ARTICLES

USING THE HISTORICAL ARCHIVES OF THE EU TO STUDY CASES OF CJEU – SECOND PART

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THE GARDEN GROWS LUSHER: COMPLETING THE NARRATIVES ON OPINION 1/75

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ABSTRACT: In the European legal tradition, legal researches typically do not have access to court documents to the same extent as in the USA. This has partially changed in 2015, when the Archives of the Court of Justice of the European Union first became available for public consultation. This *Article* inspects the *dossier de procédure* in the Opinion 1/75 case and discusses how our knowledge of the case itself, and the development of EU law more generally, may be enhanced as a result of the availability of the archival material. Through analysing the *dossier*, the *Article* demonstrates, on the basis of internal communication between the members of the Court, that there was an atmosphere of novelty and urgency within the Court at the time and that the entire procedure was considerably micro-managed by President Lecourt. As the Court did not report the arguments the parties made in the Opinion, they are revealed for the first time as the submissions of the actors in the proceedings are made available. Analysing these arguments demonstrates that there was a *kompetenz-kompetenz* dimension to the case which remained hitherto hidden and unnoticed in scholarship as arguments to this effect were ignored by the Court when ruling on admissibility. It also demonstrates that when deciding on merits, the Court routinely responded to some types of arguments (textual, literalistic) and routinely ignored others (factual, practical, policy), while devising some of them (teleological) *proprio motu*. These new findings complete the existing historical narratives about Opinion 1/75.

KEYWORDS: CJEU archives – Opinion 1/75 – *kompetenz-kompetenz* – external relations – methods of interpretation – President Lecourt.

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I. Introduction

In December 2015, the archives of the Court of Justice of the European Union (CJEU) were opened at the Historical Archives of the European Union (HAEU) in Florence, Italy. During the ceremony, the President of the Court Lenaerts predicted that the preservation of the archives would add to the knowledge of European law through fostering legal research.[1] However, given the restrictive conditions under which the Court's archives were opened, one could adopt a cynical attitude towards this statement. The Court did not deposit its archive in its entirety but only allowed public access to the *dossier de procédure*. Due to the sacrosanct secrecy of deliberations, this does not include any archival material related to the *délibéré*. Many deposited dossiers are heavily redacted and material is removed from the dossier by the Court for a plurality of reasons, including trade secrets and privacy concerns.[2] The Court refuses to reveal what parts of a dossier are redacted and for what reason, leaving the researcher in the dark as to what documents are missing and why. With such depleted archival material, could the archives really add to our knowledge of EU law?

As the *Articles* in this Special Section demonstrate, the answer varies from dossier to dossier. This *Article* examines the extent to which the release of the Opinion 1/75 dossier enriches our understanding of the case and complements the narratives we have developed describing it. It argues that in the case of Opinion 1/75, a cynical attitude towards Lenaerts' prediction would be uncalled for. The dossier makes a substantial contribution to our knowledge of EU law and its history. It demonstrates this as follows. Section II provides a brief background of Opinion 1/75. Section III offers an overview of the contents of the dossier. Section IV characterises the atmosphere that surrounded the decision-making process at the Court, drawing from the procedure-related documents found in the dossier. Section V demonstrates how the submissions made by the parties enrich the historical narratives surrounding Opinion 1/75 and give insight into the argumentative practices of the Court. Section VI concludes.

II. Background of the case

Opinion 1/75[3] concerned the competence to regulate the field of export credits. One of the marking points of decade-long attempts of states to harmonise their regimes of export credits was the negotiation of the draft OECD "Understanding on a Local Cost Standard".[4] While the substantive negotiations on the common regime had been successfully

[1] HAEU, *Opening of the historical archives of the European Court of Justice*, www.eui.eu.

[2] For redaction practices, see Decision of the Court of Justice of the European Union of 10 June 2014 concerning the deposit of the historical archives of the Court of Justice of the European Union at the Historical Archives of the European Union (European University Institute); F Nicola, 'Waiting for the Barbarians: Inside the Archive of the European Court of Justice, New Legal Approaches to Studying the Court of Justice' in C Kilpatrick and J Scott (eds), *New Legal Approaches to Studying the Court of Justice* (Oxford University Press 2020).

[3] Opinion 1/75 *Arrangement OCDE – Norme pour les dépenses locales* ECLI:EU:C:1975:145.

