of the population of the participating Member States, plus one member, failing which the qualified majority shall be deemed attained.

By way of derogation from the third and fourth paragraphs, where the Council does not act on a proposal from the Commission or from the Union Minister for Foreign Affairs, the required qualified majority shall be defined as at least 72 % of the members of the Council representing the participating Member States, comprising at least 65 % of the population of these States.

29 TREATY ESTABLISHING A CONSTITUTION FOR EUROPE (35. PROTOCOL ON THE FINANCIAL CONSEQUENCES OF THE EXPIRY OF THE TREATY ESTABLISHING THE EUROPEAN COAL AND STEEL COMMUNITY AND ON THE RESEARCH FUND FOR COAL AND STEEL)

http://europa.eu.int/constitution/en/ptoc130_en.htm

THE HIGH CONTRACTING PARTIES,

RECALLING that all assets and liabilities of the European Coal and Steel Community, as they existed on 23 July 2002, were transferred to the European Community on 24 July 2002;

TAKING ACCOUNT of the desire to use these funds for research in sectors related to the coal and steel industry and **therefore**⁵⁰[bd45] the necessity to provide for certain special rules in this regard,

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty establishing a Constitution for Europe:

30 JUDGMENT OF THE COURT (SECOND CHAMBER), 25 OCTOBER 2005 (*) IN CASE C-229/04

<http://europa.eu.int/eur-lex/lex/lexuriserv/lexuriserv.do?uri=celex:62004a0305:en:html>

The questions referred for a preliminary ruling

34 As a preliminary point, the Hanseatisches Oberlandesgericht in Bremen explains that, since the judgment in *Heininger*, there has been disagreement, in Germany, between the 11th Chamber of the Bundesgerichtshof and a number of courts of first and second instance regarding the legal effects of that judgment.

35 According to the referring court, the conditions for the right of cancellation provided for by Paragraph 1 of the HWiG are themselves controversial. It states in that regard that, according to the settled case-law of the Bundesgerichtshof, the right of cancellation does not turn solely on the existence of a doorstep-selling situation but also on responsibility for it. This case-law is linked to the official explanatory memorandum attached to the HWiG, which specifically recommends the interpretation of Paragraph 1 of that law on the basis of the legal principles laid down in Paragraph 123(2) of the BGB, that is to say that a contracting party must be held responsible for the deceptive conduct of a third party only where it was or ought to have been aware of the conduct of that third party. According to the Bundesgerichtshof, a person who is taken unawares in a doorstep-selling situation and is caused to make a declaration of intent must not be in a better position than a person who is the victim of deceit. The Hanseatisches Oberlandesgericht in Bremen takes the view, rather, that the Directive contains nothing to suggest that the right of cancellation should be restricted in that way, as it makes that right dependent only on the existence of a

⁴⁹ 28.I.T.I.noC.b

⁵⁰ 29.I.T.E.noC.a

doorstep-selling situation. The first question **therefore**⁵¹[bd46] concerns the conditions under which a lender must be considered responsible for a doorstep-selling situation.

36 The Hanseatisches Oberlandesgericht in Bremen also raises the question whether, in a doorstep-selling situation, cancellation necessarily entails an obligation to repay the loan. Its second to fourth questions thus concern the legal effects of cancellation.

The questions

The first question

(...)

43 Moreover, to accept such an additional condition would be contrary to the objective of the Directive which is to protect the consumer from the element of surprise inherent in doorstep selling.

44 That interpretation is borne out by paragraph 43 of the judgment of 22 April 1999 in Case C-423/97 *Travel Vac* [1999] ECR I-2195, according to which, in order for the consumer to have the right of renunciation, it is sufficient for him to be in one of the situations described in Article 1 of the Directive and there is no need to require in addition that he was influenced or manipulated by the trader.

45 **Therefore**,⁵²[bd47] the answer to the first question must be that Articles 1 and 2 of the Directive must be interpreted as meaning that when a third party intervenes in the name of or on behalf of a trader in the negotiation or conclusion of a contract, the application of the Directive cannot be made subject to the condition that the trader was or should have been aware that the contract was concluded in a doorstep-selling situation as referred to in Article 1 of the Directive.

31 MARGOT WALLSTRÖM, VICE-PRESIDENT OF THE EUROPEAN COMMISSION RESPONSIBLE FOR INSTITUTIONAL RELATIONS AND COMMUNICATION STRATEGY, CONNECTING EUROPE – PLAN D, CIRCOM CONFERENCE AT THE COMMITTEE OF THE REGIONS, BRUSSELS, 11 OCTOBER 2005
<<http://europa.eu.int/rapid/pressreleasesaction.do?reference=speech/05/600&format=html&aged=0&language=en&guilanguage=en>>

1. The need for better communication

The European Union affects daily life on this continent in a thousand ways. Yet opinion polls show that most Europeans feel very poorly informed about the EU – how it works and what it has actually achieved for their benefit.

This is partly because the Union has taken on more and more responsibilities, and become increasingly complex. In a fast changing world, the objectives and impact of the EU are less and less clear, raising doubts and misunderstanding in people's minds.

At the same time, people want the European Union to deal with their main concerns. What difference does the EU make to daily life in the town or region where they live?

People want the European Union to deal with such issues as:

Unemployment – which many see as a negative effect of globalisation;

The pensions and healthcare "time-bomb" as Europe's workforce shrinks;

The need for better education and training;

Climate change and other environmental issues.

In fact, as you know, and as some of you explain on your TV channels, the EU is taking action on many of these issues.

Some – in particular social issues – are the responsibility of individual governments, but the European Commission helps them coordinate their efforts and work towards agreed goals.

Others are global issues that no country can tackle on its own. That is why the EU is working on them with its international partners. Our efforts are making a difference: but people need to know about them.

Let me illustrate that point with some recent analysis of public opinion in the country I know best.

⁵¹ 30.1.T.M.noC.b

⁵² 30.2.T.I.C.d

As you know, Swedish citizens as a whole are among the most "eurosceptic" in the EU.

However, the in-depth analysis found that peoples attitudes changed as they went deeper into the issues.

The more time they had to reflect about some of today's cross-border problems and discuss solutions the more they came to see the EU and European cooperation as necessary for tackling those issues.

So – we certainly need to identify the gaps in people's knowledge of EU affairs; and we need better communication to fill those knowledge gaps. We need more effective ways of telling people the story.

