the territory of the Member State concerned, of offers of employment corresponding to their occupational qualifications and to take, where appropriate, the necessary steps in order to be engaged.

In the absence of a Community provision prescribing the amount of time, it is not contrary to Community law for the legislation of a Member State to provide that a national of another Member State who entered the first State in order to seek employment may be required to leave the territory of that State (subject to appeal) if he has not found employment there after six months, unless the person concerned provides evidence that he is continuing to seek employment and that he has genuine chances of being engaged.

2. A declaration recorded in the Council minutes at the time of the adoption of a provision of secondary legislation cannot be used for the purpose of interpreting that provision where no reference is made to the content of the declaration in the wording of the provision in question and the declaration therefore has no legal significance.

REPORT FOR THE HEARING
in Case C-292/89 *

I — Facts and procedure

1. *Community legal background*

In accordance with Article 48 of the Treaty:

'1. Freedom of movement for workers shall be secured within the Community by the end of the transitional period at the latest.

2. Such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment.

3. It shall entail the right, subject to limitations justified on grounds of public policy, public security or public health:

(a) to accept offers of employment actually made;

(b) to move freely within the territory of Member States for this purpose;

* Language of the case: English.

(c) to stay in a Member State for the purpose of employment in accordance with the provisions governing the employment of nationals of that State laid down by law, regulation or administrative action;

(d) to remain in the territory of a Member State after having been employed in that State, subject to conditions which shall be embodied in implementing regulations to be drawn up by the Commission.

4. The provisions of this Article shall not apply to employment in the public service.'

In pursuance of Article 49 and in order to bring about freedom of movement for workers, the Council adopted Regulation No 1612/68/EEC of 15 October 1968 on freedom of movement for workers within the Community (Official Journal, English Special Edition 1968 (II), p. 475).

Under the terms of Articles 1 and 5 of that regulation:

'*Article 1*

1. Any national of a Member State, shall, irrespective of his place of residence, have the right to take up an activity as an employed person, and to pursue such activity, within the territory of another Member State in accordance with the provisions laid down by law, regulation or administrative action governing the employment of nationals of that State.

2. He shall, in particular, have the right to take up available employment in the territory of another Member State with the same priority as nationals of that State.

Article 5

A national of a Member State who seeks employment in the territory of another Member State shall receive the same assistance there as that afforded by the employment offices in that State to their own nationals seeking employment.'

On the same date the Council adopted Directive 68/360/EEC on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families (Official Journal, English Special Edition 1968 (II), p. 485). Articles 4, 6, 7 and 8 thereof are worded as follows:

'*Article 4*

1. Member States shall grant the right of residence in their territory to the persons referred to in Article 1 who are able to produce the documents listed in paragraph 3.

2. As proof of the right of residence, a document entitled "Residence Permit for a National of a Member State of the EEC" shall be issued. This document must include a statement that it has been issued pursuant

to Regulation No 1612/68/EEC and to the measures taken by the Member States for the implementation of the present Directive. The text of such statement is given in the Annex to this Directive.

3. For the issue of a Residence Permit for a National of a Member State of the EEC, Member States may require only the production of the following documents;

— by the worker:

(a) the document with which he entered their territory;

(b) a confirmation of engagement from the employer or a certificate of employment;

— by the members of the worker's family:

(c) the document with which they entered the territory;

(d) a document issued by the competent authority of the State of origin or the State whence they came, proving their relationship;

(e) in the cases referred to in Article 10 (1) and (2) of Regulation No 1612/68/EEC, a document issued by the competent authority of the State of origin or the State whence they came, testifying that they are dependent on the worker or that they live under his roof in such country.

4. A member of the family who is not a national of a Member State shall be issued with a residence document which shall have the same validity as that issued to the worker on whom he is dependent.

...

Article 6

1. The residence permit:

(a) must be valid throughout the territory of the Member State which issued it;

(b) must be valid for at least five years from the date of issue and be automatically renewable.

2. Breaks in residence not exceeding six consecutive months and absence on military service shall not affect the validity of a residence permit.

3. Where a worker is employed for a period exceeding three months but not exceeding a year in the service of an employer in the host State or in the employ of a person providing services, the host Member State shall issue him a temporary residence permit, the validity of which may be limited to the expected period of the employment.

Subject to the provisions of Article 8(1)(c), a temporary residence permit shall be issued also to a seasonal worker employed for a

period of more than three months. The period of employment must be shown in the documents referred to in paragraph 4(3)(b).

