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'Integration-through-Law' Contribution to a Socio-history of EU Political Commonsense

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Abstract

This article tracks the genesis of one of the EU's most established meta-narratives, that of Europeanization-through-case-law. Instead of studying this theory of European integration as an explanatory frame, I consider it here as the phenomenon to be explained and accounted for. Thereby, the paper does not try to assess how heuristic and explicative it may be, but rather analyzes what is at stake in its genesis *as* a dominant theory of Europeanization. I trace its emergence in the conflicting theorizations of the relationship between Law and the European Communities that come along with the European Court of Justice's 'landmark' decisions (*Van Gend en Loos* and *Costa v. ENEL*). This approach helps seizing the genesis of a specific and - at the time - rather unlikely political model for Europe in which a judge (the ECJ) is regarded as the very *locus* of European integration's dynamics as well as the best mediator and moderator of both Member States' 'conservatism' and individuals' 'potential excesses'. It also allows to grasp the emergence of Euro-implicated lawyers as a group endowed with a set of critical functions (integration) and missions (protecting the EC treaties) the theory assigned them.

Keywords

Sociohistory, Theories of European integration, Law and politics, EC elites, European Court of Justice

The European Union too has its 'magic triangle': 'direct effect', 'supremacy' and 'preliminary ruling.'[1] Despite being possibly deterring for non-lawyers, they have become crucial keywords for grasping the specific *nature* of the EU polity. Taken individually, any of these notions is merely a legal principle utterly incapable of founding a political order on its own. Taken together, their effects appear to beget a dynamic of circular reinforcement: no effective European treaties without the supremacy of European law over the law of Member States; no supremacy without direct effect opposable to and by individuals; no direct effect without preliminary rulings ensuring the uniform application of Euro-law throughout the European Union; and, to loop the loop, no preliminary references to the ECJ without an incentive to engage in this procedure -namely the direct effect and supremacy of treaties. It seems that the whole European Community would fall apart, were one of these three pillars to be compromised or put in question.[2] Structured as a unique legal matrix, this 'magic triangle' provides with a cognitive frame able to put order (legal order) in the heterogeneous and multi-level European public sphere.

Not only does this 'magic triangle' supply the EU polity with a rationale and a sense of unity, but it is also seen as an essential channel, if not as the real *engine*, of Europeanization itself. There is nowadays an immense literature documenting the critical contribution of this 'magic triangle' to the dynamics of economic/social/political integration. As it is well known, Joseph Weiler played an essential role in giving full academic credentials to this theory, now known as 'integration-through-law'[3], and hereafter referred to as the Europeanization-through-case-law (ETCL) narrative. The *diminution* of the political push for integration during the 1960s and 70s, he argued more than 25 years ago, has been counter-balanced in a functional manner by an *approfondissement* of the judicial lever, the European Court of Justice (ECJ) taking on a political role as an integration actor. Over the last 15 years, this link between EC law's 'magic triangle' and European construction has become more and more evident as an abundant neo-functionalist literature documented the increasing usages of this judicial opportunity by a number of actors of all sorts (interest groups, multinational companies, EC institutions…) to pursue their own undertakings (Haltern 2004; Conant 2007).[4] As a result, Euro-law[5]

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1 Preliminary ruling is a procedure laid down by the Treaties of Rome (nowadays article 221, former article 177) allowing any national judge ruling on a case that involves EC law, to stay the proceedings and to ask the European Court of Justice to interpret the legal issue concerned.

2 Nowadays, however, many fear the exhaustion of the 'structuring effects' of this magic triangle on European integration, particularly as a result of the 'politicization' of the EU.

3 See in particular the 'Florence Integration Project' launched at the European University Institute in December 1981 which ended with the volumes emblematically entitled *Integration Through Law* (Weiler 1981; Cappelletti, Weiler 1988).

4 The neo-functionalist paradigm of integration-through-law can be sketched in three steps.[4] Step 1, the point of departure: the 'constitutional' doctrine of the Court of Luxembourg (in our words, the 'magic triangle' of supremacy / direct effect of Euro-law / preliminary ruling) built by the Court in a series of legal *coups*. Step 2, the driving forces: on the one hand, the mobilization of the European jurisprudence by multinational companies, transnational interest groups and EU institutions that seize this institutional opportunity; on the other hand, the national courts' progressive – yet turbulent – acceptance of the general principles established by the ECJ (K. Alter: 2001). And step 3, the dynamic: this support by private and national actors offers in turn new opportunities for the Court to assert and extend the scope of its case law (discrimination, environment, fundamental rights, etc). This triggers an implacable iterative mechanism that catches interest groups, multinational companies, EU institutions, States and the ECJ in a virtuous circle of judicialisation/europeanization, which has not been designed by any specific actor, but to which everybody contributes in its own way (A. Stone: 2004). For a discussion and critical elements, see Antoine Vauchez (2007b).

5 Hereafter, we take European law, Euro-law, EU law and EC law as synonyms.

and the ECJ are now solidly tied to a whole theory of integration which features them as the supporting framework of the European Union.

The objective of this article is certainly not to deny the strength of this model but to consider its very success as an object of research. To put it differently, this Court-centred theory of European integration is a phenomenon *to be explained* and accounted for rather than just an ex-post explanatory frame. As it has been for years Europe's most powerful meta-narrative, ETCL should be also considered as one essential channel through which EU polity has been thought of (and, therefore, built) by all sorts of Euro-implicated actors converging in Brussels. In other words, instead of trying to assess how heuristic and explicative this theory of Europeanization may be, I analyze here its very genesis *as* a theory, that is as a cognitive and normative frame constitutive of visions and representations of Europe. Such a research requires to consider academic formalizations mentioned above not as a starting point, but rather as one form of *coronation* of the many academic and non-academic struggles over the most appropriate theory grasping the relationship between Europe and Law. In other words, rather than an *ex-post facto* account of European integration, we argue that ETCL was built alongside with the history it is itself pretending to explain. As they were engaged in their own undertakings or, more precisely, *for* the sake of their own undertakings, EC judges, high civil servants, academics, MEPs, diplomats or Commissioners constantly forged theories –or, at least, partial narratives- of the contribution of Law to integration[6]. As a matter of fact, these many *apocryphal formalizations* of the causes, dynamics, and possible effects of Law on Europeanization were not abstract speculations; they were an essential –albeit too often neglected- resource for Euro-implicated actors as the very definition of 'the nature [and of the future] of the beast' was (and still is) a critical battlefield for the various groups and elites competing for access to and positions in the European Communities.[7] Therefore, tracing the genesis of this specific theory brings the scholar back to the very first years of the European Communities when both Europe and its law had to be designed and defined.

Such a historical *detour* into the early conflicts over the functions and missions of Law in EC polity *statu nascendi* is not just some sort of historicist *point d'honneur*, nor just an erudite interest in the history of European ideas. I contend that it has become necessary to understand in a renewed way how both EC polity and EC elites were built. In this article, I show the progressive framing of a model that turned the ECJ into the very *locus* of Europeanization, while two other possible paths for integration were left off, or at least played down in the course of history : the classic 'international politics' paradigm where the Member States-Commission duet (through political decision making) monitors the implementation of the treaties, but also the 'legal citizenship' model in which individuals (and civil society in general) lead the process (through *direct* petitioning before the European Court of Justice).

6 The fact that many of the most prominent EU actors were often at the time academics, most of them legal scholars, playing on both sides of the fence makes it impossible to draw any clear-cut line between those who theorized and those who practiced the Europeanization process.

7 From its creation, the European Commission has invested heavily in this symbolic struggle by supporting the emergence of a community of EC-specialized scholars (institutionalized into the 'Jean Monnet Chairs' as of 1989) that would help provide not only legal but also political and economic frames of understanding and of legitimizing of this nascent and fragile transnational polity.

Table 1: Contending theories of legal integration (early 1960s)[8]

	Inter-State politics	**Judicial functionalism** ('*VGL-Costa* doctrine')	**Legal citizenship**
CENTRAL EC ACTOR	Commission and Council of Ministers	European Court of Justice	Individuals/Civil society
DOMINANT FIGURE OF LAWYER	*Jurisconsulte*	Judge	Lawyer
FUEL OF INTEGRATION	Political and administrative moves	Economic and social groups' interests	Rights
LEGAL VECTOR	EC *policies*	Preliminary ruling *procedure* (art. 177)	Direct judicial action
ROLE OF THE ECJ	Incidental	Regulatory	Instrumental
TYPE OF LEGAL INTEGRATION	Europeanization-through-harmonization-of-national-legislations	Europeanization-through-case-law	Europeanization-through-citizens'-legal-activism

In the early 1960s, ETCL therefore emerged as a 'third way' in which the ECJ would stand as *mediator and moderator* between individuals' claims (considered to be potentially disruptive of the fragile inter-states agreements) and the EC inter-institutional decision making (deemed incapable of providing Europe with a lasting integration route). Theory-building however is more than just an abstract speculation, it produces at the same time renewed conceptions of legitimacy within a specific political system. The genesis of the ETCL and its imposition as a new common sense of European integration goes along with the requirement that anyone wishing to authoritatively take part to the EC debates and to access positions within EC polity should possess legal credentials and know-how. Finally, I also argue that the framing of ETCL is at one and the same time an essential way through which Euro-implicated lawyers objectified their own role and, consequently, constituted themselves as a group despite their many divisions and differences. In other words, in a very characteristic *effet de théorie* (Bourdieu: 1982), tracing the genesis of this judicial theory of Europe inextricably means studying the formation of the group endowed with the functions (integration) and the missions (defending EC treaties) the theory refers to.

The paper traces this general process as follows. In a preamble, it defines what it takes and what it means –methodologically and empirically speaking- to engage in such a socio-historical analysis. Given this general ambition of the paper, its empirical scope is then restricted to one specific critical juncture, namely that of the so-called 'founding decisions' of the EC law (*Van Gend en Loos* Feb. 1963 and *Costa v. ENEL* July 1964). We then move on to consider 'law-and-politics' initial constellation at the outset of the European Communities where Euro-implicated jurists see their initial hopes in European integration deceived (part I). Having sketched this specific context, the article seizes the processes through which *Van Gend en Loos* became a landmark decision endowed with many political and legal 'implications' (part II). Subsequently, the paper shows how -with the *Costa* case- a consistent legal-political doctrine of the relationship between Europe and Law was built (part III). In the context of a deep crisis in Brussels' inter-state politics, various political and administrative

8 It should be noted that these three models are ideal-types. Thereby, they do not intend to *mirror* reality and they can not be observed *as such* in social life. Rather, this table aims at providing with a stylization of specific cleavages over the possible political functions given to law and lawyers in the integration process in the early years of European construction. The relevance and respective weight of these three models then have to be measured empirically (as we try to do in the rest of the paper).

actors with strong legal credentials took advantage of this emerging body of doctrine to reframe the stakes of the law and politics' relationship in judicial terms, enabling at the same time the construction of Euro-lawyers as *a* group endowed with specific missions at the core of EC polity. (part IV).

Preamble: A Foundational Myth: *Van Gend en Loos* and *Costa v. ENEL* Decisions

Beyond its many variations, the ETCL narrative has one compulsory utterance: the *Van Gend en Loos* and *Costa v. ENEL* foundational decisions delivered by the European Court of Justice on the 5 February 1963 and 15 July 1964. Solidly linked together today, the latter appearing as a sort of necessary follow-up of the former's 'logical' implications, these two judgements stand as one moment of revelation in which the *efficient* principles (direct effect / supremacy) and procedures (preliminary reference) for building Europe were identified.[9] These two decisions appear today as the *de facto* Constitution of Europe encapsulating in themselves all the successive development of EU polity to which they are purported to have paved the way, if not directly called for. As noted by Joseph Weiler, 'the measure of the success of the Cour [in promoting *Van Gend en Loos* principles] is the almost sacrosanct nature of the venerable *acquis* of the Community vindicated and validated again and again at each IGC' (Weiler 2003: 151). Strikingly indeed, all the successive political undertakings in EU polity –starting with the various projects of European Constitution from 1984 onwards[10]- have referred in one way or another to the principles first 'uncovered' by ECJ judges in what can therefore be considered as one of Europe's foundational myth. With the benefit of hindsight, the consequences of this judicial 'discovery' seem so far-reaching that it has become almost impossible to imagine 'what EU law would have been' - and even EU polity, one might wonder -, 'without the decisions of 1963 and 1964.' (Lecourt 1991: 350).[11] Matter of factly, the very history of EC law is often presented as the progressive un-folding of these two cases' legal 'potentialities' : on the one hand, the clarification of their scope (which articles of the treaties have direct effect ? What sort of EC regulation ? Which consequences in terms of liability ? , etc… Cf. *Van Duyn* in 1974, *Simmenthal* in 1978, *Francovich* in 1990…); on the other hand, their difficult and uneven acceptance by the different national jurisdictions (Alter 2001). Generally speaking, it seems virtually impossible today to escape the teleological retro-dictions which describe the scope and reach of these two decisions according to their 'logical' *outcomes*, be they legal (formation of a highly integrated legal order), economic (intense development of intra-community exchanges) or political (succession of treaties reinforcing European integration).