Until now, we have focused mainly on putting out information for experts, researchers, journalists, lobbyists and so on... Now it's time to begin broaden our communicating, and communicate directly with the citizens.

But communication is not just about information. It is also about making contact. It is about listening and dialogue.

We **therefore**⁵³[bd48] have to find more effective ways of listening to people:

Making the EU see itself from their perspective;

Take their views into account when designing policies.

That brings me to the second issue:

32 **BRUSSELS, 7.11.2005, COM(2005) 547 FINAL, 2005/0219 (ACC), PROPOSAL FOR A COUNCIL DECISION, ON THE CONCLUSION OF THE AGREEMENT BETWEEN THE EUROPEAN COMMUNITY AND THE UNITED STATES ON TRADE IN WINE**

<http://europa.eu.int/eur-lex/lex/lexuriserv/site/en/com/2005/com2005_0547en01.doc>

Whereas:

On 23 October 2000 the Council authorised the Commission to negotiate an agreement on trade in wine between the European Community and the United States of America.

The negotiations have been concluded and the Agreement between the European Community and the United States of America on trade in wine (hereinafter referred to as "the Agreement") was initialled by both Parties on 14 September 2005. The agreement represents a first-stage agreement and the Parties should begin negotiations within ninety days from the date of entry into force of the Agreement with a view to concluding one or more agreements that further facilitate trade in wine between them.

The Agreement should **therefore**⁵⁴[bd49] be approved.

33 **BRUSSELS, 28.10.2005, COM(2005) 546 FINAL, COMMUNICATION FROM THE COMMISSION TO THE COUNCIL, ON THE OPENING OF CONSULTATIONS WITH MAURITANIA UNDER ARTICLE 96 OF THE COTONOU AGREEMENT**

<http://europa.eu.int/eur-lex/lex/lexuriserv/site/en/com/2005/com2005_0546en01.doc>

Due to the circumstances in which the change of regime in Mauritania occurred and due to the form of political organisation put in place by the new authorities, the Commission considers this to be a "case of special urgency". **Therefore**,⁵⁵[bd50] in compliance with Article 96(1a) of the revised Cotonou Agreement, it is not necessary to work out the possibilities of political dialogue as set out in Article 8 of the same Agreement. The European Commission, **however**, hopes to have formal consultations with the government before appropriate measures are taken. The Commission **therefore**⁵⁶[bd51] proposes that the Council invite the Islamic Republic of Mauritania to hold consultations under Articles 9 and 96 of the revised Cotonou Agreement in accordance with the attached draft letter.

⁵³ 31.1.T.iM.noC.d

⁵⁴ 32.1.T.mM.noC.d

⁵⁵ 33.1.T.I.C.b

⁵⁶ 33.2.T.M.noC.b

34 **BRUSSELS, 28.10.2005, COM(2005) 546 FINAL, COMMUNICATION FROM THE COMMISSION TO THE COUNCIL, ON THE OPENING OF CONSULTATIONS WITH MAURITANIA UNDER ARTICLE 96 OF THE COTONOU AGREEMENT, ANNEX, BRUSSELS, H.E. MR SIDI AHMED OULD ABOUBACAR, PRIME MINISTER OF THE ISLAMIC REPUBLIC OF MAURITANIA, NOUAKCHOTT, MAURITANIA, DRAFT LETTER**

<http://europa.eu.int/eur-lex/lex/lexuriserv/site/en/com/2005/com2005_0546en01.doc>

Dear Prime Minister,

In its statement of 3 August 2005 on the coup in Mauritania, the EU Presidency reiterated its condemnation of all attempts to seize power by force.

On the very same day, the Commission deplored the seizure of power by force and called for respect for democracy and a return to constitutional order.

Due to the circumstances in which the change of regime in Mauritania occurred and due to the form of political organisation put in place by the new authorities, the EU considers there has been a violation of the essential elements of the revised Cotonou Agreement. Furthermore, the EU considers this to be a "case of special urgency". **Therefore**,⁵⁷[bd52] in compliance with Article 96(1a) of the revised Cotonou Agreement, it is not necessary to exhaust the possibilities of political dialogue as set out in Article 8 of the same Agreement.

The European Union, **however**, hopes to have formal consultations with the Government before appropriate measures are taken. We are, **therefore**,⁵⁸[bd53] pleased, on behalf of the Community and of the Member States of the European Union, to invite your country to hold consultations under Article 96 of the revised Cotonou Agreement, with a view to carrying out an in-depth analysis of the situation and, if appropriate, of the corrective measures to be taken. For its part, the EU will engage in these consultations in a constructive and open manner.

The consultations should allow the Mauritanian side to be more specific about the transition programme of the new Government and, in particular:

on aspects relating to the organisation of legislative and presidential elections and to the return to constitutional order;

on measures to be taken on economic and political governance, on legal sector reform, and on the promotion of public freedoms and of freedom of expression.

We would like to suggest that these consultations are held in the near future, on a mutually convenient date, in the premises of the Council of the European Union in Brussels.

Yours sincerely,

For the Council For the Commission

Cc: President of the Committee of ACP Ambassadors

Secretary General of the ACP Group

35 **BRUSSELS, 28.10.2005, COM(2005) 537 FINAL, REPORT FROM THE COMMISSION TO THE COUNCIL, THE EUROPEAN PARLIAMENT, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS, SAPARD ANNUAL REPORT – YEAR 2004**

<http://europa.eu.int/eur-lex/lex/lexuriserv/site/en/com/2005/com2005_0537en01.doc>

3.2 Bulgaria and Romania

The total amounts committed to Bulgaria and Romania for 2004 amounted to €226.7 million.

In terms of approved projects, the implementation of Sapard in Bulgaria progressed very well in 2004. By 31 December 2004, the Sapard agency had approved 1 909 projects accounting for €285.4 million of EU contribution, and **therefore**⁵⁹[bd54] almost doubled the number of approved projects as compared to 2003. This figure corresponds to 100% of the Sapard allocation for the years 2000–2004.

Under the farm investment measure, the EU funds allocated to that measure were completely contracted. The number of projects contracted by the end of 2004 more than doubled as compared to the end of 2003. The share of the arable

⁵⁷ 34.1.T.I.C.b

⁵⁸ 34.2.T.mM.C.b

⁵⁹ 35.1.T.mM.noC.a

crops sector still remains high (44%) compared to other countries which is justified by the substantial need for rationalisation and mechanisation.