[4] Hereafter "OECD Understanding" or simply "Understanding".

concluded by 1974, it remained unclear in what form the European Community and its Member States would participate in the conclusion of the Understanding. There was no agreement on the distribution of competences, neither between the Member States within the Council of the European Communities, nor between the Council and the Commission. The process of concluding the Understanding was stalled.

To cut the Gordian knot, the Commission requested that the Court of Justice deliver an opinion on the compatibility of the OECD agreement with the EEC Treaty, utilising the procedure foreseen by art. 228(1) EEC Treaty (currently art. 218(11) TFEU) for the first time.[5] The Commission asked the Court to decide "whether the Community even has power to negotiate and conclude the proposed agreement and, should the reply to this question be in the affirmative, whether or not such power is exclusive".[6]

The Court responded to both questions in the affirmative. It reasoned that export credits clearly fell within the meaning of "aids for exports" in art. 112 and "common commercial policy" in art. 113 EEC Treaty (now repealed and currently art. 207 TFEU, respectively), which formed the textual basis for the Court's conclusion that the Community had the competence to conclude the Understanding. Based on the teleology of arts 113 and 114 EEC Treaty (currently art. 207 TFEU and repealed, respectively), the Court also concluded that the competence of the Community was exclusive in nature. Before doing so, the Court squarely rejected all the arguments advanced in various submissions that the request of the Commission should be declared inadmissible.

III. A SHORT JOURNEY THROUGH THE *DOSSIER*

At 552 pages and 127 different documents, the Opinion 1/75 dossier features a wealth of diverse archival material available to the public for the first time. Its contents can be divided into four types of documents, as demonstrated in Table 1 below. The most sizeable category (as a percentage of the dossier) is comprised of the submissions made by the Commission, the Council, and four Member States – Ireland, the United Kingdom, the Netherlands, and Italy. This is followed by evidence, which was submitted by the Commission and the UK in the form of annexes to their original submissions. The Opinion of the Court in all language versions constitutes the third category of documents. Last is a plethora of procedure-related documents, including correspondence between the Court and the parties, internal correspondence within the Court, and internal process-related decisions of the Court.

[5] Art. 228(1)(2) EEC Treaty read: "The Council, the Commission or a Member State may obtain beforehand the opinion of the Court of Justice as to whether an agreement envisaged is compatible with the provisions of this Treaty [...]".

[6] Commission of the European Communities, Request for an Opinion Submitted by the Commission of the European Communities to the Court of Justice Pursuant to art. 228(1)(2) EEC Treaty, JUR/1973/75 (1975) 2-3.

Category of Document	No. of documents (N=127)	% of number of documents	No. of pages (N=551)	% of the dossier
Submissions	16	12.6%	231	41.9%
Evidence	29	22.8%	151	27.4%
Procedure-related documents	76	59.8%	81	14.7%
Opinion of the Court	6	4.72%	88	16.0%
Documents previously not available to public	121	95.3%	464	84.2%
Redacted documents	0	0%	0	0%
Report of the Oral Hearing	0	0%	0	0%
Opinion of the Advocate General	0	0%	0	0%

TABLE 1. Overview of the composition of the Opinion 1/75 dossier.

The bottom part of Table 1 also reflects the specific way in which the opinion procedure was conducted in those early years. There were no oral hearings, and the Advocates General voiced their views collectively *in camera* during the *délibéré*. As a result, the dossier does not contain a report of the oral hearing nor any written record of the Advocates General views. More importantly, the table demonstrates the immense value of the archival material in the Opinion 1/75 dossier, especially compared to the dossiers of other cases; except for the Court's Opinion itself, no other documents had previously been available to the public. Additionally, no material in the dossier has been redacted by the Court and it may be consulted in its entirety. In other words, the Opinion 1/75 dossier is permeated with novelty; it has been released in its entirety and the entirety of its contents is new to the public eye.

IV. AN INSIGHT INTO THE ATMOSPHERE AT THE COURT: PROCEDURAL DOCUMENTS

Even though the idea of procedure-related documents might seem dry at first, they provide a fascinating insight into how the case was managed within the Court and more generally depict the atmosphere surrounding Opinion 1/75 at the time. From these documents, three themes emerge and characterise the context in which the case was conducted: *i)* the novelty of the opinion procedure, *ii)* the temporal urgency to deliver the Opinion as soon as possible, and, related to this, *iii)* the micro-management of the case by the President of the Court.