Article 7

1. A valid residence permit may not be withdrawn from a worker solely on the grounds that he is no longer in employment, either because he is temporarily incapable of work as a result of illness or accident, or because he is involuntarily unemployed, this being duly confirmed by the competent employment office.

2. When the residence permit is renewed for the first time, the period of residence may be restricted, but not to less than twelve months, where the worker has been involuntarily unemployed in the Member State for more than twelve consecutive months.

Article 8

1. Member States shall, without issuing a residence permit, recognize the right of residence in their territory of:

(a) a worker pursuing an activity as an employed person, where the activity is not expected to last for more than three months. The document with which the person concerned entered the territory and a statement by the employer on the expected duration of the employment shall be sufficient to cover his stay; a statement by the employer shall not, however, be required in the case of workers coming within the provisions of the Council Directive of 25 February 1964 on the attainment of freedom of establishment and freedom to provide services in respect of the activities of intermediaries in commerce, industry and small craft industries;

(b) a worker who, while having his residence in the territory of a Member State to which he returns as a rule, each day or at least once a week, is employed in the territory of another Member State. The competent authority of the State where he is employed may issue such a worker with a special permit valid for five years and automatically renewable;

(c) a seasonal worker who holds a contract of employment stamped by the competent authority of the Member State on whose territory he has come to pursue his activity.

2. In all cases referred to in paragraph 1, the competent authorities of the host Member State may require the worker to report his presence in the territory.'

The following declaration on Articles 3 and 4 of the abovementioned directive is to be found in the minutes of the meeting of the Council at which that directive was adopted:

'Nationals of a Member State as referred to in Article 1 who move to another Member State in order to seek work there shall be allowed a minimum period of three months for the purpose; in the event of their not having found employment by the end of that period, their residence on the territory of this second State may be brought to an end.

However, if the abovementioned persons should be taken charge of by national assistance (social welfare) in the second State during the aforesaid period they may be invited to leave the territory of this second State.'

2. *National legal background*

In accordance with section 3(1) of the Immigration Act 1971 (hereinafter referred to as the '1971 Act') a person not having British nationality may not enter the United Kingdom unless given leave to do so. Section 3(2) of the 1971 Act provides that the Secretary of State shall from time to time lay before Parliament statements of the rules laid down by him as to the practice to be followed in the administration of the 1971 Act for regulating entry into and stay in the United Kingdom of persons required by the 1971 Act to have leave to enter.

In the present case, the Statement of Changes in Immigration Rules (HC169) was applicable. Paragraphs 67, 140, 141 and 143 thereof provide:

'67. A national of a Member State of the European Community is entitled to admission to take or seek employment, to set up in business, to become self-employed or otherwise to exercise the right of establishment or the rights relating to the provision or receipt of services as provided in Community law.

...

140. A person admitted [to the United Kingdom under paragraph 67] may normally remain in the United Kingdom for six months before applying for a "Residence Permit for a National of a Member State of the EC". Such a residence permit will be issued if the person:

(a) has entered employment; or

(b) has established himself in business or in self-employed occupation or otherwise in accordance with the provisions of Community law relating to the right of establishment and the rights relating to the provision and receipt of services; or

(c) is a member of the family ... of a person to whom (a) or (b) above applies. Such a person will be issued with a residence permit if he is a Community national, or granted an extension of stay if he is not, in the same terms as those relating to the spouse or persons on whom he is dependent.

141. In the case of a person to whom paragraph 140(a) applies the residence permit should be limited to the duration of the employment if this is expected to exceed three months but to be less than 12 months; otherwise the residence permit should normally be valid for 5 years. A residence permit should not normally be issued if the person has not entered employment within 6 months of the date of entry to the United Kingdom nor if during that time he has become a charge on public funds.

...

143. A person may be required to leave the United Kingdom, subject to appeal, if he falls a charge on public funds before issue of a first residence permit, or if, after 6 months from admission, he fails to meet the requirements of paragraph 140(a) or (b) above. After written warning, the duration of a residence permit may be curtailed, subject to appeal, if it is evident that the holder no longer satisfies the conditions at 140(a), (b) or (c) above. However, the duration of a residence permit issued to a worker will not be curtailed solely on the grounds that he is no longer in employment where this is because he is temporarily incapable of work as a result of illness or accident or because he is involuntary unemployed'

3. *The dispute in the main proceedings and the preliminary questions*

Mr Gustaff Desiderius Antonissen, a Belgian national, arrived in the United Kingdom in October 1984. He made unsuccessful attempts to find work and, on 30 March 1987, was convicted of unlawful possession of cocaine and possession of that drug with intent to supply, and sentenced to six months' imprisonment on the first charge and two years' imprisonment on the second count. He was released on parole on 21 December 1987.