Now, this teleological bias (it-had-to-go-this-way) risks to obscure the understanding of what was at stake in that specific moment of EC history. The dense mythology of *Van Gend en Loos* and *Costa* makes it difficult to conceive of the sense of uncertainty and fuzziness that prevailed among lawyers when it came to define what this now body of law actually was (not to mention what its functions vis-à-vis European construction were).[12] Not only other conceptions of the relationship between Law and

9 Quite emblematically, the ECJ's selection of its most important decisions presented in the languages of the new Member States that joined the EU in 2004 start with the decision *Van Gend en Loos* of 5 February 1963. http://curia.europa.eu/cs/content/juris/data57/liste.htm (consulted on 25 February 2008).

10 It comes as no surprise that the many projects of European Constitution have included articles on the matter. The 1984 Spinelli's project of Constitution indicated in his article 42 that : 'Le droit de l'Union est directement applicable dans les États membres. Il prévaut sur les droits nationaux. (…) Les juridictions nationales sont tenues d'appliquer le droit de l'Union', while the recent treaty put the supremacy doctrine among its very first articles (art. I-6) i.e. at the heart of the provisions regarding the very definition of the European Union. However, the exclusion of the supremacy principle from the Reform treaty agreed upon in Lisbon in December 2007 was an essential element of the compromise that was eventually reached.

11 Here, and all the way through the article, the translation of the quotations is ours.

12 It has been evidenced that, technically speaking, these decisions (and particularly their audacious legal motivations) were certainly not the only possible ones for the ECJ judges. Joseph Weiler has shown that the *Van Gend en Loos* decision could well have been taken on the ground of classic public international law

Europe were seriously envisaged in the early 1960s (other than ETCL), but also, the idea of a process of Europeanization driven by the European Court of Justice seemed quite remote at the time. Moreover, as any foundational myth, the ex-post exegesis of *Van Gend en Loos* and *Costa* offers a selective reading of history, in line with the heroic reading of the Court's history conveyed in the ETCL narrative. Highlighting those decisions that cast the purported emancipation of the ECJ from classic inter-state politics, it neglects other ECJ's decisions that could well be considered as equally important in defining the Court's jurisprudence but contradicts the idea that European law is just as much law as its national counterparts[13].

In other words, considering the genesis of this Europeanization-through-case-law narrative requires the temporary suspension of the taken-for-granted exegesis of the two founding decisions through which the European Court of Justice purportedly settled *ex nihilo* a full-fledged doctrine (the 'magic triangle' discussed *supra*). Rather than considering the Court as a solitary ('praetorian') and foreseeing author, I consider that the meaning of its decisions –here *VGL* and *Costa*- lies less in their text –often polysemous- than in the collective and concurrent attempts to define their *true* reach[14]. This process requires the charting of not just the scholarly legal debate but more widely the whole *'hermeneutical space'* of the two decisions (Heinich 1991), that is the various social arenas –national as well as European, legal but also bureaucratic, economic, or political sites…- in which their meaning, scope, and implications has been commented before, during,[15] and after their occurrence. In other words, I argue that the rich set of meanings associated today with this 'Van Gend en Loos-ENEL theory of Community law' (Stein 1981:12) is the outcome of a continuous and multi-layered process that takes place on either temporal side of these judicial 'events' as they are taken into a dense web of *pre-dictions* structuring the anticipations and strategies of the actors vis-à-vis the ECJ as well as of *retro-dictions* granting them with specific meanings and implications[16]. It is therefore our objective to understand the *interpretative process* through which both decisions have been prophesied, associated, contested, stylized and progressively polished and codified into *one* judicial theory of Europe constituted around a group of stable principles at the foundation of the European political order. To sketch such a process, it is necessary to track Euro-implicated actors of all sorts as they engage in building bridges and connexions between Europe and Law[17]. Theoretical attempts, provisory predictions, legal test-cases, ex-post analysis, hesitations, contradictions, and interpretative

(Contd.)

(Weiler 2003) while Bruno de Witte has exemplified why the *Costa* supremacy principle was just not a necessary consequence of the *Van Gend en Loos* direct effect (de Witte 1984).

13 Among others, *Confédération nationale des producteurs de fruits et légumes v. Council of the EEC*, 14 December 1962 could also qualify as a 'landmark decsion' as it gave a very restrictive reading of the individual standing, therefore granting Member States with specific privileges and rights within this new legal order.

14 In this, I disagree with Alec Stone's reading of VGL as a juridical *coup* (Stone 2007) not so much for the objective he is aiming at -questioning transformations of the political legitimacy of a given legal system (my general goal too)- but rather for the conception of social change it conveys. It is hardly possible to conceive of Courts –and of international Courts in particular- as unified and rational actors endowed with one clear and common idea of their objectives and *raisons d'être*. A product of heterogeneous if not opposed conceptions of Law and particularly of EC Law, *Van Gend en Loos* is less the sort of inaugural and far-reaching judgment Alec Stone seems to have in mind, than a cautious compromise, ambiguous enough to leave open a variety of possible interpretations and futures (particularly as far as supremacy is concerned). When the relative indeterminacy of these decisions is accepted, the research strategy moves on to understanding how the authentic meaning of the decision is produced *over time* and how it has been progressively been given these far-reaching 'consequences'.

15 Both decisions are indeed the outcome of an internal process that lasts for many months from the notification of the case before the ECJ to the decision itself. In the case of VGL for example, there were no less than 5 months between the notification to the actual decision.

16 For further discussion on the construction of the meaning of 'events' see Gaïti (1998), Lehingue (2006), Cohen (2007).

17 A simplified chronology of the events is presented in Annexe n°1.

adjustments of all sorts therefore make up the variegated material for this article. Through an extensive research[18], I have tried to trace all references to and quotations of *Van Gend en Loos* and *Costa* over the 1961-1965 period in the various EC political, academic, bureaucratic *fora* as well as (albeit in a less systematic way) in national settings with the objective of grasping historically the collective and concurrent framing of this judicial theory of Europe. However, to make sense of the circulation of ideas and of the process through which some prevail over others, one needs to seize at the same time the personal ties and resources, the groups and interlocking networks that have informed the set of intellectual associations and aggregations built over time.

I. Law and Politics at the Outset of the European Communities

The specific context of the law and politics' relationship as it existed at the outset of the EC is critical to understand how *Van Gend en Loos* and *Costa* have been interpreted as landmark decisions providing Europe with a new theory of integration. As a matter of fact, both decisions were taken at a point when various Euro-implicated legal actors were seeing their initial hopes and ambitions dashed by the recurring crisis in Brussels. On the one hand, legal experts' initial mission in the EC polity – namely the harmonization of national legislations- was experiencing its first setbacks. On the other hand, the many 'gentlemen-politicians of law'[19] committed to pan-Europeanism saw their project of political integration (through further strengthening of the EC supranational institutions) defeated by the inter-state crisis in Brussels. I argue that the debate over the two ECJ decisions opened up an opportunity for legal experts and these gentlemen-politicians of law to reframe EC polity in a manner more suitable to their professional and political ambitions, that is in judicial terms.

Truly enough, in those early days of the EC, the idea of a process of Europeanization driven by the ECJ's case-law seemed quite remote. Although Law and legal experts had been given an important role in the negotiations of the EC treaties (Pescatore 1981), their missions in the integration process were confined to a range of relatively limited tasks. In direct continuation with the knowledge and know-how of the jurisconsults on the international scene (Sacriste & Vauchez 2007) and in accordance with the very letter of the treaties, which often appeal to the *rapprochement* and *harmonisation* and even the *unification* of national legislations, the first European legal expertise focused on finding the best method to overcome the obstacles to the establishment of a Common Market, i.e. the diversity of national laws. In that project, the Court of Luxembourg appeared to be of secondary importance, or even entirely 'incompetent' (in the legal sense of the term), whereas the Commission and Council were seen as the key institutions. At a time when the preliminary references to the ECJ were still an abstract idea, the 'essentially constitutional and administrative character' of the Court did not make it the best placed institution to resolve the multiple conflicts of *private law* which emerged as the result of the opening of national markets.[20] Nevertheless, the hopes of imposing a general program of 'unification' of national legislations on the 'political' institutions, of 'finding this unity [which] was a fact before the separation and isolation of the States' (Barman 1960: 57), soon clashed with the

18 Specialized law libraries (Cujas, European Court of Justice, EUI) and national public libraries (French and Italian ones) have been the essential terrain of research. We have also dug into the Historical Archives of the European Communities (HAEC) in Florence, particularly the files from the Legal service of the three EC executives (CEAB and BAC fonds) as well as from the European Parliament, which helped to partially circumvent the fact that the European Court of Justice has still not deposited anything…

19 The expression borrowed to Dezalay and Garth (2002) refers to notables from legal professions (often law professors) playing on both sides of fence, committed at one and the same time in legal engeniering and in political undertaking politicians with strong legal credentials.

20 At the time, Jean-Louis Roper, a Belgian judge and member of the Commission on international law of the International Union of Judges even suggested to create a second Court which 'by its composition, would be the emanation of the supreme courts of the various member States', Jean-Louis Roper (1962) and Charles Cheval (1962).

technical nature (the 'product by product' approach) of the Commission's harmonisation policies, while the more ambitious projects (like the 'European company' legal status) faced a lack of political interest.

These problems did not go unnoticed by ECJ judge Robert Lecourt. Pointing out that a 'minimalist conception of the rapprochement of legislations' (Lecourt & Chevallier 1965: 147) had prevailed, he assessed on several occasions the failure of 'general harmonisation not only of a considerable part of the economic, social and fiscal legislation of Member States, but also of the private law that is used as a transactional framework'. Such a disappointing outcome was seen as the result of 'a certain conservatism of habits, which always requires the manifestation of a common will of the governments' (Lecourt & Chevallier 1963: 275), whereas the opinion 'of an intergovernmental or EC organism for pre-arbitration in charge of giving impetus to the work of experts' would have been sufficient (Lecourt & Chevallier 1964 : 20).

In the domains of economic and commercial law, bankruptcies, mergers of companies or the acknowledgement and execution of judgements, for example, the results were modest and permanently mortgaged by the political crisis of 1962-1966 in Brussels. In other words, by the time of *Van Gend en Loos*, the Europeanization-through-harmonization-of-national-legislations project (see table 1 'Contending theories of legal integration', *supra*) had reached a deadlock.

While most of EC-concerned lawyers had to acknowledge the pitfalls of this legal method of integration, pan-European political leaders were simultaneously facing a closure of European integration's political perspectives. The many disagreements and crises that developed between the member states from 1962 to 1966 prevented the rapid political development of EC supranational institutions in which federalist political entrepreneurs had placed lot of their hopes. The failure of the various initiatives to revive European integration (e.g. the Fouchet plan of 1961-62 and, most of all, the Hallstein proposals of March 1965), but also the rejection of the British application for membership (January 1963) illustrated the hardening of the diplomatic positions of the Member States and marked a sudden break in the rise of the Commission within EC institutional system.[21] It quickly became clear that it was 'unrealistic' to expect a joint revitalisation of both the Commission and the Parliament (Loth 2001). While the agreement reached by the six Member States in February 1964 on the merging of the European Communities was carried out *à institutions constantes*, i.e. without modifying the competences of EC institutions, the 1966 'Luxembourg compromise' was essentially decided at the expense of the two supranational institutions (Ludlow 2006). The fact would not be of direct interest to our matter if many of these pan-European political leaders with prominent positions within the EC institutions were not at the same time jurists often maintaining tight relationships with legal academia[22]. Fernand Dehousse, Walter Hallstein, Carl Ophuls, Jean Rey, Ivo Samkalden, Paul-Henri Spaak, or Pierre-Henri Teitgen were not only Commissioners or members of the European Parliament. They were at the same time law professors, judges or lawyers related to the legal realm through a number of professional associations, learned societies and legal journals. This blurriness of the borders between law and politics is essential to understand how these gentlemen-politicians of law were able to seize the new course of the ECJ to redirect their own pan-European investments into the promotion of the European rule of law*:*

Thereby, *Van Gend en Loos* and *Costa v. ENEL* took place in a background in which: i) the chances of a political revival of the Pan-European project were growing slimmer, and ii) the legal potentialities of the harmonization project had been blocked. The failure of both these political and legal ambitions for Europe does not *explain* the legalization of Europe, but it is certainly a critical *pre-condition.* These blockages help understand the propensity of Euro-implicated legal experts and

21 For a review of the diplomatic crises of the first years of the 1960s, see John Newhouse (1969). This period has been revisited recently in Jean-Marie Palayret, Helen Wallace, Pascaline Winand (2006).