Under the processing and marketing measure, 96% of EU funds allocated to that measure for the period 2000–2004 have been contracted. Investments in the meat products sector represent 31%, in the milk and dairy products 14%, and in fruit and vegetables 28%.

The contracting level and the number of projects have also increased under the diversification of economic activities measure. The most important activities related to investments in rural tourism (42%) and investments in timber, carpentry and biofuels (33%).

Additionally, in 2004 rural infrastructure and the renovation of villages became operational. By the end of 2004, the contracting levels for these two measures reached 84% and 71% respectively. Under the rural infrastructure, 83% of the funds were used towards road infrastructure.

36 BRUSSELS, 25.10.2005, COM(2005) 532 FINAL, IMPLEMENTATION OF THE COMMUNITY LISBON PROGRAMME, COMMUNICATION FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT, THE CONTRIBUTION OF TAXATION AND CUSTOMS POLICIES TO THE LISBON STRATEGY

also accessed at <<http://www.senat.cz/cgi-bin/sqw1250.cgi/new/sqw/text.sqw?CID=937&K=agendaEU1>>

1. A new start for the Lisbon Strategy

The Commission has recently proposed a new start for the Lisbon strategy, with the focus on growth and jobs. In order to meet this challenge, it will be necessary to make Europe a more attractive place in which to invest and work; to promote knowledge and innovation; and to shape policies that allow European businesses to create more and better jobs.

Taxation and customs policies have a significant role to play in the attainment of these objectives. They can contribute to raising the efficiency of our economies, including via the efficient use of natural resources, and the competitiveness of our companies. They can also generate more competition in the markets, boost trade and support knowledge and innovation.

This Communication presents the key Community taxation and customs policy measures that would contribute to the rapid structural adjustment needed in our economies in order to fulfil the above objectives. In so doing, it follows the lines of action established in the Communication to the Spring European Council: "Working together for growth and jobs, a new start for the Lisbon strategy".

The purpose of this Communication is to set out in a comprehensive manner both ongoing and planned customs and tax measures that represent a coherent set of initiatives supporting one of the main EU political commitments.

Section 2 presents key actions aimed at deepening the internal market, ensuring open and competitive markets and improving European and national legislation. Section 3 presents key initiatives to increase and improve investment in research and development and to facilitate innovation and the sustainable use of resources. (See the annexed table of policy measures). In the light of their specific features, these initiatives will take different form and will, as appropriate, be accompanied by an evaluation of their impact.

These initiatives would help to renew growth and therefore⁶⁰[bd55] create more and better jobs. As far as more specific employment policies are concerned, it should be noted that, at Member State level, specific taxation measures can contribute to raising employment and promoting socially inclusive economies. Relatively heavy taxation on labour appears to have been a disincentive to the creation of additional jobs, especially low skilled jobs; but broadening the tax base by getting more people in work is still the most effective way for governments to raise revenues without raising tax rates. A shift from labour to consumption and/or pollution taxes could also help as part of a broader strategy to increase employment levels.

(...)

2.1.1. A Common Consolidated Corporate Tax Base for EU businesses

The present co-existence of 25 different and sometimes even mutually incompatible corporation tax systems in the EU *de facto* imposes supplementary compliance costs and offers few opportunities for cross-border loss compensation, even though such loss compensation frequently exists for purely domestic situations. This should not happen in a truly single market. While in their commercial activities (research, production, inventories, sales, etc.) companies

⁶⁰ 36.1.T.mM.noC.a

increasingly tend to treat the EU as one single market, they are obliged, for tax purposes alone, to segment it into national markets.

Corporate tax rules treat cross-border activities in the EU differently and frequently less favourably than similar purely domestic activities. This encourages firms to invest domestically and deters participation in foreign companies and the establishment of subsidiaries abroad. At the same time, inconsistencies between national systems open possibilities for tax avoidance.

The Commission policy of working towards a Common Consolidated Corporate Tax Base ("CCCTB") dates back to 2001 and was confirmed in 2003. A CCCTB would enable companies operating in the internal market to follow the same rules for calculating their tax bases in different Member States of the EU. The Commission does not intend to propose a harmonised corporate income tax rate. **However**, a Common Consolidated Corporate Tax Base would permit cross-border offsetting of losses and would solve the current tax problems linked to cross-border activities and restructuring of groups of companies. A method for sharing the consolidated tax base between Member States so that each State could apply its own tax rate to its share of the consolidated base would have to be agreed. This method should lead to a simpler and more transparent corporate tax system in the EU.

This is a challenging exercise, but the Commission intends to carry out the necessary preparatory work towards a Common Consolidated Tax Base during the next three years in order to present a Community legislative measure by 2008.

2.1.2. Simplifying the tax environment and creating a level playing field

The measure presented above aims at tackling many of the Corporate tax obstacles faced by multinational companies. **However**, cross-border economic activities in the EU are also confronted with a number of other taxation measures, particularly in the VAT system, that impose cumbersome obligations and act as barriers to trade and investment. Cross-border activities lead to statistically significant increases in compliance costs for all companies: Small and medium-sized enterprises are particularly vulnerable to such obstacles since compliance costs are proportionately higher for SMEs than for large companies, and relief from these obstacles could considerably increase SMEs' participation in the internal market, that is at present much lower than that of large companies. This results in economic inefficiencies and a potentially negative impact on economic growth and job creation.

(...)

b) Transfer pricing

The management of transfer pricing is a considerable source of additional compliance costs for EU firms. The Commission established the EU Joint Transfer Pricing Forum in 2002 in order to find pragmatic, non-legislative solutions to transfer pricing problems in the EU. It consists of tax experts from Member States' tax administrations and from the business world. Following the Forum's first report the Commission adopted a Communication, including a proposal for a Code of Conduct for the effective implementation of an Arbitration Convention in 2004, and the Council agreed to this Code of Conduct last December.

Following the Forum's second report of May 2005, the Commission intends this year to propose a Code of Conduct on a common approach to transfer pricing documentation for associated enterprises in the EU. In addition, the Commission services and Forum members are now focusing their attention on alternative procedures for the avoidance and elimination of tax disputes.

c) Capital duty

Certain indirect taxes such as capital duty (a levy on contributions of capital to capital companies) are clearly detrimental to businesses within the EU and should be abolished as part of the process of making Europe a more attractive place in which to invest. The levying of capital duty is particularly damaging in connection with restructuring operations and the development of EU companies. It is also disadvantageous for companies starting up and for companies increasing their capital. In recent years, the trend has been towards an elimination of capital duty. This duty is currently levied by just 10 of the 25 Member States. And from next year only 8 Member States will continue to levy it.