In 1975, the novelty of the opinion procedure under art. 228(1) EEC Treaty was a fact; Opinion 1/75 was the first time the Court was requested to institute the opinion procedure. This pioneering role is reflected by Opinion 1/75 being featured heavily in academic

literature on the nature of the opinion procedure. The Court's reasoning here was foundational for the development of both judicial and academic understanding of the procedure.[7] Given the strong and persuasive teleological exposition of the nature of the procedure, it may seem surprising that the archival material discloses that there was a tangible sense of novelty in the way it was perceived and managed inside the Court. In a letter to the Registrar of the Court, the Attaché of the Court[8] openly spoke of "*la procédure très particulière*".[9] The sense of novelty was at times associated with a lack of certainty. This was clear when the UK sought procedural guidance from the Registrar due to the "absence of precedent for an application of this nature".[10]

Like the novelty of the opinion procedure, the urgency for the OECD to have the opinion delivered as soon as possible was also clear at the time. In part this was due to the prolonged negotiations that had been required for the parties to agree to the draft Understanding. More acutely, with the substantive negotiations concluded, the competence of the Community remained the only outstanding matter preventing the conclusion of the Understanding: "there only remains to be clarified the form of the participation in the Understanding by the European Economic Community, whose decision on the subject is to be made very soon".[11]

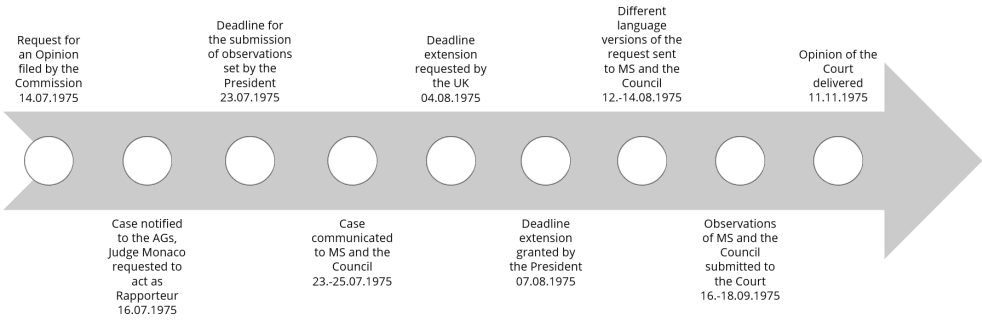

FIGURE 1. Procedural timeline of the Opinion 1/75.

[7] See, for instance, P Pescatore, 'External Relations in the Case-Law of the Court of Justice of the European Communities' (1979) CMLRev 626; P Craig and G De Búrca, *EU Law: Text, Cases, and Materials* (Oxford University Press 2015) 370.

[8] Please note that *attachés* have later been renamed and are referred to today as *référendaires*.

[9] "A very peculiar procedure" (translation author's own); *dossier de procédure original* Opinion 1/75 HAEU CJUE-2383, Letter of the Attaché of the Court to the Registrar of the Court of 16 July 1975.

[10] *Dossier de procédure original* Opinion 1/75 HAEU CJUE-2383 cit., Letter of the Assistant Treasury Solicitor of the UK to the Registrar of the Court of 4 August 1975, L75/3950/WHG.

[11] Organization for Economic Cooperation and Development, Note by the Chairman of the group on export credits and credit guarantees of the OECD Trade Committee: draft report to the Council Concerning the understanding on a local cost standard, 11 February 1975. See *dossier de procédure original* Opinion 1/75 HAEU CJUE-2383 cit., Annex I to the Request by the Commission (1975) 3.

The fact that it took the Court less than four months to deliver Opinion 1/75 from the time the Commission had filed its Request, as demonstrated by Figure 1, could give an impression that the Court was aware of the time crunch and was willing to act on the urgency that had surrounded the case. The archival material confirms this impression. It also demonstrates that it was President Lecourt who assumed the role of the expeditor and micromanaged the case considerably to ensure that the Opinion was delivered as soon as possible.

From a letter from the Attaché Mr Chevallier to the Registrar of the Court, we learn in unambiguous terms that the President had made a phone call to the Attaché, giving him specific instructions as to how to handle the case and made it clear that it would be useful not to waste time and proceed with the matter immediately.[12] President Lecourt practised what he preached when he set 1 September 1975 as the deadline for the submission of observations,[13] despite the fact that by 4 August 1975 the UK had still not received the English translation of the Commission's Request for an Opinion.[14] Mr Chevallier, in another letter to the Registrar, suggested to explain this brief deadline with the fact that "*la Cour devra répondre sans tarder à la demande*".[15] He also notified the Registrar that President Lecourt "insisted" that any requests for deadline extensions should be delivered to him personally.[16] The UK was not convinced by the explanation for the brevity of the deadline and proceeded to request a one-month extension.[17] The President rejected the request and only agreed to a shorter 20-day extension.[18]