22 This position in-between the legal and the political realm is typical of these first international political entrepreneurs (Madsen & Vauchez 2005).

gentlemen-politicians of law to engage in building a novel theory of Europeanization where the ECJ would stand as the necessary engine of political/economic integration.

II. Between Predictions and Retrospection: *Van Gend en Loos* and the Making of a Landmark Decision

This first part traces the process through which *Van Gend en Loos* was built as the milestone of European law. In this first section, the paper considers the dense net of expectations and anticipations that precedes the *Van Gend en Loos* case (1). It then looks at the many possible meanings that could have been given to the decision itself (2). Subsequently, it shows how its interpretation is pre-empted by part of the jurists (legal advisers, lawyers and judges) implicated in the case (3), manufacturing its content, scope and future implications (4).

1. Stirring up expectations: mobilizing for judicial fiat

Far from being a thunderbolt in a calm judicial sky, *Van Gend en Loos* (hereafter, *VGL*) had been expected for a couple of years within the still restricted circles of Euro-implicated lawyers. As a matter of fact, the Court's interpretation on the juridical value/effect of the new European treaties signed in 1957 remained a point of uncertainty. As early as 1961, the Rome treaties had received their first implementation before national courts, opening the way for a flow of judicial decisions that has continued ever since.[23] To be sure, these first decisions had triggered a debate on the interpretation of the new treaties, and particularly on their legal effects. A limited range of academic and judicial circles had started debating this classic and recurrent issue of international public law. Quite strikingly, the president of ECJ himself had bluntly noted that 'the treaties contain many so-called self-executing provisions' that 'can be invoked what they are worth before domestic jurisdictions' (Donner 1962:447). Others, such as Nicola Catalano, a former ECJ judge who had just left the Court a couple of months earlier, indicated in October 1962 that 'the direct and compulsory effect of all the EC norms [was] essential for the functioning of the Community' (Catalano 1962:336). The question had quickly raised the interest of the Legal Service of the three executives of the European Communities (hereafter the Legal Service) which started scrutinizing how the national judges were resolving it[24]. Under the urge of that Service, this concern for the legal value of the treaties rapidly expanded to the pan-European lawyers' movements –the *Fédération internationale pour le droit européen* (FIDE) (Alter 2007)- that had just been created in 1961 in Brussels under its auspices. As early as June 1962, the Board of the FIDE decided hand in hand with the Legal Service to devote part of its October 1963 congress to that issue, entitling (still) quite cautiously one of its round-tables : *'le problème des dispositions directement applicables* (self-executing) *des traités internationaux, et son application aux traités instituant les Communautés'* (Pettiti 1962:29).

The interpretation of the ECJ on the matter was actually particularly expected within the Dutch section of the FIDE. Maybe because its 1956 constitutional reform had rendered its legal system compatible with the direct effect of international treaties, in November 1961, the Dutch section of the

23 Among others, the Dutch *Hoge Raad* in Grundig Radio-Werke case, 12nd January 1962, the French *Conseil d'Etat* SNCF v. French government 1962, the French *Cour de cassation* on July 11th 1962 in Etat français v. Nicolas and Société Brandt, the Administrative Court of Berlin on 26 October 1962, the Italian *Consiglio di Stato* on 7 November 1962, the *Cour d'Appel de Paris* in Etablissements Consten v. Société UNEF on 26 January 1963, the Landgericht from Munich on the 14th of January 1963, etc…

24 As of 1961, the Legal service produced every couple of months an internal working document entitled *Analyse des décisions nationales sur le droit des Communautés européennes* scrutinizing the evolution of national jurisprudences on EC law : Centre de documentation du Service juridique des exécutifs européens, 'Document de travail interne. Analyse des décisions nationales rendues par les juridictions et les autorités administratives sur le droit des Communautés européennes', 1962, HAEU / COM / BAC.

FIDE launched a working group in charge of identifying 'which dispositions of the Treaty establishing the EC are self-executing' (FIDE 1962). While other national sections of the FIDE were more keen on studying EC anti-trust legislation or the statute of the European Court of Justice, the Dutch FIDE was putting together legal practitioners from various backgrounds - legal advisers of public (EC institutions, Dutch State coalmine company) and private bodies, lawyers, and law professors- to consider the juridical potentialities of the Rome EEC treaty *article by article*. Their doctrinal efforts were offered a chance to get tested in real judicial life. As a matter of fact, the working group had barely started when the ECJ received its first preliminary ruling (a novelty that had been included in the Rome treaties) and gave a wide interpretation on the range of national jurisdictions allowed to refer to the ECJ through this procedure (*Bosch*, 6 April 1962). This new legal venue did not go unnoticed by the members of the working group; in fact, the recourse to this procedure before the European Court was initially a distinctively Dutch phenomenon spearheaded by the FIDE members[25]. Amongst them was L. F. D. Ter Kuile, a lawyer of the Rotterdam bar since 1955, legal adviser to an important international bank (the *Bank voor Handel en Scheepvaart* -Bank of Commerce and Navigation), who engaged in two test cases on the legal effect (direct or indirect) of EEC treaty article 12[26]: on the 21st of May 1962, he defended (together with Hans Stibbe[27]) two different firms -the transport company *Algemenende Van Gend en Loos* and the electro-technical equipment company *Da Costa en Schaake N.V.*- obtaining from the Dutch tax jurisdiction (*Tarifcommissie*) a preliminary ruling before the ECJ on the matter (granted respectively in August 1962 and September 1962).

Within the 5 months between the notification of the preliminary ruling before the Court (23 August 1962) and the *VGL* decision itself (5 February 1963), various competing legal theories and scenarios confronted each other, indicating the variety of paths the ECJ could actually follow in its decision, from refusing *any* direct effect to the EC treaties (States and the Commission being the only actors entitled to require the implementation of the treaties)[28] to granting them both direct effect *and* supremacy.

The signal of *VGL* relevance for European integration initially came from the Commission, and more precisely from its Legal service. What Michel Gaudet, its director since 1952, submitted to the *Collège* of commissioners is arguably the most far-reaching and ambitious account of the relationship between Law and Europe at the time. A very influential figure in the early times of the EEC, often referred to as the 'seventh commissioner', Michel Gaudet had the *Collège* fully endorsed his daring legal theory of European integration in its 204th meeting on 31 October 1962 on the matter (Rasmussen 2007). Described as a 'vast' and 'very impressive analysis of the structure of the EC' by the advocate general Karl Roemer himself, the 21-page memo presented by Michel Gaudet before the Court on 29 November 1962, proposed in fact a unique legal 'doctrine' for the *three* European treaties, only mentioning the substance of the *VGL* case at the very end. Trying to identify the irreducible specificity of the 'legal structures established by these Treaties' with regard to international law, he suggested three interrelated theses:

25 At a matter of fact, out of the first 18 preliminary rulings notified to the Court during the first six years of the Rome treaties, 15 were coming from Dutch tribunals, 1 from Luxemburg, 1 from Germany and 1 from Italy.

26 They were followed some months later by F. Salomonson, secretary of the Dutch FIDE working group and secretary of the main Dutch law journal interested in the EC at the time (*S.E.W.*) that successfully asked a Dutch administrative court for a preliminary ruling before the ECJ on the same article 12. Cf. *N.V. Int. Crediet 'Rotterdam' v. Ministry of Agriculture*, 18 February 1964.

27 In 1920, Hans Stibbe inherited the law firm founded by his father in Amsterdam. After several fusions (in 1991 with the Belgian law firm Simont § Simont specialized in Community law) and after opening several offices abroad (in Brussels, Paris, London, New York), this office will later impose itself as one of the principal law firms in the field of European law, cf. http://www.stibbe.be.

28 This position was defended by the three Member States which had presented briefs in the case (Belgium, Germany, Netherlands). On the quiproquos and later disagreements on the handling of the case within German administration see Davies (2007).

> i) 'the effect of the treaties on national law is not a question of national law, which is a matter of sovereign assessment of the national (diplomatic) authorities, but (…) it is a matter of interpretation of this law by the Court of Justice' (referred to via the preliminary reference procedure of article 177);
>
> ii) 'the national courts have to apply the rules of Community law' (because of the direct applicability of the treaties and the secondary Community legislation);
>
> iii) 'the national courts have to make EC law prevail over contrary national law, and even over subsequent rules'.[29]

With such a full-fledged doctrine, the Legal service clearly indicated to the Court the fact that the decision was viewed by the Commission as a critical moment for the future of the European Communities. The fact that many actors of the Court itself did catch these signals is confirmed by the comment Robert Lecourt's *référendaire* made a few days before the actual decision, further stimulated these anticipations by predicting a 'landmark judgement':

> 'When you know that a preliminary reference has recently been made to the Court (the case is under deliberation) concerning a possible direct 'applicability' of article 12 on the territory of the Member States, that is to say, concerning the right of the interested parties to claim the implementation of this article before their national jurisdictions, you understand the huge interest (…) not only for the Member States but for any individual if the Court is to give a positive answer to this question.' (Chevallier 1963: 1).

Beyond the various expectations of a legal clarification of the EC treaties' scope, there are therefore specific hopes for a landmark judgement that would provide Europe with a legal theory adjusted to the 'needs' of European integration process.

2. Did Van Gend en Loos *call for something ?*

In many respects however, the judgement of the European Court is far from being as clear-cut and unambiguous as it is presented today. Both the judicial empowerment vis-à-vis classic international politics of treaty implementation and the activist interpretation of the treaties, that form the backbone of today's reading of the case have to be qualified.[30] First of all, because ex-post interpretations almost always forget to relate *VGL* to the other decisions taken by the ECJ at the same time that would contradict such a reading. Indeed, it is often forgotten that while the ECJ was building his audacious jurisprudence of direct effect-supremacy, it was also establishing its restrictive jurisprudence on individual standing. Annexe n°1 shows how intricate the unfolding of both jurisprudences was[31]. Only a couple of weeks before, the Court of Luxembourg had indeed quite brutally closed the door to any extensive interpretation of individual legal standing in a decision (*Confédération nationale des producteurs de fruits et legumes v. Council of the EEC*, 14 december 1962) defeating the lawyers' claims that the 'interest to act' before the Court had to be considered in a liberal way (on the French model of the *recours pour excès de pouvoir*). The imperatives of inter-state politics had played an essential role in the arguments promoted by the advocate general Maurice Lagrange.

Judges had little room for manoeuvre within the EC treaties, Jean Monnet's former legal adviser argued ('such is the system that the jurist, for his part, might regret, but which the judge is bound to apply'). They had to be

29 Michel Gaudet, 'Note à MM. Les membres de la Commission. Objets : observations de la Commission devant la Cour de justice au sujet des demandes préjudicielles de la 'Tariefcomissie' néerlandaise', ronéo, 1963, 21p. I would like to thank Bruno de Witte who was so kind as to lend me his own copy of this precious albeit still unpublished document. The translation is ours.

30 As for today, we can only speculate on the discussions the seven judges had during the deliberation. As a consequence, their differences of opinion with regard to this judgement can only be accessed indirectly

31 Beyond the *Confédération nationale v. Council of EEC* decision mentioned hereafter, see also on the same issue, *Plaumann & Cie v. EEC Commission*, 15 July 1963, and *Glucoseries reunites v. EEC Commission*, 2 July 1964.

aware of the political consequences of their acts, particularly the 'extremely grave consequences that would follow from even a partial annulment of texts' that had 'quasi-legislative character' and had been adopted with 'considerable difficulty, and sometimes after a compromise reached in the Council'. Heralding judicial self-restraint, Lagrange recalled that 'it ought not to be the function of the judge to correct' this system (Lagrange 1962:172).

Although more cautious in its remarks, the Court however endorsed the substance of his position indicating its concern for protecting the 'political institutions' from the potentially disruptive effects of individual claims. In other words, contrarily to Stone's view (2007), ECJ judges were certainly not in the wake of a making a 'juridical *coup*'. Even after *VGL* and *Costa*, they were far from being a group of cosmopolitan individuals exclusively attached to the transnational cause of a European rule of law freed from any political constraints. The following discussion from June 1965, that is more than one year after *Costa v. ENEL*, shows that they actually still conceived of their space of manoeuvring as rather limited.