Therefore,⁶¹[bd56] the Commission services are now preparing a proposal for a recast of the Capital Duty Directive before the end of 2006. The recast will aim to simplify and modernise the legislation and to provide for a phasing out of capital duty with a view to supporting the development of EU companies.

2.1.4. A new strategy for car taxation

⁶¹ 36.2.T.I.C.d

The European car market is a good example of a sector that has not yet benefited fully from the internal market, and taxation is one of the reasons for this. Following a Communication in 2002 and an extensive consultation process, the Commission adopted on 5 July 2005 a new proposal on passenger car taxation. This proposal calls for the gradual abolition of car registration taxes in Member States and their replacement by annual circulation taxes or other existing or innovative new taxes. The gradual abolition of registration taxes would reduce bureaucracy and the high transactional costs faced by consumers. It would also bring about more transparency and legal certainty for all operators and reduce existing car price differentials by about one fifth.

The proposal also aims to reduce the existing fragmentation of the EU car market, which affects the cross-border car trade. At present, industry is often obliged for tax reasons to produce specific models with different specifications for different Member States. The proposal would give an impetus to the car industry to benefit from greater economies of scale by producing cars for the entire internal market using the same technical specifications.

2.1.5. Reducing distortions created through tax fraud and tax evasion

Tax fraud creates a significant distortion in the functioning of the internal market, prevents fair competition and also erodes revenues that should be used for the implementation of public services at national level. Increased levels of fraud result in increased tax burdens on legitimate companies as governments are forced to make up their revenue shortfalls.

The operation of tax systems is and should remain the competence of Member States. Nevertheless, the Commission believes that more common and coordinated approaches could help and encourage Member States in the fight against tax fraud. The Commission is **therefore**⁶²[bd57] currently evaluating the need for a new anti-fraud tax policy at European level. A wide range of instruments could be considered, such as improving cooperation between internal administrations; reducing obstacles to the effective exchange of information by, for example, improving access to bank information; promoting negotiations with third countries to introduce provisions for exchanging information; further developing the use of intra-Community administrative cooperation tools; and improving basic tax legislation.

The Commission would ensure the necessary coordination, in particular with a view to enhancing the administrative cooperation tools available to Member States. It intends to present a Communication on this subject in 2006.

2.2. Ensuring open and competitive markets inside and outside Europe

European companies are facing an increasing number of international challenges. Ensuring a level playing field for them within and outside the EU would enhance investment in the EU's internal market. Action to improve the international competitiveness of EU firms is **therefore**⁶³[bd58] essential in order to meet the Lisbon agenda.

2.2.1. A strategy against counterfeiting

The industrial and intellectual property rights of EU businesses are being massively violated by pirated and counterfeit products. According to studies carried out by the International Chamber of Commerce in 1997 and the OECD in 1998:

Counterfeits accounted for 5 to 7% of world trade

Counterfeits were responsible for the loss of 200 000 jobs in Europe

Since that time there has been considerable growth in this traffic. In 2003 in Davos, Switzerland, global business leaders and Government representatives called for "a massive global effort to combat counterfeiting, now estimated to equal more than 450 billion dollars annually". Improving border controls was considered to be of key importance.

(...)

This modernised Customs Code, which will be the subject of a Commission proposal later this year, will be the legislative pillar of eCustoms. It will create the legal basis for electronic data exchange not only between traders and customs authorities of the Member States⁶⁴, but also with other administrations or agencies involved in the international movement of goods, as provided for in Commission Communication on the role of eGovernment for Europe's future. According to this initiative, traders will have to deliver information only once to customs authorities, ('single window') and the goods will be controlled by these different authorities at the same time and at the same place ('one-stop shop').

In order to permit effective and efficient risk management, the customs administrations of all Member States must be able to exchange electronic information. This includes in particular the exchange of pre-arrival and pre-departure

⁶² 36.3.T.mM.noC.b,d

⁶³ 36.4.T.mM.noC.c

declarations, risk information and information concerning economic operators. **Therefore**,⁶⁴[bd59] customs systems and practices will need to be convergent, and the automated customs systems of the Member States and of the Commission will need to be synchronised. In addition, traders will need to communicate and carry out their business with customs online. This should be achieved on the basis of the principle of "inclusive access" (multi-platform access), as defined in the above-mentioned Commission Communication on the role of e-Government for Europe's future.

2.3. Improving European and national regulation

2.3.1. Modernising VAT rules

Better regulation is an important element of the renewed Lisbon strategy. In the area of VAT, the Commission has made several proposals aimed at improving the regulatory framework so as to remove obstacles to market functioning and to introduce more competition.

The basic VAT legislation laid down in the 6th VAT Directive has undergone numerous modifications and has become complex and difficult to understand. The Commission has **therefore**⁶⁵[bd60] proposed a recast of the 6th VAT Directive in order to provide clear EU-level rules for traders wishing to do business in the EU. The discussions on this proposal have progressed significantly in the Council and will be continued with a view to its adoption before the end of 2005.

In addition, it has becoming increasingly apparent that there is a need for a more uniform application of the VAT system in order to facilitate the Community-wide activities of businesses. In 2004, the Council provided for the possibility of adopting measures to ensure the uniform implementation of existing VAT rules. The first Regulation proposed by the Commission under this new legal basis has recently been agreed by the Council and will be adopted shortly. The Commission considers that a more extensive use of this possibility to adopt binding secondary VAT legislation at Community level would go a long way to eliminating the difficulties encountered by businesses confronted with divergent interpretations of EU VAT law.

The need for a more uniform application of VAT rules is particularly evident where different interpretations can lead to double taxation (or conversely to non-taxation). Nevertheless, there are also circumstances where cases of double taxation or a requirement for a trader to pay VAT on the same transaction in two different Member States may be due to the fact that Member States have different views of the nature of a particular supply. This different appreciation of facts can result despite the Member States concerned having identical VAT legislation. The Commission will **therefore**⁶⁶[bd61] make a proposal by the end of 2005 for an EU mechanism to resolve or at least alleviate such situations of double taxation.

3. Knowledge and innovation for growth

3.1. Increasing and improving investment in Research and Development (R&D)

Both economic theory and empirical analysis emphasise the key role of R&D in economic growth. R&D investments typically create spill-over effects whereby the social return of the investment is higher than the private return to the company. Hence, without public intervention the level of business research would remain at a sub-optimal level and fail to enhance the full growth potential of the economy.