On 27 November 1987 the Secretary of State decided to deport Mr Antonissen on the basis of section 3(5)(b) of the 1971 Act, which authorizes deportation if the Secretary of State considers that it would be conducive to the public good. Mr Antonissen lodged an appeal with the Immigration Appeal Tribunal which was dismissed on 18 May 1988.

Leave to apply for judicial review having been granted, the High Court of Justice, Queen's Bench Division, stayed the proceedings and referred the following questions to the Court of Justice for a preliminary ruling:

'1. For the purpose of determining whether a national of a Member State is to be treated as a "worker" within the meaning of Article 48 of the EEC Treaty when seeking employment in the territory of another Member State so as to be immune from deportation save in accordance with Council Directive 64/221 of 25 February 1964, may the legislature of the second Member State provide that such a national may be required to leave the territory of that State (subject to appeal) if after six months from admission to that territory he has failed to enter employment?

2. In answering the foregoing question what weight if any is to be attached by a court or tribunal of a Member State to the declaration contained in the minutes of the meeting of the Council when the Council adopted Directive 68/360?'

It should be stated that Mr Antonissen left the United Kingdom to resume residence in Belgium on the same date on which the order for reference was made (14 June 1989).

4. *Procedure before the Court*

The order for reference by the High Court of Justice, Queen's Bench Division, was received at the Court Registry on 21 September 1989.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations were submitted by the applicant in the main proceedings, represented by Richard Plender, QC, and Geraldine Clark of the London Bar, instructed by Winstanley-Burgess and Co., by the United Kingdom, represented by J. E. Collins, of the Treasury Solicitor's Department, acting as Agent, assisted by David Pannick, Barrister-at-Law, the Government of the Federal Republic of Germany, represented by Ernst Röder and Joachim Karl, acting as Agents, the Council of the European Communities, represented by Marta Arpio, a member of the Council's Legal Department, acting as Agent, the Commission of the European Communities, represented by Antonio Caeiro, Legal Adviser, and Nicholas Khan, a member of the Commission's Legal Department, acting as Agents.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry.

II — Written observations submitted to the Court

The first question

The *applicant in the main proceedings* observes first of all that, in accordance with the Court's case-law, workers are entitled, even if they are not in receipt of an offer of employment, to move freely within another Member State in search of employment there. In this connection he cites the judgments of 8 April 1976 in Case 48/75 *Royer* [1976] ECR 497, 23 March 1982 in Case 53/81 *Levin* v *Staatssecretaris van Justitie* [1982] ECR 1035 and 18 June 1987 in Case 316/85 *Centre Public d'Aide Sociale, Courcelles* v *Lebon* [1987] ECR 2811.

Since no derogation from this right is provided for in the Treaty it follows, so the applicant considers, that the Member States may not impose limits on that right of six months or of any other period. Derogations from freedom of movement for workers, such as that provided for in Article 48(4) of the Treaty, must, in accordance with the Court's case-law, be strictly construed. *A fortiori*, where no derogation is provided for, the Member States are precluded from introducing any themselves.

Moreover, the possibility for the Member States to impose a temporal limitation on the right to freedom of movement in searching for employment is incompatible with the principle that Community law must be applied uniformly, which was upheld by the Court of Justice when it decided that the term 'worker' has a Community meaning (see the abovementioned *Levin* judgment and the judgments of 19 March 1964 in Case 75/63 *Hoekstra (née Unger)* v *Bestuur der Bedrijfsvereniging voor Detailhandel en Ambachten* [1964] ECR 177, of 3 June 1986 in Case 139/85 *Kempf* v *Staatssecretaris van Justitie* [1986] ECR 1741 and of 3 July 1986 in Case 66/85 *Lawrie-Blum* v *Land Baden-Württemberg* [1986] ECR 2121).

The applicant in the main proceedings points out that the possibility for a Member State to limit the period during which seekers of employment who are nationals of other Member States may remain on its territory is inconsistent with the object and purpose of Article 48 of the Treaty which has as its object the realization of the aim identified in Article 3(c), namely 'the abolition, as between Member States, of obstacles to freedom of movement for persons'. Article 3(c) constitutes both an objective of the Community and a means of

achieving further objectives, namely 'a continuous and balanced expansion, an increase in stability, an accelerated raising of the standard of living and closer relations between the States . . . ', of which Article 2 speaks.