Still a political court?

In a meeting organized in June 1965 at the Court, ECJ judges and the highest representatives of national judicial systems engaged in a heated debate over the specificity of the European Court of Justice. The president of the French *Cour de Cassation* bluntly pushed ECJ judges to admit –with a number of hesitations and a certain embarrassment that the stenography of the discussion conveys- that, even after *VGL* and *Costa*, the ECJ could not act like a 'normal' court but had to grant specific status and privileges to the Member States at the expense of individuals :

'Monsieur le Président Bornet [premier président de la Cour de cassation, France] : Monsieur le Président, si j'ai bien entendu l'exposé que vient de nous faire l'avocat général (Roemer), c'est que (…) tous les requérants ne sont pas mis sur le même pied d'égalité lorsqu'ils s'adressent à la Cour de justice. (…) Si j'ai bien compris l'intérêt [à agir] est exigé du particulier, mais il n'est pas exigé des Etats, il n'est pas exigé des Commissions, ni des Autorités. Comment peut-on expliquer que tout le monde –il me semble que c'est un principe démocratique, si je puis employer ce mot- ne soit pas sur un pied d'égalité lorsqu'il s'adresse à la Cour communautaire ?

(…)

-Monsieur l'avocat général Roemer : Oui, on peut regretter la situation…

-Monsieur le président Hammes : On peut le regretter, mais c'est une situation de … qui peut donner lieu à des critiques et peut-être des améliorations, à des amendements

(…)

-Monsieur le président Lecourt : Il y aurait peut-être un élément supplémentaire qu'il faudrait indiquer ; c'est que dans un certain nombre de cas, lorsque nous sommes en présence d'un acte du Conseil, (…) la nature de l'acte se rapprocherait –enfin je suis prudent dans l'expression- certains pourraient même aller jusqu'à dire SONT des actes législatifs- de sorte que le contrôle juridictionnel peut- dans ces cas- s'exercer d'une façon plus limitée, et même éventuellement, devenir inexistante. (…) les particuliers peuvent difficilement avoir accès devant les juridictions nationales, pour mettre en cause directement la valeur d'un acte communautaire. Et, par ailleurs, ils ne trouvent pas dans ces cas, toujours la protection communautaire à laquelle ils pourraient s'attendre. Il est vrai qu'il y a le tempérament que le Président Hammes tout à l'heure indiquait, qu'ils ont toujours la possibilité –en tout cas fréquemment la possibilité- de s'adresser (…) aux tribunaux nationaux lesquels alors peuvent avoir *par le canal de l'art. 177* la possibilité de mettre en cause la validité de l'acte communautaire. Mais nous reconnaissons que c'est une voie indirecte, je ne suis pas chargé de la défendre, c'est une simple constatation.

-Monsieur le président Donner : Sans vouloir défendre [la limitation de l'accès juridique qui est ouverte par le traité de la CEE], il faut tout de même bien penser que par exemple [lorsqu'il s'agit] (…) de prescriptions générales qui sont promulguées par le Conseil des ministres, conformément au Traité il faut dire qu'un particulier ne peut pas faire appel contre des prescriptions d'ordre général. (…) A nouveau, il est difficile, le Traité en main, de permettre à des particuliers d'interjeter appel contre une décision de la Commission qui s'adresse à un gouvernement national' (Cour de justice 1965 :42-45)

Beyond this judicial context that calls for a qualification of the *VGL*'s purported revolution, the decision itself is not deprived of ambiguities. Of course, the Court clearly rejected the allegations of the three Member States (Belgium, Netherlands, Germany) who had presented memos refusing *on*

principle any direct applicability of the treaties.[32] But at this stage the judgement only recognized direct effect on the restrictive ground that article 12 entailed a 'negative' obligation for Member States (namely obligation not to act), therefore (potentially) excluding from the scope of 'direct application' large parts of the treaties according to which States had 'positive' obligations. Furthermore, it did not consecrate the specificity of the European legal order, only described as a 'new legal order in international law'.[33] Read together with *Confédération nationale des producteurs de fruits et legumes v. Council of the EEC* (December 1962), the judgement could well be taken as just another elaboration of a rule already enunciated by the Permanent Court of International Justice in his 1928 opinion on access of *certain* individuals to the Danzig courts. Last and not least, *VGL* did not express any opinion on the question of supremacy of EC law over national laws - as the Legal service of the Commission had requested. The final decision laid somewhere between the ambitious design of Michel Gaudet and the more circumspect analysis of the German advocate general Karl Roemer.

Thereby, in itself, *VGL* did not *call* for what nowadays appears to be its 'logical' consequence : the affirmation of the principle of supremacy of European law as a whole. The decision was very far from clarifying all the unknown factors regarding the interpretation of the EEC treaties. As a matter of fact, because of its thorough nature and its argumentative richness, which has been pointed out by many authors, the judgement left a wide margin of interpretation opened. The very wavering of the decision's terminology is quite telling in this regard : while the English-speaking version mentioned the 'direct effects' (ECJ 1963:13), the French one spoke about *effets immédiats* (CJCE 1963:21), the unofficial translation made by the *Common Market Law Reports* referred to 'direct effect' with no plural to it, not to mention the rich vocabulary legal scholars mobilized to comment it (*self-executing* articles, direct application, direct insertion…). This ambiguity of the decision as well as the fluidity in the lexicon not only indicates that no legal commonsense had yet imposed itself *erga omnes*, but also confirms that a wide range of possible legal futures were still open.

3. Pre-empting the interpretation: Van Gend en Loos *and its legal entrepreneurs*

This may actually be the reason why *Van Gend en Loos* was immediately taken up in an interpretative tide sparked by a handful of ECJ judges joined by both their *référendaires*[34] and the Commission's Legal service. Such an activism profoundly transformed the case. First of all because they contributed to publicize it while the decision had not attracted the attention of the general public as none of the main daily newspapers of the time, nor the Europe-centered press agency *Agence Europe* covered the information. Indeed, these efforts converged in alerting a variety of audiences and publics (legal professions, academic circles, public opinion…) on the historical importance of the decision for European integration just a couple of days or weeks after its delivering[35].

32 For a detailed analysis of the arguments of the various parties (the Dutch and Belgian State, the Commission, the advocate general Karl Roemer), see Eric Stein (1981).

33 Citations all come from the judgment as it is published in *Common Market Law Reports* (1963:127-132).

34 To our knowledge, three out of the seven ECJ judges and one out of the two advocate generals did not give any direct comment on the decision : Karl Roemer, Louis Delvaux, Rino Rossi, Charles Leon Hammes.

35 It would be interesting here to further investigate the different signs and markers (the classification of the decision, the communication of the Court, etc.) which, leaving aside the content of the decision, are important to the judges and legal circles - an apparently silent communication mode of the Court, but which does not go unnoticed by those who are familiar with the judicial world. On this topic, see Evelyne Serverin (1985).

ECJ Judges' and référendaires first interpreters of *Van Gend en Loos* : a chronology

It is possible to trace a precise (although probably incomplete) chronology of the various interventions of judges, *référendaires* and members of the Legal service publicizing (as well as re-framing) the decision before a variety of audiences :

-6 February 1963 : **Otto Riese**, ECJ judge at the ceremony at the Court for his departure and the welcoming of the newly-elected German judge, Walter Strauss: 'The Treaties are the constitution of the European Communities and they create a specific body of law. In these days, the Court has pronounced itself in an important decision on the consequences that stem from this as far as its relationship with national legal systems is concerned'[36]

-21 February 1963 : **Michel Gaudet**, head of the Commission's Legal service, before the *Conférence du Libre barreau de Liège* : 'The main novelty of EC law is related to the reach that is granted to the articles of the treaty. The 5 February decision of the Court is *of the highest interest* in this regard' (Gaudet 1963 :24).[37]

-23 February 1963 : **Maurice Lagrange**, ECJ advocate general, before the French section of the FIDE: 'Concerning the 'self executing' character of the treaty, I have to call immediately your attention to a recent Court decision, 26/62 of the 5 February 1963. It is a decision *of the highest importance* since it considers that the articles of the treaty has a normative power creating rights as well as obligations vis-à-vis the citizens of the various Member States' (Lagrange 1963 :10).

-23 February 1963 : **Robert Lecourt**, ECJ judge in French leading newspaper *Le Monde :* 'In the core of the Brussels' crisis, the judicial world has just brought *an important stone* to the building of the European entity'.

-6 April 1963, **Alberto Trabucchi**, ECJ judge, Distinguished lecture at the University of Ferrara : 'The theme [the building of a specific legal order at the international level] and its boldness are certainly not new but they have found a support in the definition given by the Court in a decision that *will have a great echo*: I am speaking about the 6 February 1963 decision of the Court' (Trabucchi 1963 :259)

-Spring 1963, **Nicola Catalano**, former ECJ judge (he had left the Court a year before) in one the major Italian legal journals, *Il Foro padano* : 'a rightful, well founded and cautious decision' (Catalano 1963 :32)

-Spring 1963, **Paolo Gori**, judge Trabucchi's *référendaire*, in one of the major Italian legal journals, *Foro italiano* : 'We consider this decision [Van Gend en Loos] costitute *one of the most important contribution* and will be remembered as a landmark in the affirmation of EC law' (Gori 1963:10)

-Spring 1963, **Andreas Donner**, ECJ's president, in the first issue of the Dutch-British EC law journal *Common Market Law Review :* 'Even more interesting is another decision given some weeks ago. (…) In its decision of February 6th 1963, the Court (…) has accepted that (article 12 of the treaty) is self-executing and becomes therefore immediately part of the internal law of the Member States and applicable in local courts is of *cardinal importance* for the entire operation of the EEC Treaty' (Donner 1963:13)

But most of all, this exercise of judicial ventriloquism by which the judgement is put to speaking ('the-Court-said-that…') turned the ambiguous *VGL* into a clear-cut and far-reaching *judicial fiat*. On the whole, it all occured as if a kind of second judicial deliberation had been initiated that would, this time publicly, fabricate the overall reach of *Van Gend en Loos*, by extending in manifold ways the sense and the validity of its 'message', above and beyond the relatively prudent and balanced considerations of the decision itself. Even if there are no signs of a pre-meditated collective strategy, four judges and one advocate general together with their *référendaires*, former judge Nicola Catalano, and the director of the Commission's Legal service Michel Gaudet swiftly converged in giving *VGL* a legal and political saliency. The multi-faceted activism of *part* of the jurists that had taken part to the case (hereafter referred to as *ECJ paladins or promoters*) was essential in securing an extensive interpretation of the Court's decision. The elements that were crucial in such a pre-empting of *VGL*

36 Otto Riese, 'Ansprache von Herrn Professor O. Riese anlasslich seiner Verabschiedung am 6 February 1963' in HAEU / CEAB 2 / 1137.

37 The stresses are ours.

'hermeneutic space' are analyzed hereafter[38]. The first one relates to the very position of these ECJ paladins. As each of them had taken part to the case (as judge, law clerk or even as litigant in the case of Michel Gaudet), they could claim direct access to the 'authentic' sense of the decision. As there were (almost[39]) no dissenting opinion was expressed publicly in the following weeks[40], their authority with regard to asserting what *VGL* 'really meant' remained virtually unchallenged. Protected by the secrecy of the judicial deliberations, they were in a privileged position when it came to persuasively stating what 'the decision recognized implicitly' (Trabucchi 1963). The second element that helped these judges secure the interpretation of the case is an activism by proxy through their own *référendaire* who were in an even more favourable position in this respect as they had been indirectly associated with the judicial deliberations, but had more freedom to openly speak about the case. This is particularly important as they played a crucial role at the time in the legal commentary of ECJ case-law. While finishing a Ph.D precisely on ECJ preliminary rulings (Chevallier 1964b), Roger-Michel Chevallier,[41] Robert Lecourt's *référendaire,* was holding a regular Euro-law chronicle in the French *Gazette du Palais*, and, together with the Belgian Gérard Rasquin (Hammes's *référendaire*), wrote numerous doctrinal articles on the Court's procedures and case-law. Paolo Gori, Alberto Trabucchi's *référendaire*, a Ph.D in international law from the University of Florence and Harvard Law School, and Sergio Neri, another Italian *référendaire* who also held a Ph.D in international law, were respectively commenting ECJ decisions for the *Foro italiano* and the *Foro padano*. One could add former judge Nicola Catalano to this group, for he had just left the Court and had become one of the most active commentators of the Court's decisions in major Italian, French, and Belgium law journals. In such a position, they could echo as *commentators*, what they had contributed to build as *référendaires*. The third element that helps explain how these ECJ promoters monopolized *VGL* exegesis lies in the position they had in the nascent transnational academic circles on EC law. Most of them were key members of that emerging community of scholars as both the Court and the Legal Service of the Commission had played a critical role in framing (and subsidizing) this *milieu* from the very beginning of the EC. Quite naturally then, *référendaires* and judges engaged in a sort of academic tour spreading the word. Two months after the decision, in late April 1963, no fewer than 13 members of the Court (5 judges out of 9, 8 *référendaires* out of 9) took part in the important conference held at the *Institut fur das Recht der Europeaische Gemeinschaften* in Cologne on *Ten years of ECJ jurisprudence*; and in October 1963, eight of them (3 judges, *5 référendaires*) attended the second FIDE congress[42] devoted to *The problem of self-executing dispositions of international treaties and its application to the Treaty establishing the EC* –a topic decided upon jointly with the Legal service of the Commission. Together with two litigants directly involved in the case, the Commission's

38 For a sociology of judicial entrepreneurship, see Antoine Vauchez (2004 :71-84) and Wayne MacIntosh, Cynthia Kate (1997).