Accordingly, various measures designed to promote R&D are included in the Lisbon agenda. The Presidency conclusions of the European Council of March 2005 explicitly state that the 3% R&D investment objective "will be obtained *inter alia* by tax incentives for private investment....."

3.1.1. A Communication providing guidance on R&D tax incentives

Depending on the economic background, the R&D capacity and the overall tax system in a given country, tax incentives can help to address market failures and increase business research investment by reducing the cost of R&D. Fiscal measures allow firms to better determine the appropriate allocation of R&D investment across projects and priorities and offer them greater legal and planning certainty. They also allow creating a direct link between public incentives and increase in private R&D spending, which is crucial given the average lack of private research and innovation in Europe. **However**, the value of R&D tax incentives has to be assessed in the context of the overall tax system. For instance, the level of overall corporate tax rates decisively influences the impact of tax incentives in connection with the level of business R&D investment.

In recent years, Member States have introduced a variety of different R&D fiscal incentives or have reinforced existing ones. Over the last two years, an exchange of information among Member States on the best practices in this domain

⁶⁴ 36.5.T.I.C.c

⁶⁵ 36.5.T.mM.noC.c

⁶⁶ 36.6.T.mM.noC.c

has been overseen by CREST as part of the mutual learning process aimed at increasing the level of R&D investment. Currently, **however**, there is a great diversity of R&D incentives in Member States which creates a largely uncoordinated situation at the EU level. Given that Member States are often confronted with the same types of challenges, this lack of coordination can result in sub-optimal allocation of public resources and is an obstacle to an EU-wide level playing field.

A Communication providing guidance on R&D tax incentives could help to tackle this relative failure and ideally help Member States jointly develop solutions to common problems and even devise mutually reinforcing R&D incentives, thus creating a favourable tax environment for R&D in the EU research area. In line with the announcement made in its State Aid Action Plan, in 2006 the Commission will review its framework for State aid in favour of R&D and innovation. In parallel, a Communication offering guidance to Member States on how to design and implement measures on R&D tax incentives in their general taxation system will be presented to provide them in particular with a clear view of the relevant constraints in Community law.

The Communication will:

set out the key EU legal conditions for Member State R&D tax incentives;

highlight best practices as regards R&D tax treatment and incentives in some Member States that could serve as a model for other Member States; and

where appropriate, set out the political message and main contents of possible future initiatives directed to Member States.

Clearly, such a Communication will be designed to help those Member States who wish to use tax incentives but would in no way oblige Member States to use them.

3.2. Facilitating the sustainable use of resources

Indirect taxation, as a market-based instrument, can play a significant role in the sustainable use of resources in the European Union. Appropriately designed excise duties or specific environmental charges provide improved price signals by internalising external environmental costs, and thus lead economic actors to change their behaviour accordingly. Moreover, taxation provides incentives to companies to pursue technological innovation to reduce their tax burden. Energy, transport and environmental taxes could be used to facilitate such sustainable use of resources, preferably in a coordinated EU framework in order to avoid distortions of competition.

3.2.1. *Energy, transport and environment-related taxes*

The Energy Products Taxation Directive has given Member States new scope for using taxes in order to facilitate the sustainable use of resources. For instance, it allows tax reductions for companies which implement agreements leading to the achievement of environmental protection objectives or to improvements in energy efficiency.

a) Taxation of commercial diesel

This Directive requires amendment, **however**, in order to tackle the distortion of competition on haulage markets created by wide divergences in the levels of taxation of commercial diesel in EU Member States. While the recent screening exercise relating to pending legislation has led to the withdrawal of the proposal of 2002 concerning commercial diesel, the Commission intends, before the end of 2005, to present a new proposal taking into account the comments made by the European Parliament, the Council and operators during the debates on the initial proposal.

b) Energy taxation

In addition, the Commission is considering whether to propose changes to the Energy Tax Directive to introduce more ambitious environmental targets for energy taxation aimed at full internalisation of external costs. In the 2005 Green Paper on Energy Efficiency, the Commission has stated that further initiatives need to be considered with a view to strengthening the positive impact of taxation policies in favour of greater energy efficiency. These include, for instance, bringing excise rates on energy products and electricity consumed in production activities closer together, but at the higher end of the scale, and introducing automatic indexing of all excise rates.

c) Car taxation

Moreover, it should be noted that the newly adopted car tax proposal referred to in section 2.1.4 above also includes provisions for the introduction of a CO₂-sensitive element into the tax base of Member States' car tax provisions. Fiscal measures constitute one of the three pillars of the Community strategy to reduce CO₂ emissions from passenger cars. Their optimal use, together with commitments from the car industry and consumer information, is critical in achieving the Community's target of 120 g CO₂ per km. The reduction in CO₂ emissions would go hand in hand with savings in the energy consumption of cars, which would in turn contribute positively to the efficient use of energy products and the sustainability of energy supplies.

37 **BRUSSELS, 21.10.2005, COM(2005) 529 FINAL, COMMUNICATION FROM THE COMMISSION TO THE COUNCIL, ON THE PROGRESS ACHIEVED BY BOSNIA AND HERZEGOVINA IN IMPLEMENTING THE PRIORITIES IDENTIFIED IN THE "FEASIBILITY STUDY ON THE PREPAREDNESS OF BOSNIA AND HERZEGOVINA TO NEGOTIATE A STABILISATION AND ASSOCIATION AGREEMENT WITH THE EUROPEAN UNION (COM (2003) 692 FINAL)"**

http://europa.eu.int/eur-lex/lex/lexuriserv/site/en/com/2005/com2005_0529en01.doc

4. Overall conclusion

Taking into account the above, the European Commission considers that Bosnia and Herzegovina has made significant progress in addressing the sixteen priorities identified in the framework of the 2003 Feasibility Study. **Therefore,**⁶⁷[bd62] in line with the FS conclusions, the Commission is in a position to recommend to the Council the opening of negotiations for a Stabilisation and Association Agreement with Bosnia and Herzegovina. The Commission will accordingly present draft negotiating directives to the Council.

However, the opening of negotiations will require that BiH State Parliament endorses the Agreement on Restructuring of Police.