Whether such urgency and micromanagement by the President was standard at the time is an interesting question, but beyond the scope of this *Article*. Even allowing for the possibility that a smaller case-load in the 1970s might have allowed President Lecourt to micromanage the docket in ways that would be more difficult for future presidents of the Court, it seems likely that his engagement reflects his appreciation of the (historic) nature of the case.[19]

[12] *Dossier de procédure original Opinion 1/75* HAEU CJUE-2383 cit., Letter of the Attaché of the Court to the Registrar of the Court and Mr Eversen of 23 July 1975.

[13] *Dossier de procédure original Opinion 1/75* HAEU CJUE-2383 cit., decision of the President of the CJEU on the deadline for the submission of observations of 23 July 1975, Avis 1/75 – 64048.

[14] *Dossier de procédure original Opinion 1/75* HAEU CJUE-2383 cit., Letter of the Assistant Treasury Solicitor (1975).

[15] "The Court needs to respond to the request without delay" (translation author's own); *dossier de procédure original Opinion 1/75* HAEU CJUE-2383, Letter of the Attaché of the Court to the Registrar of the Court of 16 July 1975 cit.

[16] *Ibid*.

[17] *Dossier de procédure original Opinion 1/75* HAEU CJUE-2383, Letter of the Assistant Treasury Solicitor (1975) cit.

[18] *Dossier de procédure original Opinion 1/75* HAEU CJUE-2383 cit., decision of the President of the CJEU on the extension of the deadline for the submission of observations of 7 August 1975, Avis 1/75 – 64236.

[19] For further discussion on the role of Judge Lecourt, see W Phelan, 'The Revolutionary Doctrines of European Law and the Legal Philosophy of Robert Lecourt' (2017) EJIL 935; V Fritz, *Juges et avocats généraux*

V. Of incomplete narratives and forks in the road: learning from the submissions

Opinion 1/75 is also remarkable because the Court, in contrast to its later opinions, did not report the arguments made in the submissions in the Opinion itself. As a result, the Opinion reads like an authoritative proclamation of the law. It is impossible to ascertain why the Court discussed a certain point, or made an argument, by just reading the Opinion; the origins of the analysed legal issues are unclear and have hitherto remained unknown.

Having access to the submissions of the Commission, the Council, and the Member States, we can now trace where the arguments discussed by the Court originated and how they were affected by the submissions made by other actors. We can also identify arguments that might have been ignored by the Court in the Opinion but formed an important part of the contention behind the scenes. Likewise, we can discern whether there were any argumentative paths not taken by the Court – whether Opinion 1/75 included some forks in the road of the historical development of EU law and how the turns taken by the Court have impacted EU law as we know it today.

V.1. Paving the way to admissibility: the affirmation of *Kompetenz-Kompetenz* and the acceptance of exclusive Community competence

One such fork in the road that has remained publicly unknown was the Court's decision to declare admissible the Commission's Request to determine if the Community had *exclusive* competence to conclude the OECD Understanding. While this would be impossible to deduce from the text of the Opinion 1/75 itself, the Court's path forked as a result of a strong push made by the Council and the UK against the Court having the competence to decide on the exclusive nature of the Community's competence. But because this argument was ignored by the Court and did not feature in the text of the Opinion, the *kompetenz-kompetenz* dimension of Opinion 1/75, *i.e.*, the means by which the Court affirmed and extended the scope of its own jurisdiction, has remained undiscovered by academic commentary and has not yet become part of the historical narratives.

As noted, this constitutional struggle *par excellence* was initiated by the Council and the UK.[20] Both made lengthy textualistic and teleological arguments that art. 228(1) EEC Treaty only permitted the Court to decide whether the Community had the competence to conclude the Understanding but not to decide whether it had *exclusive* competence to

de la Cour de Justice de l'Union européenne (1952-1972): une approche biographique de l'histoire d'une révolution juridique (Vittorio Klostermann 2018); A Vauchez, *Brokering Europe Euro-Lawyers and the Making of a Transnational Polity* (Cambridge University Press 2015).