39 I identified only one public dissenting opinion to this interpretative activism coming from ECJ *référendaire* Sergio Neri, presumably echoing the viewpoint of his judge Rino Rossi, who denied the view, held by many of ECJ paladins (see II/§5 hereafter), that there be any element in the decision enabling to see supremacy of EC law as a logical consequence of VGL: 'While the Court has endorsed the Dutch theory of self-executing of *specific* international norms, it is not possible to affirm that it has accepted supremacy' (Sergio Neri 1964:235).

40 To our knowledge, three out of the seven ECJ judges (Louis Delvaux, Rino Rossi, Charles Léon Hammes) and one out the two advocate generals (Karl Roemer) did not participate to this ex-post interpretative activism and kept silent.

41 At the time, Roger-Michel Chevallier was completing a Ph.D at Sciences Po Paris defended in July 1964 under the supervision of Prof. Paul Reuter, precisely on article 177 and the preliminary ruling procedure before the ECJ.

42 At the time, the FIDE gathered between two to three hundred legal professionals of all kinds (ECJ or national judges, professors, jurisconsults, lawyers, etc.) coming from different political, administrative, academic, judicial and -to a lesser extend- economical segments of European polity. This association has become a real crossroad for the different types of European elites at the same time as it is at the crossing of the national and Community elites.

jurisconsult Michel Gaudet, and Van Gend en Loos's lawyer L.F.D. Ter Kuile[43] (but in the absence of the more sceptical Karl Roemer, the advocate general), they actively promoted the relevance of *VGL*'s case for interpreting the whole architecture of the treaties. The last and not least element that put these jurists in a privileged position as far as interpreting *VGL* is their specific *national* social networks. Quite characteristically, these pilgrims of the Pan-European legal cause primarily took action in their own national political, legal and academic circles. It comes as no surprise that former Minister and Member of Parliament Robert Lecourt published his opinion in *Le Monde*, and did so again several times during his years in Luxembourg. Similarly, judges Antonio Trabucchi and Andreas Donner, two academics, both commented the *VGL* judgment in their academic settings - the former at a conference in his home university of Ferrara (he had taught there in the late 1930s), and the latter in an editorial to the first issue of the Dutch-English EC law journal *Common Market Law Review*. Such diversity amongst these channels of mobilization mirrored the various sorts of social capital the first ECJ judges had. The range of national but also Community resources they could collectively count on - a range that, at the time, was almost as large and diversified as the one of the Commissioners as recently shown by Antonin Cohen (2007) – allowed for a quick enlargement of the social *fora* which had an interest in defining the relationship between Law and the European Communities.[44]

Through their interpretative activism, *VGL* ceased to be the mere resolution of a dispute between the transport company NV Algemene-Van Gend en Loos and the Dutch tax authorities, nor just an interpretation of article 12 of the EEC treaty on customs duties. It soon came to represent a trail-blazing judgement founding EC law and its relationship with European integration.

4. Manufacturing content : **Van Gend en Loos** *and its legal 'implications'*

Although addressed to a variety of publics in each of the six Member States, and undertaken by actors with (relatively) heterogeneous social characteristics, this multi-faceted exegesis of *VGL* actually converged on two elements that became tightly associated with the decision : i) as the cornerstone of the emerging body of EC law, *VGL* determined the path it ought to follow; ii) in a context in which Brussels was undergoing many successive crises, the decision entailed a 'clear' political meaning.

Beyond some differences, all ECJ paladins indeed agreed to endow *VGL* with *implications* that went far beyond its specifically judicial resolution of the dispute, or even its legal nucleus (that is, the direct applicability of article 12 of the Treaty before domestic jurisdictions). By establishing rights and judicial capacity for individuals, it had paved the way for a 'new body of law' – *'un nuovo diritto'* said judge Trabucchi (1963). As such, *VGL* entailed its own logical and necessary follow-up: the supremacy or prevalence of EC law over national law. In other words, the decision was presented as announcing successive stages in the ECJ's case-law; it was 'the *first arch* of a bridge meant to overcome entirely the barrier between the sovereignties of the different Member States' (Gori 1963:17). For this little transnational group of exegetes promoting *VGL*, the decision was to be considered as a cornerstone for the Court's future jurisprudence. Just as judge Trabucchi identified the next obstacle - 'the serious problem concerning the coexistence of national and EC law remains' (Trabucchi 1963), former judge Catalano explicitly urged the Court to solve it - 'a decision of the ECJ in this matter could well be necessary' (Catalano 1963:36). Playing on the ambivalence of legal discourse –at once performative and normative, descriptive and prescriptive, informative and prospective-, they engaged in defining what ECJ case-law was and would become after *VGL*

43 Presumably as a tribute to his achievement in his *Van Gend en Loos* test-case, L. F. D. Ter Kuile was representing the Dutch section of FIDE in that debate (L. F. D. Ter Kuile 1966).

44 By the spring of 1963, the notoriety of the decision was established enough for Homer G. Angelo (1963:12), the European correspondent of the *American Bar Association* and a lawyer established in Brussels, to indicate : 'on February 5, 1963, the Court of Justice handed down an interlocutory ruling which may prove for the European communities to be a landmark equivalent to *Marbury v. Madison* or *McCulloch v. Maryland* in American constitutional history' (Angelo 1963:12).

particularly as far as the issue of supremacy of EC law was concerned. While Paolo Gori stated that 'the rule *will be* the general rule of prevalence of special law and special jurisdiction on the law and jurisdiction of common law' (our emphasis, Gori 1963:18), the president of the Court himself explained boldly that the issue was almost solved already as the Court 'would presumably have ruled that the E.E.C. Treaty has precedence [supremacy] over national law' (Donner 1963) in *VGL* if it had been questioned on the matter. Caught up in this net of descriptions, predictions, and anticipations, *Van Gend en Loos* therefore became not only a foretaste of EC law's future but also a far-reaching manifesto calling for a number of further steps in that 'direction'.

In this pile of interpretative strata, a second cognitive saliency emerges: the political relevance and timeliness of the decision in the context of the EC institutions' crisis. With the French government adjourning the British membership negotiations a couple of days before (on 28 January 1963), thus adding to the tensions that had already emerged over the Fouchet plan a year before, the diplomatic positions of the various Member States hardened. Quite strikingly in the case of a legal realm typically attached to its being exterior to social and political junctures, this heated political context quickly found its way into the interpretation of *VGL*'s relevance. The first reference to the inter-governmental crisis actually came just one day after the *VGL* decision was delivered, on 6 February 1963, in the presidential address welcoming a newly-elected ECJ judge: 'since the political impetus [for European integration] will possibly slacken for some time to come, it is incumbent upon the organs [of the Communities] to be all the more conscious of their role as the institutionalized carriers of the European idea' (Donner quoted in Feld 1964:116). This transgression of the separation of political and judicial orders is also made by the director of the Commission's Legal service, Michel Gaudet: 'while the statesmen discuss the political future of Europe, without sparing the weight of their authority and the fiery of their convictions, the lawyers of our six countries dedicate themselves to the *birth* of a European *law* which is discreet, yet full of promises' (underlined in the text, Gaudet 1963). A couple of weeks later, ECJ judge and former political leader Robert Lecourt went further, indicating ECJ's case-law as one of the possible fuel for a lasting European integration: 'in times where the establishment of a political construction is at a standstill, the field is clear to accomplish other, certainly more modest, progresses but (…) which might be determinant (…). The practical Europe, which evolves under the influence of mere facts, could soon make political Europe inevitable.' (Lecourt 1963:31). On the whole, therefore, *VGL* is endowed with very extensive legal and political potentialities that made it a salient point for anyone wishing to conceptualize the functioning of this nascent Europe and of the Europeanization processes.

III. The Genesis of '*Van Gend en Loos-Costa*' Doctrine

In turn, the extensive interpretation given to *VGL* triggered further expectations concerning the building of an authentic European rule of law where individuals and States would stand as equal, while at the same time fueling some first oppositions to such a project (1). The *Costa* case originated in such critical context where the (legal but also political or economic) stakes of legal integration got progressively dramatized (2). However, spearheaded by the jurists that had already manufactured *VGL*, the interpretation of the *Costa* verdict is in line with the post-*VGL* comments, paving the way for a true doctrine of EC law (3).

*1. Post-*VGL *hopes and ambitions : legal activism in the* Costa *case*

This emerging body of legal doctrine was however broad and vague enough to allow very different expectations and hopes. One point that remained rather unclear was the role individuals should actually play in the EC political and legal system and the extent to which direct effect should and could concern the political core of the treaties (e.g. the decision-making process). A variety of future paths were forecast as well as auspicated. Despite the first ECJ decisions on the matter (*Syndicat des producteurs v. EEC Council*, 14 December 1962; see *supra*) gave a very restrictive understanding of

individual standing, *VGL*'s paragraph on the contribution of individuals in the implementation of the treaties[45] had been read by some as setting the stage for legal actions against any sort of violation of the spirit or letter of the treaties by the Member States or the Commission (including the more political aspects concerning the functioning of the EC institutions and their internal politics). Among the promoters of this extensive reading of *VGL*, one can find the – at the time - 43-years-old law professor Giangaleazzo Stendardi and the 62-year-old lawyer Flaminio Costa, both members of the Milan bar, who in 1963 engaged in the famous *Costa v. ENEL* case[46] that would spark an unprecedented buzz around legal issues of European integration. Far from being a rather irrational dispute over a contested 1,925 *lire* bill issued by the Italian electricity company ENEL (roughly 22 pound sterling of the time, says the *CMLR*, 1964:427) led by uncontrolled, 'litigious' (Stein 1965: 491), if not foolish, lawyers (as most of the accounts seem to indicate nowadays), their undertaking was grounded in a consistently activist conception of the rule of law. Their previous records and statements cast them as liberal lawyers (in the European sense of criticism of State intrusion in the area of both individual freedom *and* economic market). Individual standing before the two European Courts, both of them argued in their various interventions, were critical elements for bringing about a *Stato di diritto* in Italy. At the time, Costa was calling for his government to accept 'with no more delays the individual petition right before the European Court of Human Rights' (Costa 1966:735). Stendardi, a constitutional law professor, had theorized the role of individuals in legal systems, particularly at the European level, as a quasi-substitute for political accountability. In various writings before and after the *Costa* case, he indicated that 'it is not necessary to have a Parliament directly elected by the people for the citizen to be protected; it only requires the existence of procedure capable of protecting the individual vis-à-vis the [European] organization' (Stendardi 1958:18). Test-case was a familiar strategy to him. An early analyst of the Italian Constitutional Court (in 1955 he published one of the very first books on the Court), he had immediately seized (however unsuccessfully) the opportunity opened by its creation in 1956 to defend freedom of speech through a preliminary ruling before the Constitutional Court (23 June 1956, the third decision of the Court). Similarly, when claiming -as early as 1958- that the ignorance of EC law supremacy was 'a substantial violation of the treaties', he prophetically stated that 'it will be necessary to plead judicially such an issue, in order to provoke a decision, for example of the European Court of Justice' (Stendardi 1958). This strong belief in Law as *the* paramount tool for citizens (before vote)[47] was naturally mobilized in this context against the December 1962 Italian nationalization law. As a matter of fact, Stendardi, who had been adjunct professor at the private Milanese business school *la Bocconi* in the 1950s and was at the time an active member of the Italian liberal party in Milan,[48] was highly critical of the on-going process of in Italy. In an article published in late 1962, Stendardi argued that such nationalization was both unconstitutional and contrary to the EC treaties and that the most likely 'legal consequences of these violations [would be] a preliminary ruling before the European Court of Justice' (Stendardi 1962:60).