Moreover, Bosnia and Herzegovina needs to continue, in a sustained way, its reforms. Bosnia and Herzegovina should ensure the completion of outstanding FS issues and focus on adequate implementation of the European Partnership priorities. The Commission will continue monitoring closely the progress made by Bosnia and Herzegovina. The pace at which Bosnia and Herzegovina draws closer to the EU depends essentially on its speed in adopting and implementing the necessary reforms. Continued focus by the authorities on European integration is, **therefore,**⁶⁸[bd63] key to the sustainability of the process. In order to progress through the various stages of the process, both before and during the negotiations, Bosnia and Herzegovina must, in particular, continue to co-operate with the International Criminal Tribunal for former Yugoslavia (ICTY) with a view to rapidly achieving full co-operation, adopt the Law on Public Broadcasting Service and ensure the implementation of the police reform and of the Public Broadcasting legislation.

In addition to the above-mentioned areas, the authorities should pay special attention to and achieve substantial progress in relation to the following issues: Implementation of the outstanding Council of Europe post-accession obligations, in particular in the areas of electoral law and education and adoption of the legislation necessary for the establishment of a single Ombudsman in Bosnia and Herzegovina.

With regard to governance and public administration, adequate staffing and suitable premises need to be made available for all State-level ministries and institutions. Bosnia and Herzegovina must develop a comprehensive Action-plan for public administration reform and ensure its implementation. It should also enhance aid co-ordination capacities of the Directorate for European Integration. Furthermore, it is essential that State-Entity coordination be further improved.

Sustained efforts are necessary to tackle crime, and in particular organised crime, efficiently. The Ministry of Security should be reinforced both in terms of staff and funding. The laws establishing the Data Protection Commission and the Information Society Agency should be adopted. The Specific Action Oriented Measures against Organised Crime should be fully implemented.

A sound and comprehensive Trade Policy Strategy should be rapidly adopted and implemented. Bosnia and Herzegovina should ensure that its trade-related contractual commitments are fulfilled and that the Free Trade Agreements are properly implemented. BiH international trade commitments, including its offers within the ongoing WTO accession negotiations, should be fully consistent with the objectives of the future EU-Bosnia and Herzegovina SAA and with Bosnia and Herzegovina's obligations therein and should **therefore**⁶⁹[bd64] take fully into account EC own international trade commitments. Ensuring the adequate supervision and management of free zones in accordance with EU standards is essential. Furthermore, the issuing and control of certificates of origin need to be enhanced and BiH should fully apply customs valuation rules in accordance with international standards.

Additional measures are necessary to achieve Bosnia and Herzegovina's single economic space. Bosnia and Herzegovina needs to accelerate the removal of duplicate licences, authorisations and similar barriers to the existence of an actual single economic space, including through the establishment of the necessary state-level institutions. Public procurement legislation should be brought progressively in line with EU standards and should be consistently implemented, including through the establishment of the bodies foreseen by the law. Continued efforts are necessary to implement the laws on standardisation, metrology and intellectual property, as well as to ensure the adequate

⁶⁷ 37.1.T.I.C.b

⁶⁸ 37.2.T.mM.C.b

⁶⁹ 37.3.T.mM.noC.a

functioning of a single business register. Further efforts are necessary to complete the implementation of the Law on Statistics and to further develop and harmonise the production of statistics.

Should the Commission note at any time that Bosnia and Herzegovina has not lived up to its commitments and has not satisfactorily addressed the issues highlighted in this Communication, it may propose to the Council that the SAA negotiations be suspended.

To support the efforts made by Bosnia and Herzegovina before the formal opening of negotiations and throughout the negotiation process, the Commission will further intensify discussions with the authorities, in particular by setting up sectoral groups, as appropriate. The Commission is also committed to supporting this process through its financial assistance programme.

**38 JUDGMENT OF THE COURT OF FIRST INSTANCE (THIRD CHAMBER), 27 OCTOBER 2005 ^(*),
(COMMUNITY TRADE MARK – OLFACTORY MARK: SMELL OF RIPE STRAWBERRIES – ABSOLUTE
GROUND FOR REFUSAL – SIGN NOT CAPABLE OF BEING REPRESENTED GRAPHICALLY – ARTICLE
7(1)(A) OF REGULATION (EC) NO 40/94), IN CASE T-305/04
<<http://europa.eu.int/eur-lex/lex/lexuriserv/lexuriserv.do?uri=celex:62004a0305:en:html>>**

4 By decision of 7 August 2003, the examiner rejected the application pursuant to Article 38 of Regulation No 40/94, on the ground, first, that the olfactory sign applied for was not capable of being represented graphically and **therefore**⁷⁰[bd65] fell under Article 7(1)(a) of that regulation and, second, that it was devoid of any distinctive character within the meaning of Article 7(1)(b) of that regulation, in respect of some of the goods claimed.

6 By decision of 24 May 2004 ('the contested decision'), the First Board of Appeal of OHIM dismissed the appeal on the ground that the mark applied for was not capable of being represented graphically within the meaning of Article 4 of Regulation No 40/94, and that it was **therefore**⁷¹[bd66] covered by the ground for refusal provided for in Article 7(1)(a) of Regulation No 40/94.

16 Referring to *Sieckmann*, the applicant asserts that it is sufficient that the graphic representation be 'unequivocal' and that there is no need to inquire whether that representation will be perceived more or less subjectively by the consumer. To that effect, the applicant submits that no other type of sign is subject to an objectivity criterion and that **therefore**⁷²[bd67] olfactory signs should not be subject to that criterion either.

19 As regards, next, the figurative representation, the applicant claims that, in the contested decision, the Board of Appeal fails to explain why the combination of a description in words and an image is not sufficiently precise and clear. It asserts that the image of a ripe strawberry cannot be perceived in isolation either by the public or by the competent authorities, but that it is associated with other aspects of the application for registration, namely the description 'smell of ripe strawberries' and 'olfactory mark'. The mark as applied for **therefore**⁷³[bd68] forms a whole that the authorities and the public perceive as such.

21 The applicant **therefore**⁷⁴[bd69] takes the view that the graphic representation of the mark satisfies the requirements laid down by the case-law. The applicant asserts that the description in words is clear, precise, easily accessible, intelligible, durable and objective and that the image enables the sign to be complete in itself. Since the combination of those two elements satisfies the requirement of graphic representation laid down in Article 4 of Regulation No 40/94, the application for registration should be accepted.