[20] *Dossier de procédure original* Opinion 1/75 HAEU CJUE-2383 cit., observations by the Council of the European Communities on the request, submitted by the Commission of 16 September 1975 4; *dossier de procédure original* Opinion 1/75 HAEU CJUE-2383 cit., written observations by the United Kingdom of Great Britain and Northern Ireland of 18 September 1975 12-14.

conclude it. According to them, deciding on the exclusivity of the Community's competence would implicitly mean ruling on the competence of the Member States, which the Court could not do as there was no basis for that in the Treaty; art. 228(1) did not give the Court the competence to decide, as part of the opinion procedure, what competences Member States had or did not have.

This argument is noteworthy for a number of reasons. First, compared to many other arguments made in the submissions in a haphazard and cursory manner, the Council and the UK developed and presented this argument particularly thoroughly and insistently. Second, that two different actors made the same argument is significant in and of itself. Of 31 distinct legal arguments made across all six submissions, only five arguments were advanced by more than one actor. And finally, due to its repercussions for the division of competencies between the Community and the Member States, the argument presented a key and arguably constitutional moment in the development of EU (external relations) law.

And yet, despite this momentous juncture, the Court evaded the challenge and ignored this line of argument, only rejecting it implicitly. In the relevant passage, the Court wrote:

> "The question whether the conclusion of a given agreement is within the power of the Community and whether, in a given case, such power has been exercised in conformity with the provisions of the Treaty is, in principle, a question which may be submitted to the Court of Justice, either directly, under Article 169 or Article 173 of the Treaty , or in accordance with the preliminary procedure, and it must therefore be admitted that the matter may be referred to the Court in accordance with the preliminary procedure of Article 228".[21]

In this passage, the Court said nothing expressly about its competence under art. 228 to rule on the *exclusive* competence of the Community and, by implication, on the competence of the Member States to conclude an envisaged international agreement. Instead, it only speaks of the legal basis to rule on the "power of the Community". It was through this passage that the Court declared the Commission's Request admissible and, in so doing, by implication rejected the claim advanced by the UK and the Council. However, given the multifaceted significance of their claim, as demonstrated above, a more direct rebuttal of the argument by the Court could have been expected.

But the point here is not simply that the Court ignored an important argument made by a plurality of actors, while this is interesting in and of itself. Instead, the main claim is that the Court's silence has entirely obscured what was one of the more important issues of Opinion 1/75 in the eyes of some Member States: does the Court have the competence to (indirectly) rule on the competence of Member States to conclude international agreements as part of the opinion procedure? Learning of this contestation behind the scenes, as well as the consequential affirmation of *kompetenz-kompetenz* by the Court, has only been possible by consulting and analysing the archival material found in the Opinion 1/75

[21] Opinion 1/75 cit. 1361. Please note that the equivalent current provisions of arts 169 and 173 EEC Treaty are arts 258 and 263 TFEU, respectively art. 228 EEC can currently be found in art. 218(11) TFEU.

dossier. The submissions by the Council and the UK have made it clear that the competence of the Court to rule on the competencies of Member States was very much an issue for the Member States and that it was not taken for granted as one might have assumed from the text of Opinion 1/75. By implicitly ruling on the competences of Member States, the Court also affirmed its *kompetenz-kompetenz* as part of the opinion procedure. As a result, we should not only expand our understanding of the contestation that was at the heart of Opinion 1/75 as including the issue of whether or not the Court has the competence to (implicitly) decide on the competencies of the Member States. We should also treat Opinion 1/75 as an important case in the development and the affirmation of *kompetenz-kompetenz* of the Court.

V.2. Towards exclusive competence: what types of arguments interest the Court?

Another consequence of being able to trace the arguments advanced in the submissions and link them to the arguments made by the Court is the ability it gives us to identify patterns in the ways that the Court treats different types of arguments. While no such patterns can be discerned in the Court's approach to arguments pertaining to admissibility, nor the *existence* of the Community competence as it was not contentious, the Court did show a considerable amount of consistency in its approach to different types of argument when deciding on the *exclusiveness* of the Community's competence. Some types of argument were consistently ignored by the Court, while it consistently engaged with others, regardless of whether it agreed with them.

The Court was particularly unwilling to engage with policy arguments and arguments that were practical and consequentialist. For instance, the Court ignored the argument that were the Community to have exclusive competence, the relationship between the Member States of the Community and other OECD member states would be strained because the Community would be an additional, unnecessary intermediary between them. It also ignored the argument that exclusive Community competence would create an imbalance of obligations between Community Member States and other OECD member states because the latter could make exceptions or withdraw from the Understanding unilaterally, while Community Member States could not. Likewise, the Court took no notice of the argument that exclusive Community competence may prejudice potential future changes of the Understanding due to the limited competence of the Community.