It was therefore as a natural continuation of both their professional litigation know-how and their political commitments (Flaminio Costa was both the plaintiff and his own lawyer in this case), that both Costa and Stendardi asked a Milanese *giudice conciliatore* for a preliminary ruling before the ECJ on the legality of ENEL's nationalization. Arguing that individuals could solicit the Court on the

45 'The fact that article 169 and 170 of the EEC treaty enable the Commission and the member states to bring before the court a state which has not fulfilled its obligations does not deprive individuals of the right to plead the same obligations, should the occasion arise, before a national courts' (VGL in CMLR 1963:13).

46 Giangaleazzo Stendardi only participated to the case before the Italian Constitutional Court.

47 In point of fact, he urged each European citizen to 'ask himself : what have I done, what am I doing for the European norms to be implemented ?' (Stendardi 1958:17).

48 The *Partito liberale italiano* a small right-wing party closed to corporate interests had gained an unprecedented momentum at the time in Milan (around 20% in 1963-64 elections) actively campaigning against the politics of the centre-left-wing government and, particularly, its nationalization policies. Prof. Giangaleazzo Stendardi was on the party's list at the municipal elections in Milan in 1963 and eventually entered the municipal council in 1969. See Massimo Emanuelli (2002).

grounds that the Italian State had not met its obligation of consulting the European Commission before engaging into the nationalization process (articles 93 and 102 of the EEC treaty), they tested an extensive interpretation of the scope of direct effect that would have enabled individuals to enter the core of the EC political process. The fact that the Milanese judge did actually engage in a preliminary ruling before both the ECJ and the Constitutional Court (order of 16 January 1964) seemed to lend credibility to their petition.

2. Waiting for **Costa***: dramatization strategies*

While *VGL*'s emerging doctrine was stirring up more or less daring hopes as for the role of individuals, it was simultaneously contested in its scope. Various judicial decisions coming from national jurisdictions had cast doubt on *VGL*'s capacity to redefine on its own what EC law was all about. Various eminent legal scholars, particularly in Germany, contested the fact that the EC legal system could be regarded as 'independent, autonomous and as such truly supranational'[49]. Although Billy Davies notes that, at the Congress of German Public Law Professors held in 1964 in Kehl, there was a noticeable shift in the direction of pro-integration views, a large share of the legal doctrine continued to look at the Court's rulings with scepticism, if not hostility. Moreover, while the French *Conseil d'Etat* in its *Shell-Berre* decision of June 1964 had considered the preliminary ruling (art. 177) as an optional possibility (*acte clair* theory), two decisions, one by a German Tax Tribunal (November 1963) and the other by the Italian Constitutional Court (7 March 1964), had denied, on different grounds, that 'supremacy' could come out of 'direct effect'. In the brief he presented before the ECJ in the *Costa* case, the Italian government actually went as far as denying both 'supremacy' and 'direct effect' (Stein 1981). It is not the case to analyse here further these various judicial disagreements that have already been extensively studied[50]. Rather, I intend to show the various reactions to these decisions and, particularly, the dramatization strategies engaged by various actors situated in-between the legal and the political realms that tried to politicize the issue at stake. The unexpected intervention in the debate of the president of the Commission Walter Hallstein in June 1964 was probably critical in dramatizing the whole issue and reinforcing the feeling amongst various Euro-implicated groups that the very fate of European integration was endangered in the matter. A professor in private international law for almost 20 years, co-editor of the *Deutsche Juristenzeitung* and member of many learned societies (International Law Association, German association for comparative law…), Hallstein had maintained strong links within the legal academia[51] and evidence shows that he was closely following the on-going debates over EC law.[52] In a context where the political development of Community institutions experienced its first block, he took advantage of his presentation of the EEC Commission annual report before the European Parliament on 18 June 1964 (that is to say one month *before* the *Costa* decision), to present his legal doctrine of Europe. His 'theses' were all grounded on the fact that 'the regulation of EC law prevails, regardless of the level of the two orders where the conflict appears', therefore including prevalence of all EC regulation over national constitutions (Hallstein 1964:5). This dramatization strategy went on with the memo presented by the Legal Service of the Commission in the *Costa v. ENEL* case that indicated its 'vivid apprehensions' after the Italian and German adverse judicial decisions (quoted by Lagrange 1964:1179). A couple of days after Walter Hallstein's bold statement on supremacy, on 24 June 1964, ECJ advocate general Maurice Lagrange presented his conclusions on *Costa*. He stressed the 'disastrous –the word is not too strong-

49 On this heated debate within German legal academia, see Billy Davies (2007).

50 Karen Alter describes in detail these judicial conflicts over 'supremacy doctrine' (Alter 2001).

51 During his mandate at the head of the Commission, he published several legal essays and was himself offered his own *Festschrift* in 1966.

52 Billy Davies notes that he was kept informed through briefs and summaries on the on-going debates in German legal academia. More generally, different studies have shown receptiveness of the President and of his cabinet to academic studies likely to legitimate the reinforcement of European institutions. On the case of American functionalists' literature and the European Commission, see White (2003).

consequences of such a jurisprudence [the one by the Italian Constitutional Court] on the functioning of the institutional system established by the treaty and therefore, on the very future of the common market' (Lagrange 1964). The controversy seemed heated enough for the European press agency *Agence Europe* to publish a special dossier on the issue on the 1 July 1964 putting together the statements of Lagrange, Hallstein and an article of former ECJ judge Catalano harshly criticizing the Italian Constitutional Court's decision on *Costa*.

3. From Costa *to* VGL *(back and forth) : the birth of a doctrine*

One of the effects of this multi-faceted dramatization of the stakes of the awaited *Costa* decision is that the controversy over the nature of EC law for the first time spilled over beyond the legal arenas bringing together a number of Commissioners, EC high civil servants, academics and member of the European Parliaments. By their convergent commitment, they made of the 'supremacy' issue *the* condition for the survival of the European Communities (whereas an adverse decision would 'deprive the treaties of their substance'). In such a context where the Court was brought to the forefront of EU politics, it comes as no surprise that its *Costa v. ENEL* decision (released on 15 July 1964) was immediately seen as a landmark decision raising interest and concern far beyond the restricted circles of EC law specialists -although again none of the main European newspapers actually mentioned the fact on the following days. Even if it is still impossible to speculate on the internal balance within the Court itself,[53] its decision resolutely sides with the pro-integration legal advocates. Admittedly, *Costa* is strikingly assertive when it comes to defining legal principles, reiterating most of the arguments expressed by the Commission in its memorandum on *Van Gend en Loos*. Not only does it set out the prevalence of EC law, but this time it does it in a particularly clear, almost provocative manner, with EC law being defined as an 'integral part of the legal systems of the Member States' organizing a 'permanent limitation [by the latter] of their sovereign rights' (ECJ 1964:1141).[54]

However, it would be misleading to consider the judgement as a sort of *avant-garde* standpoint. In many respects, it remained quite moderate, if not protective of States' interests. As a matter of fact, it proved disappointing to many among the most activist European lawyers, including the plaintiffs Flaminio Costa and Giangaleazzo Stendardi, who had hoped the treaties 'would have helped individuals to stand as protagonists in the economic field enabling them to avoid their subordination to an *economia dirigista*' (Stendardi 1967:109). Not only had the Court remained very cautious as far as the heated issue of nationalization was concerned but also 'the 6/64 decision of the Court has shown – as Stendardi commented bitterly- the tendency to limit the cases in which the individuals can bring treaty violations before the ECJ' (Stendardi 1967:121). Where the plaintiffs had claimed that the procedure for the prevention of distortions of competition or the ones before the Commission regarding the removal of state subsidies had been breached, the Court said that these articles of the treaties only concerned member States and were not opening any individual rights (Stein 1965: 501). Compared with the very wide range of expectations that had crystallized around the Court's case-law, the outcome could well be considered a quite balanced one. Deprived of the justiciable rights enabling them to intervene in the very core of the inter-institutional and inter-state processes (consultations, recommendations, sanctions…), individuals were only allowed a secondary role in the implementation of the treaties' obligations. In other words, if 'supremacy' seemed to be fully consecrated in *Costa*, the Court had nonetheless remained cautious enough : i) '*not* to embrace the power specifically to declare

53 In-between the two decisions, the composition of the Court had undergone only one change with the, to our knowledge, still unexplained resignation of the German judge Otto Riese only one day after the publication of the decision *Van Gend § Loos* (but after he had taken part to the judicial deliberations). He was replaced by Walter Strauss, former State Secretary of Justice in the Adenauer government.

54 As a matter of fact, the moderate dualist approach advocated by Maurice Lagrange in his conclusions is overruled with the Court decisively siding with the monist conception of supremacy ; namely that no revision of the Constitution was needed in countries like Germany and Italy since European law *was already* integrated at the highest (normative) rank of each of the member state's legal system. For further discussion, see Bruno de Witte (1984).

a given law invalid' (Stein 1965:514); on the model of the US Supreme Court ; ii) to restrict the scope of direct effect, thereby keeping individuals at bay when it came to implementing the most heated political parts of the treaties[55]. In that, *Costa* was just as much the heir of his *Syndicat des producteurs v. EEC Council* restrictive jurisprudence on individual standing (ECJ, 14 December 1962, abovementioned), as it was of *Van Gend en Loos*.

Quite remarkably though, Costa and Stendardi's voices remained quite isolated in the dense web of legal comments and praises that surrounded the Court's decision. Just as they had pre-empted the interpretation of *VGL*, the ECJ paladins seized that of *Costa*. Ignoring the various hopes and ambitions their own post-*VGL*'s comments had ignited, they read the decision as a *retrospective* confirmation of *their own prospective* interpretations of *VGL*'s content and implications. Just as they had prophesied that 'supremacy' would be *VGL*'s following step, they immediately read *Costa* as 'undoubtedly a continuation and development of the 26/62 decision [*VGL*]' (Gori 1964:1077). After having put 'supremacy' on the Court's agenda a couple of months before, ECJ paladins now focused their exegeses of the *Costa* decision on that specific issue : 'the fundamental point that had to be solved' (Catalano 1964:152) which 'conferred to the decision its critical importance' (Gori 1964:1075). The fact that 'supremacy' of EC law could remain an abstraction as the Court had: i) refused to consider *in concreto* the compatibility on Italian nationalization law with EC treaties; ii) not departed from classic public international law impeding individuals to take action within the province of inter-governmental relations, was *not* regarded as a problem as it sounded like a cautious choice (Catalano 1964:155)[56].

The ECJ promoters essentially did not consider that this judicial self-restraint could actually weaken the political relevance of the Court. To the contrary, the definition of the Court as a substitute for the many shortcomings of political integration gained momentum. *Rapporteur* of the *Costa* deliberations within the ECJ, judge and former prominent French political leader Robert Lecourt who would be in command of the Court from 1967 to 1976 was one of the most committed choirmasters in this undertaking. Less endowed in legal capital than many of the other judges and *référendaires*, Lecourt soon became very active in promoting the Court beyond the realm of legal academia, particularly through a series of newspapers articles in *Le Monde*. Although we have no accounts of Lecourt's encounters with the functionalist literature[57], his 1964 conference before the French section of the FIDE entitled 'The role of law in unifying Europe' is arguably the first systematic conceptualization of the Court's contribution to the dynamics of (what we would call today) Europeanization. The relationship established in the '*VGL-Costa* doctrine' between the Court and individuals through preliminary ruling, is depicted as triggering an incremental process of integration of the Six countries that political leaders will eventually have to endorse at some point:

> The legal method to unify Europe lies in the fact that EC law has the effect of multiplying relations, associations, transactions beyond borders, as well as of triggering narrow interrelations of activities, interests, and human relationships. The resulting interpenetration of populations cements *in concreto* a lively Europe become irreversible. Thereby, this process will necessarily call for a political coronation required by the very needs of the population ruled by this unique body of law. (Lecourt 1964 :22)

Lecourt conceptualized in details what he and others had announced in still rather general terms after *VGL* : the judicial route to integration had to be conceived of as the best way to circumvent the on-going inter-governmental conflicts:

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55 In Joseph Weiler's words, 'many obligations did not produce direct effect and rested in the province of inter-governmental relations, violation of which remains a matter for the Commission and the Member States' (Weiler 1981:301).

56 Monaco's *référendaires*, Paolo Gori, however, seemed to worry about the fact that 'by limiting the possibility for individuals to claim before national judges violations to EC law', the decision 'had the effect of limiting, at least in practice, the scope of the principle of supremacy of EC law' (Gori 1964 :1082).

57 It must be noted that the first book engaging in a reflection on the role of the European Court in a functionalist perspective is posterior. Cf. Stuart Scheingold (1965).