27 As regards, first, the word element, the Board of Appeal held, on the one hand, that the description at issue was imbued with subjective factors and could **therefore**⁷⁵[bd70] be interpreted subjectively and, on the other hand, that it would be difficult to describe the sign at issue in a sufficiently clear, precise and unequivocal manner since the smell of strawberries differs according to the variety; **therefore**⁷⁶[bd71] there is necessarily a discrepancy between the description itself and the actual smell. The Board of Appeal concluded that a description could not constitute a graphic representation of the smell in respect of which it purports to be the written expression.

33 It must **therefore**⁷⁷[bd72] be held that the evidence adduced before the Board of Appeal shows that the smell of strawberries varies from one variety to another. Consequently, since the description 'smell of ripe strawberries' could

⁷⁰ 38.1.T.M.noC.a

⁷¹ 38.2.T.mM.noC.a

⁷² 38.3.T.I.noC.a

⁷³ 38.4.T.M.noC.b

⁷⁴ 38.5.T.M.noC.d

⁷⁵ 38.6.T.mM.noC.a

⁷⁶ 38.7.T.I.noC.b

⁷⁷ 38.8.T.mM.noC.d

refer to several varieties and **therefore**⁷⁸[bd73] to several distinct smells, it is neither unequivocal nor precise and does not eliminate all elements of subjectivity in the process of identifying and perceiving the sign claimed.

39 In *Sieckmann* (paragraph 69), the Court of Justice held that the graphic representation of an olfactory mark must, in order to be accepted, represent the odour whose registration is sought and not the product emitting that odour. It **therefore**⁷⁹[bd74] held that the chemical formula of the substance emitting the odour in question could not be regarded as a valid graphic representation.

40 The Court of First Instance cannot but find **therefore**⁸⁰[bd75] that since the image of a strawberry contained in the application for registration represents only the fruit which emits a smell supposedly identical to the olfactory sign at issue, and not the smell claimed, that does not amount to a graphic representation of the olfactory sign.

39 OPINION OF ADVOCATE GENERAL TIZZANO DELIVERED ON 25 OCTOBER 2005 (1) CASE C-551/03 P (APPROXIMATELY 19 PAGES)

In this document, therefore appears 28 times, thus appears 4 times, however appears 5 times, nevertheless appears 3 times. This document will be attached and has approximately 19 pages and uses altogether 40 connectives.

⁷⁸ 38.9.T.E.noC.a

⁷⁹ 38.10.T.M.noC.b

⁸⁰ 38.11.T.E.noC.b

Lists of positions

Table 1

Occurrences	Initial (I)		Medial						End (E)	
			initial medial (iM)		medial medial (mM)		medial (M)		(E)	
	comma (C)	no comma (noC)	comma (C)	no comma (noC)	comma	no comma	comma	no comma	comma	no comma
1. I.1.H.I.noC.b	1. 2.1.H.I.C.d	1. I.1.H.I.noC.b	1. 3.1.H.m.C.b	1. 31.1.T.iM.noC.d	1. 7.1.H.mM.C.b	1. 8.1.H.mM.noC.d	1. 19.1.H.M.C.d	1. 15.1.H.M.noC.d	1. 4.1.H.E.C.a	1. 15.2.H.E.noC.d
2. 2.1.H.I.C.d	2. 2.2.H.I.C.b	2. 17.1.H.I.noC.b			2. 11.1.H.mM.C.a	2. 10.4.H.mM.noC.c		2. 15.4.H.M.noC.a	2. 9.1.H.E.C.b	2. 15.3.H.E.noC.a,b
3. 2.2.H.I.C.b	3. 5.1.H.I.C.b	3. 28.1.T.I.noC.b			3. 14.1.H.mM.C.d	3. 10.5.H.mM.noC.b		3. 21.1.T.M.noC.d	3. 12.1.H.E.C.d	3. 15.5.H.E.noC.b
4. 3.1.H.m.C.b	4. 5.2.H.I.C.b	4. 38.3.T.I.noC.a			4. 16.1.H.mM.C.b	4. 14.3.H.mM.noC.c		4. 30.1.T.M.noC.b	4. 15.6.H.E.C.b	4. 20.1.H.E.noC.a
5. 4.1.H.E.C.a	5. 6.1.H.I.C.d	5. 38.7.T.I.noC.b			5. 34.2.T.mM.C.b	5. 20.2.H.mM.noC.a		5. 33.2.T.M.noC.b		5. 27.1.T.E.noC.d
6. 5.1.H.I.C.b	6. 10.1.H.I.C.c				6. 37.2.T.mM.C.b	6. 20.4.H.mM.noC.b		6. 38.1.T.M.noC.a		6. 29.1.T.E.noC.a
7. 5.2.H.I.C.b	7. 10.2.H.I.C.d					7. 22.1.T.mM.noC.b		7. 38.4.T.M.noC.b		7. 38.9.T.E.noC.a
8. 6.1.H.I.C.d	8. 10.3.H.I.C.d					8. 23.1.T.mM.noC.e		8. 38.5.T.M.noC.d		8. 38.11.T.E.noC.b
9. 7.1.H.mM.C.b	9. 13.1.H.I.C.b					9. 24.1.T.mM.noC.d		9. 38.10.T.M.noC.b		
10. 8.1.H.mM.noC.d	10. 14.2.H.I.C.b					10. 25.1.T.mM.noC.b				
11. 9.1.H.E.C.b	11. 17.2.H.I.C.b					11. 25.2.T.mM.noC.b				
12. 10.1.H.I.C.c	12. 18.1.H.I.C.b					12. 26.1.T.mM.noC.b				
13. 10.2.H.I.C.d	13. 18.2.H.I.C.b					13. 32.1.T.mM.noC.d				
14. 10.3.H.I.C.d	14. 18.3.H.I.C.d					14. 35.1.T.mM.noC.a				
15. 10.4.H.mM.noC.c	15. 20.3.H.I.C.c					15. 36.1.T.mM.noC.a				
16. 10.5.H.mM.noC.b	16. 20.5.H.I.C.b					16. 36.3.T.mM.noC.d				
17. 11.1.H.mM.C.a	17. 30.2.T.I.C.d					17. 36.4.T.mM.noC.c				
18. 12.1.H.E.C.d	18. 33.1.T.I.C.b					18. 36.5.T.mM.noC.c				
19. 13.1.H.I.C.b	19. 34.1.T.I.C.b					19. 36.6.T.mM.noC.c				
20. 14.1.H.mM.C.d	20. 36.2.T.I.C.d					20. 37.3.T.mM.noC.a				
21. 14.2.H.I.C.b	21. 36.5.T.I.C.c					21. 38.2.T.mM.noC.a				
22. 14.3.H.mM.noC.c	22. 37.1.T.I.C.b					22. 38.6.T.mM.noC.a				
23. 15.1.H.M.noC.d						23. 38.8.T.mM.noC.d				
24. 15.2.H.E.noC.d										
25. 15.3.H.E.noC.a										
26. 15.4.H.M.noC.a										
27. 15.5.H.E.noC.b										
28. 15.6.H.E.C.b										
29. 16.1.H.mM.C.b										
30. 17.1.H.I.noC.b										
31. 17.2.H.I.C.b										
32. 18.1.H.I.C.b										
33. 18.2.H.I.C.b										
34. 18.3.H.I.C.d										
35. 19.1.H.M.C.d										
36. 20.1.H.E.noC.a										
37. 20.2.H.mM.noC.a										
38. 20.3.H.I.C.c										
39. 20.4.H.mM.noC.b										
40. 20.5.H.I.C.b										