On the contrary, the Court was willing to engage with textual arguments. It rejected *ERTA*-style claims and clearly distinguished competence based on the *ERTA* doctrine from competence that is derived from express Treaty provisions.[22] It also rejected the UK's claim that export credits did not fall within "the central core of commercial policy", decid-

[22] For the AETR/ERTA doctrine, see case 22/70 *Commission v Council* ECLI:EU:C:1971:32.

ing that they patently did and thus fell under art. 113 EEC Treaty. The Court even responded to and expressly rejected the most unlikely of arguments that art. 71 of the ECSC Treaty (now expired) precluded the exclusivity of the Community competence under the EEC Treaty.

Finally, the Court also demonstrated a distinct affinity for teleological expositions of the Treaty. Reading Opinion 1/75, where the Court justified the exclusivity of the Community's competence primarily through the teleology of the policy field and the EEC Treaty, one would think that purposive arguments had constituted a significant part of the submissions. However, the archival material shows that this was not the case. There were *no* teleological arguments made regarding exclusive Community competence in any of the submissions. Purposive interpretation, on which the Court so heavily relied, was endemic to Luxembourg and was made by the Court *proprio motu*.

Naturally, on the basis of the Court's approach in Opinion 1/75 one cannot make a more general claim as to how the Court treats different types of arguments. Nonetheless, it does confirm the narratives on the prominence of textual and teleological methods of interpretation that the conventional literature on judicial reasoning of the CJEU has constructed.[23]

VI. Conclusion

That something raises more questions than it answers might be cliché, but there seems to be some credence to it in the context of new discoveries. It is inevitably going to take time to answer all the questions that the newly released dossiers raise, given the wealth of information they hold. For instance, why did Jean Groux, the Agent of the Commission in Opinion 1/75, take a diametrically opposite position on a contentious factual point in his *post hoc* writings compared to the one he advocated for in the Commission's request for an Opinion?[24] Or how did the Council determine its common set of observations, given that the views on the matter inside the Council were very much divided?[25] And perhaps more interestingly, how was it that the submission of the Council seems to be more

[23] See, for instance, K Lenaerts and JA Gutiérrez-Fons, 'To Say What the Law Is: Methods of Interpretation and the European Court of Justice' (2014) ColumJEurL 3 ff.; N Fennelly, 'Legal Interpretation at the Court of Justice' (1997) Fordham Int'l LJ 656 ff.

[24] Compare the positions regarding the role of the Community in the negotiating process of the Understanding in *dossier de procédure original* Opinion 1/75 HAEU CJUE-2383, Request by the Commission (1975) cit., and in J Groux, 'Mixed Negotiations' in D O'Keeffe and HG Schermers (eds), *Mixed Agreements* (Kluwer Law 1983). This was a relevant contention in the case as the UK argued that the Community had been largely passive in the negotiations and that Member States should not be deprived of the competence they had been exercising throughout the negotiations.

[25] In the Council, six Member States voted in favour of exclusive Community competence, two in favour of shared competence, and one against any Community competence. See *dossier de procédure original* Opinion 1/75 HAEU CJUE-2383, Request by the Commission (1975) cit. 2.

in line with the views held by the minority of the Member States in the Council?[26] Was this the reason that of the three Member States voting against the Community's exclusive competence in the Council, only the UK submitted its observations to the Court? These, and some other questions, remain to be answered by further research.

However, this *Article* has already demonstrated that the dossiers may provide a unique insight into how cases are procedurally managed within the Court. As attested by the archival material, Opinion 1/75 was delivered somewhat hastily, despite the novelty of the procedure, under the close supervision of President Lecourt. Analysing the argumentation of the different actors and comparing it to the decision of the Court, the dossier also provides evidence for claims that the Court has an affinity for textual and teleological methods of interpretation. Most importantly, it sheds light on the fact that Opinion 1/75 should also be discussed as a case in which the competence of the Court to rule (implicitly) on the competencies of Member States was heavily contested. The Court ignored and implicitly rejected the reservations of the UK and the Council, thus affirming its competence to decide whether or not Member States may participate in the conclusion of international agreements. In so doing, not only did the Court affirm its competence to implicitly decide on the competencies of the Member States, but it also firmly established that its *kompetenz-kompetenz* extends also to the opinion procedure.

[26] *Dossier de procédure original* Opinion 1/75 HAEU CJUE-2383, observations by the Council (1975) cit.