> It may seem excessive to present Law as a particularly efficient tool to unify Europe. It is however worth the demonstration. It may indeed offer the chance to acknowledge –and, who knows?, to adopt- this new path, protected from the great controversies, in order to achieve the goal the Six Member States have established (Lecourt 1964 :5).

In many respects, therefore, the ECJ paladins echoed and amplified their own predictions. One decision being seen as the mere endorsement of the other's 'logical consequences', the commentators of the *Costa* case meeting the predictions they themselves had made in the wake of *VGL*, the two decisions got solidly linked together becoming thus one unique cornerstone of a far-reaching doctrine where the Court stood in-between Law and integration.

IV. 'New Style' Law and Politics: EC Judicial Rule of Law

As it gave new and brighter *raison d'être* within the EC to a variety of political, administrative and academic actors with strong legal capital, this doctrine found many supports and relays outside the legal *fora* (1). The dynamics of these mobilizations fuelled by the various sorts of legal professionals present within the EC polity - be they legal advisers within EC institutions or national bureaucracies, judges, law professors or gentlemen-politicians of law – was critical in imposing this model as a new common sense of Europe (2). Their convergent theorizing of the essential functions of the ECJ's case-law in European integration (3) simultaneously offered to this otherwise heterogeneous ensemble of Euro-lawyers an opportunity to express and explicit its existence as *a* group (4).

1. Amici curiae: academic and political supports to the 'VGL-Costa *doctrine'*

Had it not been heralded within the various social fields that made up the EC at the time, the emerging legal doctrine of Europe drawn from *VGL-Costa* exegeses would have stayed in the realm of abstraction if it. As a matter of fact, in the context described earlier in this article (see §1), these salient judicial decisions gave to various political, economic, bureaucratic and legal actors an opportunity to reframe their pan-European ambitions in new (legal) terms. In this progressive rallying of differently situated actors to the '*VGL-Costa* doctrine', a new common sense of the European Communities was consolidated as each of these mobilizations enriched this nascent paradigm with new dimensions and scopes at the core of the European construction.

This nascent paradigm encountered first of all a legal public. Euro-implicated jurists were all the more receptive that it provided the occasion to rethink the *raisons d'être* of a legal expertise that had been so far which confined to a relatively limited range of tasks (essentially the unification of national legislations, see §1) and had stayed dependent on the political will of the Member States. To the contrary, the 'magic triangle' that was formalized in that period offered lawyers a possibility to untie the development of European law from political supervision. This caused a shift in focus of this nascent 'European law' discipline from a comparative analysis of national laws (aiming at identifying common principles) to the study of the relationships between EC law (and ECJ) and national law (and courts) where it seemed that the fate of Europe was now at stake. As it defined the specificity of the European legal order, the *Van Gend § Loos* and *Costa* doctrine gave EC lawyers the opportunity to assert their *own* 'specificity' (particularly vis-à-vis their colleagues of comparative and international law). For the whole network of specialized academic institutes created at the universities of Brussels (1961), Cologne, Hamburg, Leiden, Liège (1964), Padova and Paris (1963), the newly founded doctrine was an opportunity to add an academic *raison d'être* to the political impetus that helped their creation[58]. This is just the same for the first journals specifically devoted to EC law which were launched in the same years in each of the Six member states, be it the *Rivista di diritto europeo*

58 A first generation of institutes had emerged right after the Treaty of Paris at the University of Saarland (1954), Nancy (1950) and Turin (1951).

(1961), the *Common Market Law Review* (1963) -whose inuagural editorial stressed the 'high importance' of the decision *Van Gend § Loos* [59]- and the *Cahiers de droit européen* (1965), the *Revue trimestrielle de droit européen* (1965) and *Europarecht* (1966). This reorientation of academic debates from comparativism to case-law analysis is further sustained by the blossoming of national judicial decisions implementing the Treaty of Rome, giving rise to a breathtaking judicial story which has caught the attention of Euro-lawyers ever since. As a result, from the 1960s onwards, progress likely to build a European common law was expected from the *'judicial'* realm (the relationship CJCE-national courts), rather than from the 'legislative' institutions (the Commission and the Council). The conference on the relationship between EC law and national law organized by the College of Europe in Bruges in April 1965 shows the convergence on this new academic agenda of a 'group of EC law specialists, some being actual 'Founding fathers' of the Community, others being former or current members of the Court of Justice, high civil servants of the EC or university professors (…) [embodying] the wheeling flank of the army of European jurists' (de Vresse 1965:399). In Bruges, an observer noted that 'whereas the Court of Justice's decision of 5 February 1963 in the case *Van Gend & Loos* has been at the heart of the debates in The Hague in October 1963 [at the congress of FIDE, abovementioned in §4], this time the decision of 15 July 1964 in the case *Costa v. Enel*, where the Court clearly affirmed the primacy of EC law in a well-founded manner, served as a background to the debates [in Bruges]. Nobody in The Hague challenged the liberal orientation of the decision *Van Gend & Loos*, everybody in Bruges recognized the necessary primacy of Community law' (Louis 1965:74). In the uninterrupted flow of studies, conferences and dissertations on the articulation of EC law and national laws, the two decisions very rapidly took on the status of a 'cornerstone' of the emerging European academic field.

However, the resonance of this '*VGL-Costa* doctrine' was certainly not confined to the legal realm. As a matter of fact, Walter Hallstein, probably because he had been committed in the pre-*Costa* debates, was among the first to defend this extensive reading of the two Court's decisions. Quoting *Van Gend en Loos* and *Costa v. ENEL* (he actually only referred to these two decisions) no less than six times, literally paraphrasing some of the decisions' formulations in several occasions (Hallstein 1964b:10-11), he contributed to turn the two cases into the very bedrock of this 'Community of law', an expression he had already used in 1962 but in rather vague terms (quoted in Schonwald 2001):

> Quite strikingly, in packaging altogether the direct effect ('the individual is a legal subject (…) [who] as a citizen and a subject of the Community is subjected to legal orders in the same way as in the constitutional system of states of federal nature') and the prevalence (if there were no supremacy, the very 'functioning of the Community would be put into question'), he related them to article 177 as 'the preliminary rulings of the Court of Justice guarantees a uniform interpretation of EC law which is faithful to the finality of the Treaty' (Hallstein 1964b:8-10).

The fact that the legal controversy was intruding into the political realm was confirmed and reinforced by the active role played in the European Parliament by various pro-integration political leaders that stood, just like Walter Hallstein himself, at the crossing of the legal and political arenas. The first to draw the attention of the Parliament to the matter was Jonkheer Van der Goes van Naters, a Belgian Socialist MP, lawyer and former vice-president of the Consultative Assembly of the Council of Europe between 1949 and 1959. On 11 August 1964 he expressed his concerns about the Italian constitutional court's *Costa* decision in a question addressed to the Commission. The question initiated an exchange between the Parliament and the Commission that ended with law professor Fernand Dehousse, a founding member of the FIDE and director of the Institute of European legal studies of the University of Liège, writing a report on the matter in the name of the Legal Committee of the Parliament he was presiding at the time.[60] An influential figure of the Parliamentary Assembly,

59 *Common Market Law Review* (1963:4).

60 Fernand Dehousse was all the more willing to give political importance to the legal issue of the relationships between European treaties and national law that he had himself written his doctoral thesis on the subject in the middle of the 1930s (Dehousse 1935).

Dehousse's report on the 'supremacy of EC law' (15 March 1965) was largely based on *Van Gend en Loos* and *Costa v. ENEL* of which he quoted and paraphrased many extracts. Prepared in close collaboration with the Legal Service of the Commission,[61] the report was meant to be 'a 'cry of alarm''. Forging close links between the resolution of the most abstruse doctrinal questions (e.g. dualist vs. monist reading of the relationship between national and international laws) and the very survival of European integration, it threatened a 'legal chaos' would occur (Dehousse 1965:21) if the judicial disagreements were to continue. Just as the disagreements over the reform of EC institutions were turning into an overt inter-governmental crisis (the 28-30 June 1965 Council of Ministers marked the beginning of the 'empty chair'), this stressing the importance of *judicial* integration became a point of convergence between MEPs and EC executives' presidents, all of them 'fully agreeing with the 15 July 1964 ECJ decision' (Parlement européen 1965:221-223). In such a critical context, the parliamentary debates over the Dehousse report (16-17 June 1965) displayed a consensus of most Euro-implicated political actors on the '*Costa-VGL* doctrine' and on its enhancing the role of the judicial branch.

In other words, in a context where the Brussels' crisis affected many of the initial political or legal hopes put in the European construction, this emerging doctrine offered an opportunity for jurists of various sorts to transform ECJ case-law as a core issue of their own social universe, be it academia or the political arena. On the whole then, the emergence of this 'Van Gend-ENEL theory of Community law', as Eric Stein has called it (1981:14) went hand in hand with a reformulation of Pan-European ambition of various political and academic actors in *judicial* terms.

2. Towards a new common sense: a circular circulation of ideas

What strikes most in this re-definition of the (law-and-politics) situation is how convergent it was from one social universe to another and from one EC institution to another. The commissioners, MEPs and ECJ judges implicated in the debate would actually constantly refer to each other and cross-validate their interpretation of the issues at stake. To a point that there seemed to be confusion as to who was to be ercongized as the actual founder of that doctrine. Those who had a more political role, like the European Commissioner Emmanuel Sassen, mentioned 'the Court's support [in the *Costa* decision of July 1964] to the Commission's position [of June 1964 before the Parliament]'. Others, mostly legal academics, would rather draw attention to the creative role of the Court's 'praetorian' jurisprudence and the successive rallying of political institutions to it. The similarity of the arguments of the three European institutions was actually striking enough for the president of the EEC Commission to feel the need to underline that 'there is no conspiracy, but common agreement of freely convinced institutions which are conscious of their responsibility in European affairs' (Hallstein in Parlement européen 1965:218). Equally, Commissioner Sassen had to emphasize that 'this concordance is absolutely no conspiracy whatever' (Sassen in Parlement européen 1965:223). This synchronization of the timelines and alignment of the agendas of EC institutions hints at the key-positions of some multipositional actors such as Carl Friedrich Ophuls (German ambassador at the EC and former law professor), Fernand Dehousse (head of the Legal committee of the European Parliament and EC law professor), Walter Hallstein (head of the Commission and former international law professor) or Michel Gaudet (*conseiller d'Etat* and director of the Commission's legal service)[62]

61 Its director Michel Gaudet was heard on 18 February 1965 by the Legal Committee (Gaudet 1965).

62 The role of Michel Gaudet, a member of the *Conseil d'État*, who directed the Legal service of the European executive bodies for 15 years (1952-1967) still needs to be analyzed : his role was central in the Commission (Paul-Henri Spaak asked Gaudet to help him represent the High Authority during the negotiations of the Treaty of Rome), in the FIDE as well as in the production of EC law doctrine. His position at the heart of the executive bodies had made him an interlocutor, even a godfather of the academic ventures in the field of European law. He was for instance invited to write the inaugural article of the Anglo-Dutch journal *Common Market Law Review* (1963) and of the Belgian European law journal *Cahiers de droit européen* (1965), while being at the same time a member of the Editorial board of the French journal *Revue trimestrielle de droit européen* since its creation in January 1965.

who could circulate in-between the various social universes that made up Europe at the time. We argue that their multifaceted activities in the various legal, academic, political or administrative sites of the still poorly differentiated European public sphere was essential in producing *common* cognitive and normative frameworks of European legal integration. As a matter of fact, in managing their personal 'holding' of memberships and networks, they generated diffuse and almost unnoticed forms of coordination of the points of view. Indeed, as they moved from one position to another, as they called for academics to take into account political imperatives and, successively, for political leaders to draw on the lessons of academic work, they acted *de facto* as the '*fonctionnaires de la coordination des jeux*' (Elias 1978: 99-100) Norbert Elias was referring to in his sociology of highly complex social settings. This convergence of the timing and of the agendas of Euro-implicated actors was progressively authenticated and codified under various forms such as the jurisprudence of the Court, the congresses of FIDE, the reports of the Commission, or the proceedings of the Parliament, etc... On the whole then, this doctrine had no specific author but had been designed concurrently and collectively through the interplay of reciprocal references and quotations in judicial decisions, hearings and memos as well as in academic conferences and parliamentary debates. Through that process that had no particular conductor but to which anyone contributed in its own way, a new common sense triumphed at the core of EC polity.