Occurrences	Initial (I)		Medial						End (E)	
			initial medial (iM)		medial medial (mM)		medial (M)		(E)	
	comma (C)	no comma (noC)	comma (C)	no comma (noC)	comma	no comma	comma	no comma	comma	no comma
41. 21.1.T.M.noC.d										
42. 22.1.T.mM.noC.b										
43. 23.1.T.mM.noC.e										
44. 24.1.T.mM.noC.d										
45. 25.1.T.mM.noC.b										
46. 25.2.T.mM.noC.b										
47. 26.1.T.mM.noC.b										
48. 27.1.T.E.noC.d										
49. 28.1.T.I.noC.b										
50. 29.1.T.E.noC.a										
51. 30.1.T.M.noC.b										
52. 30.2.T.I.C.d										
53. 31.1.T.iM.noC.d										
54. 32.1.T.mM.noC.d										
55. 33.1.T.I.C.b										
56. 33.2.T.M.noC.b										
57. 34.1.T.I.C.b										
58. 34.2.T.mM.C.b										
59. 35.1.T.mM.noC.a										
60. 36.1.T.mM.noC.a										
61. 36.2.T.I.C.d										
62. 36.3.T.mM.noC.d										
63. 36.4.T.mM.noC.c										
64. 36.5.T.I.C.c										
65. 36.5.T.mM.noC.c										
66. 36.6.T.mM.noC.c										
67. 37.1.T.I.C.b										
68. 37.2.T.mM.C.b										
69. 37.3.T.mM.noC.a										
70. 38.1.T.M.noC.a										
71. 38.2.T.mM.noC.a										
72. 38.3.T.I.noC.a										
73. 38.4.T.M.noC.b										
74. 38.5.T.M.noC.d										
75. 38.6.T.mM.noC.a										
76. 38.7.T.I.noC.b										
77. 38.8.T.mM.noC.d										
78. 38.9.T.E.noC.a										
79. 38.10.T.M.noC.b										
80. 38.11.T.E.noC.b										

Table 2

Occurrences	Initial (<i>I</i>)		Medial						End (<i>E</i>)	
	comma (C)	no comma (noC)	initial medial (iM)		medial medial (mM)		medial (M)		(E)	
comma (C)			no comma (noC)	comma	no comma	comma	no comma	comma	no comma	
80	22	5	1	1	6	23	1	9	4	8
80	27		2		29		10		12	

Lists of antecedents

This part contains lists of antecedents to the two items *however* and *therefore*, using the following marking system:

[a] in the same sentence, [b] in the immediately preceding sentence, [c] in the same paragraph (the second or third preceding clause), and [d] in the immediately preceding paragraph.

The following table contains the occurrences of all antecedents as well as their total number per type.

Table 3

a	b	c	d
4.1.H.E.C.a 11.1.H.mM.C.a 15.3.H.E.noC.a 15.4.H.M.noC.a 20.1.H.E.noC.a 20.2.H.mM.noC.a 29.1.T.E.noC.a 35.1.T.mM.noC.a 36.1.T.mM.noC.a 37.3.T.mM.noC.a 38.1.T.M.noC.a 38.2.T.mM.noC.a 38.3.T.I.noC.a 38.6.T.mM.noC.a 38.9.T.E.noC.a	1.1.H.I.noC.b 2.2.H.I.C.b 3.1.H.I.M.C.b 5.1.H.I.C.b 5.2.H.I.C.b 7.1.H.mM.C.b 9.1.H.E.C.b 10.5.H.mM.noC.b 13.1.H.I.C.b 14.2.H.I.C.b 15.5.H.E.noC.b 15.6.H.E.C.b 16.1.H.mM.C.b 17.1.H.I.noC.b 17.2.H.I.C.b 18.1.H.I.C.b 18.2.H.I.C.b 20.4.H.mM.noC.b 20.5.H.I.C.b 22.1.T.mM.noC.b 25.1.T.mM.noC.b 25.2.T.mM.noC.b 26.1.T.mM.noC.b 28.1.T.I.noC.b 30.1.T.M.noC.b 33.1.T.I.C.b 33.2.T.M.noC.b 34.1.T.I.C.b 34.2.T.mM.C.b 37.1.T.I.C.b 37.2.T.mM.C.b 38.4.T.M.noC.b 38.7.T.I.noC.b 38.10.T.M.noC.b 38.11.T.E.noC.b	10.1.H.I.C.c 10.4.H.mM.noC.c 14.3.H.mM.noC.c 20.3.H.I.C.c 36.4.T.mM.noC.c 36.5.T.I.C.c 36.5.T.mM.noC.c 36.6.T.mM.noC.c	2.1.H.I.C.d 6.1.H.I.C.d 8.1.H.mM.noC.d 10.2.H.I.C.d 10.3.H.I.C.d 12.1.H.E.C.d 14.1.H.mM.C.d 15.1.H.M.noC.d 15.2.H.E.noC.d 18.3.H.I.C.d 19.1.H.M.C.d 21.1.T.M.noC.d 24.1.T.mM.noC.d 27.1.T.E.noC.d 30.2.T.I.C.d 31.1.T.iM.noC.d 32.1.T.mM.noC.d 36.2.T.I.C.d 36.3.T.mM.noC.b 38.5.T.M.noC.d 38.8.T.mM.noC.d
15	35	8	22