3. Law's new suits in the EC

With this piling up of successive argumentative strata, *Van Gend en Loos'* and *Costa*'s ambiguities therefore faded away leaving in its place a genuine *corpus* of legal-political doctrine which endowed the triptych 'direct effect-supremacy-preliminary ruling' with a specific efficacy in the integration process. Still, while this emerging judicial theory of Europe conferred brighter functions to Law than those of the 'unification of national legislation' project, it was the European Court, not the individual citizens, who were given the first role in guarding the EC treaties.

In the context of inter-governmental rivalries in Brussels, this new doctrine could build on the traditional legal critique of 'politics' (here, of power politics). The jurisprudence of the Court, it was argued, had set individuals free and hence they did not 'have to worry anymore that the recognition of his rights be paralyzed by the high political spheres' (Jeantet 1963:1317). ECJ case-law, to the contrary, was regarded as a more tangible and lasting form of European integration than the shaky foundations provided by inter-state agreements. As it relied on a procedure that did not depend on the good will of the Member States or the Commission (preliminary rulings), each all Euro-concerned interests (individuals, interest groups, companies, etc.) could take his part in the construction of European law. The fact that the 'empty chair' crisis had not altered the dynamics of intra-European exchanges, which continued to expand swiftly, was considered as a confirmation of the fact that the *real* avenue for integration had to be a-political (Kaiser 1966). Mobilized by the Europe's civil society, the ECJ could then be seen as the new cornerstone for economic, social and, eventually, political integration. Its case-law was therefore seen as most important in bringing about 'a European substance deeply rooted into the populations' (Lecourt 1965:22). In this vein, functionalism was no longer related to economics, but to a law (essentially private law) endowed with a particular ability to 'build' Europe. As the natural receptacle of this 'real' Europe, the ECJ therefore appeared to be in a privileged position when it came to engaging in the highly political task of regulating interests and groups.

Although it championed such an apolitical avenue for European integration, this judicial theory was not however a full-fledged European rule of law as it managed to maintain a privileged position to Member States. For instance, the strict restrictions to individual standing before the Court was an important guarantee given to the Member States that individuals would not intervene too often and too much in EC politics. On the whole, it was the Court –and not the citizens as Costa, Stendardi and other legal activists had hoped- that was given the role of monitoring the implementation of the EC treaties. Individuals, to the contrary, were only granted a secondary position as their actions were essentially indirect (through preliminary ruling) and could not enter the very core of EC political process (as it

had been refused in *Costa*). In this context, the Court could appear as a moderator or a filter between what was regarded as the 'shortcomings' of power politics and the (potential) 'excesses' of individual claims. Claiming to protect individuals against the Member States (in the name of the rule of law) *and* at the same time Member States against individuals (in the name of political realism), the Court could emerge as the backbone of the European construction.

4.'Effet de théorie': *Law, Lawyers and the EC polity*

To be sure, this theory that linked law and politics, the ECJ and European integration, was more than just an abstract reflection on the future of Europe. The variegated set of its promoters intended it to be *performative*, that is to effectively re-design the representations of *legitimacy* within the EC polity, and particularly the competences deemed necessary to fully and persuasively participate to EC debates (*legal* knowledge). The fact that Europeanization was seen as a matter of Law meant that anyone willing to hold a position of responsibility within the European Communities had to be able to engage in legal discussions. It might not be coincidental that it is precisely when the '*VGL-Costa* doctrine' was first discussed in the Parliament, that this requirement for EC elites to possess strong legal credentials became the most explicit, as one can see from the previously mentioned debate over the Dehousse report.

When the European Parliament became an Academy of Law

In an Assembly with few deep-rooted cleavages, the political debates unnoticeably grew into academic exchanges - and the Parliamentary Assembly into an Academy of Law. In this vein, the debate on the Dehousse report of 16 and 17 June 1965 remained *de facto* in the hands of parliamentarians with a legal background as the issue (EC law supremacy) called upon both their legal formation and their Pan-European commitment. Admittedly, out of the 13 participants to the discussion, there was a certain diversity : 10 were Members of Parliament and 3 were European Commissioners; 2 were Socialists, 3 Liberals and 8 Christian-democrats; one was from Luxembourg, one was Belgian, 3 Dutch, 2 Germans and 6 Italians. But all of them, except one, were lawyers.

Written by a renowned academic, the report had itself set the stage for such a legal-only debate outlining that 'the science of law and, in particular the doctrine, play[ed] a decisive role in this framework because it contributes to define and clarify a political situation.' (Dehousse 1965:2). Fernand Dehousse briefly apologized for these circumstances mentioning a topic which 'appears to be very austere' admitting that it 'seemed to come down to an academic debate among lawyers, and I might even add among specialists of international public law'. Yet, he immediately noted that 'that technical appearances aside, this issue is of fundamental interest, I might even say of vital interest for the present and the future of the EC'. So he gave the tone right away handing over to Walter Hallstein in the following words: 'you will have the opportunity, Mr. President, to make use of your legal skills during the debate on my arguments'. All the participants then engaged into a dense doctrinal analysis of the case-law and the academic theses under discussion. Fernand Dehousse meticulously looked at *Costa v. ENEL*, made his own the 'excellent preciseness' of that decision, questioned some ideas put forward at the conference at the College of Europe in Bruges in April 1965, convened Kelsen, cited the 'famous *Transformierungstheorie* of the German authors', etc... The speech of the president of the Commission Walter Hallstein did not go out of tune either, quite to the contrary. Right from the start, he praised the report for being a 'document of scientific quality' and leaves the answer to the question at hand to the lawyers: 'one element distinguishes the problem we address today from the other big political issues: it is a *legal question*. It has to be answered along legal criteria with the help of a legal methodology and only a solution validated by this method can be the right one' (in italics in the text, 218). Speaking 'as a lawyer and in the name of the Commission' (220), it was then his turn to engage into the specifically academic discussion of the theses at hand. Given the tone of these first exchanges, some participants kept their distance. The president of the session mentioned that 'since it had been so long that I had not assisted to a law course, it had been a real pleasure to listen to Mr. Hallstein's explanations.' Emmanuel Sassen, a member of the Euratom Commission and himself a doctor in law, also talked about 'the professor' (Hallstein) who 'today has given a real law course'. While agreeing with his arguments, he observed in passing that 'neither the Euratom Commission, nor its sister institutions are Academies of Law.' Others expressed more disagreement with the turn taken by the debates. The intervention

of Edoardo Battaglia, a Member of Parliament from the Italian Liberal party, a former judge and trial lawyer, tried to restore public order: 'this Assembly is not a scientific academy of public law specialists, be it constitutional or international law. We are in a Parliamentary assembly and we are politicians' he argued and emphasized that 'we cannot examine in detail this or that particular legal argument regarding the relationship between European law and the internal law of the Member States' (231). Still however, despite this reluctance to engage in a purely legal debate, Battaglia –like his fellow MEPs- could not but refer to various law professors, himself taking side in the doctrinal debate. And in fact, the transformation of the Parliament into a Law Academy seemed to have been so conspicuous that the chairman felt obliged to adjourn the session as there were not enough lawyers present in order to keep up with a good debate... Refusing to consider an amendment of the only non-lawyer who was participating in the discussion he concluded: 'please, Mr Santoro, have a look around you, it will convince you that, in order to be able to discuss a matter of such importance, there should be more lawyers present' (243).

As they converged in seeing the ECJ as the heart of European integration, the various lawyers – judges of the Court, law professors, lawyers, but also MEPs, Commissioners or EC high civil servants with strong legal capital – were also all taking part to a process of redefinition of EC polity. A redefinition that entailed the valorisation of a legal capital within the different political, economic, administrative *fora* that made up Europe at the time. By acknowledging each other as crucial interlocutors beyond the ordinary divisions (national/European; public/private; legal/political) that structured that emerging polity, by quoting each other regardless of their different responsibilities, lawyers were jointly redefining what it meant and what it required to access and to hold the various institutional roles in European Communities (Commissioners, Members of Parliament, ECJ Judges, high-ranking officials, but also consultants, etc.).

Moulded by jurists with very different profiles (judges of the Court, law professors, lawyers, but also many of the MEPs, Commissioners, EC civil servants coming from the legal professions), this new common sense was also offering them a *common place* through which they could think and conceive of themselves as *a* group endowed with specific functions (integration) and missions (protecting the EC treaties). In other words, re-framing the role of the ECJ in Europeanization processes also meant for lawyers re-framing their own role within EC polity. While building a legal theory of Europe, the otherwise segmented, and often antagonist, ensemble of Euro-implicated lawyers was therefore constituting itself *as a specific EC elite*. This is never as clear as in Lecourt's 1964 discourse at a meeting of the French FIDE :

> If Law possesses such an ability to approximate -to point of integrating in one unique body- separate and sometimes adversary nations, if it has the power to mould and fuse them to one another, to animate them with one unique soul, if it is endowed of a unificatory power, then let's rejoice, Gentlemen, that this power has been in great part delegated to you' (Lecourt 1964 : 22)

In a very characteristic *effet de théorie* (Bourdieu 1982), the emergence of the ETCL narrative therefore offered Euro-lawyers a unitary understanding of their variegated, and often conflicting, set of experiences and practices as one unique contribution to the grand project of building a European rule of law.[63]

Rather than considering *ex-post facto* that 'Law' and 'Courts' have been logically and quite naturally functional to European integration (and inter-state shortcomings), our socio-historical analysis searches what sort of law (and, relatedly, what sort of representation of EC polity) has prevailed over other *possibles historiques*. Following the progressive framing of the 'integration through case-law' theory is therefore not just a matter of legal doctrine. It is a way to grasp the transformations of the functions of Law from a classic model of legal expertise (international politics' model, cf. table 1) to a more ambitious conception where the European Court is the real *locus* of

63 On the heterogeneity of the nascent European legal field, see Vauchez (2007a).

integration. Moreover, through the definition of this theory, a specific representation of EC polity is promoted in which legal competence is deemed essential to anyone wishing to exert (economic, political, administrative, academic…) leadership within that nascent political system. Finally, 'building Europe' also meant for the variegated set of Euro-implicated legal professionals 'building themselves', that is freeing themselves from their classic roles at the national level and finding new *raisons d'être* in a European polity in search of both professionals models and political canons.

Annexe n°1: Elements for a chronology (1961-1965)

The following elements do not pretend to offer a narrative but simply intend to help the reading of the multifaceted and cross-sector process. To be sure, these chronological milestones do not mean that the research should and stick to that phase.

Judicial Arenas	Legal Mobilizations	European Communities
	Nov. 1961: The Dutch section of the FIDE created a Working group on *self-executing*	
6 April 1962: With its *Bosch* decision, the ECJ gave an extensive interpretation of art. 177		
	June 1962: The FIDE decided to devote his next congress (Oct. 1963) to *self-executing*	
23 Aug. 1962: The *Van Gend en Loos* case was notified before the ECJ		31 Oct. 1962: The Commission endorsed its Legal service position on *VGL*
14 Dec. 1962: With *Confédération nat. v. Council of EEC*, the ECJ gave a restrictive reading of individual standing before the ECJ		
5 February 1963: *Van Gend en Loos*		28 Jan. 1963: Rejecting British candidacy to the EC, France opened a crisis in Brussels
	24-26 April 1963: Academic conference in Cologne on 10 years of ECJ jurisprudence	
15 July 1963: *Plaumann & Cie v. EEC Commission* confirmed the ECJ jurisprudence on individual standing		
	24-26 Oct. 1963: Second FIDE Congress in The Hague on *self-executing*	
16 January 1964: The *Costa v. ENEL* case is notified before the ECJ		
		Feb 1964: Gvts reached an agreement on fusion of EC executives 'à institutions constantes'
7 March 1964: The Italian Constitutional Court ruled against 'supremacy doctrine' in *Costa v. ENEL*	12-13 March 1964: Third Congress of the *Union Internationale des Magistrats* in Brussels on EC on conflicts between EC norms and national norms	June 1964: Hallstein presented his theses on EC law before the European Parliament
2 July 1964: With *Glucoseries reunites v. EEC Commission*, the ECJ consolidated its individual standing JP		
15 July 1964: *Costa v. ENEL* decision	10-11 July 1964: Conference of the German section of the FIDE in Bensheim	15 march 1965: Dehousse presented a report in the European Parliament on 'supremacy of EC law'
	8-10 April 1965: Academic conference at the Collège de Bruges on 'EC law and national law'	
10-11 June 1965: Meeting between ECJ judges and high magistrates of the Member States' supreme courts		17 June 1965: Debate in the European Parliament on Dehousse report 28-30 June 1965: Overt inter-governmental crisis at the Council of ministers opening the 'empty chair' period
	Sept. 1965: Union International des Avocats held is XXI Congress in Arnhem on individual recourse before the ECJ, particularly on article 177	

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