The limitation at issue constitutes, on the one hand, an obstacle to freedom of movement for persons and thus to the achievement of the objective set out in Article 3(c) and, on the other hand, impedes the attainment of the objectives set out in Article 2. In fact, those objectives are furthered by freedom of movement of persons by means, *inter alia*, of the establishment of a balanced labour market which presupposes the constitution of a free market where supply and demand for labour are best matched when persons in search of work are relieved of restraints on their liberty to select the place in which they will look for it. Any restriction on that liberty interferes with the balancing of supply and demand.

According to the applicant in the main proceedings, the limitation in question is, moreover, inconsistent with the principle of equal treatment as regards access to employment, which also enures to the benefit of persons seeking employment (see the abovementioned *Lebon* judgment of 18 June 1987).

Finally, the applicant in the main proceedings observes that the provisions of Directive 68/360/EEC relating to residence permits (Article 4(3)) or to the restriction of the period of residence in a case of involuntary unemployment cannot be invoked in order to abridge rights conferred by the Treaty.

On the basis of those considerations, the applicant in the main proceedings proposes that the reply to the first question should be that: for the purpose of determining whether a national of a Member State is to be treated as a 'worker' within the meaning of Article 48 of the EEC Treaty when seeking employment in another Member State so as to be immune from deportation save in accordance with Council Directive 64/221 of 25 February 1964, the legislature of the second Member State may not provide that such a national may be required to leave the territory of that State (subject to appeal) if after six months from admission to that territory he has failed to enter employment.

The *United Kingdom* acknowledges that workers who are nationals of a Member State have the right to move freely in another Member State in order to seek employment there. That right may be derived by implication from Article 1 of Regulation No 1612/68/EEC which confers the right to 'take up an activity as an employed person and to pursue such activity'. An obligation on Member States to permit residence without limit as to time in order to secure the exercise of such a right would, however, be inconsistent with certain provisions of Directive 68/360/EEC.

In this connection, the United Kingdom mentions Articles 6(3) and 8, which make provision for the treatment of those employed on temporary and seasonal work and persons who have been granted a residence permit as a worker and thereafter suffer involuntary unemployment. It cannot have been intended, the United Kingdom argues, that those persons whose right of residence is subject to certain limitations should be treated less favourably than persons who have never been employed and whose right of residence would be subject to no limitations.

The United Kingdom also mentions Article 4(3) of the aforementioned directive and

observes that persons seeking employment are not in a position to produce the documents listed therein in order to obtain a residence permit.

In the United Kingdom's view, it is clear from the abovementioned provisions that a limit may be fixed on the period of residence of persons seeking employment. Since that limit is not laid down in Community law, it is for the Member States to make provision for a reasonable and adequate period of time in all the circumstances.

The United Kingdom proposes that the reply to the first question should be that when a national of a Member State enters the territory of another Member State seeking employment, it is open to the second Member State to require him to leave if he has not, within a reasonable period of time, entered into employment. It is for the second Member State to determine what constitutes a reasonable period of time (subject to Community law standards of proportionality). The second Member State may reasonably consider requiring such a person to leave when six months have elapsed from the date of his entry as a person seeking employment and he has not entered into employment during that period.

The *Government of the Federal Republic of Germany* considers that only the nationals of Member States in possession of a confirmation of engagement from the employer or a certificate of employment are entitled to a right of residence in another Member State (Article 4(3) of Directive 68/360/EEC).

The *Council* did not submit any observations on this question since it concerned the interpretation of a provision of the EEC Treaty and the conformity of a Member State's legislation with Community law.

The *Commission* observes that it is clear from the judgment of the Court of 8 April 1976 in the *Royer* case that a national of a Member State seeking employment in another Member State has a right of residence. Nevertheless, it acknowledges that the duration of that right may be made subject to limits.

It places reliance on Article 4 of Directive 68/360/EEC according to which nationals of the Member States have a right to reside in another Member State only if they are in a position to produce the documents listed in paragraph 3. That paragraph requires the production of the document with which the worker entered the territory of the host Member State and a confirmation of engagement from the employer or a certificate of employment. The right of a person to enter the territory of another Member State and the right of a Member State to require confirmation of employment by nationals of other Member States wishing to reside there have to be reconciled by an interpretation that allows Community nationals a reasonable opportunity to exercise their rights without postponing the right of Member States to enforce the requirements of Article 4 to the point where Article 4 is deprived of its content.

In this connection the Commission places reliance on the abovementioned judgment of 18 June 1987 in the *Lebon* case according to which persons seeking

employment are not 'workers' entitled to the benefits conferred on workers by Community law, apart from the right to equal access to employment. It also refers to Article 69(1)(c) of Council Regulation No 1408/71/EEC of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community (Official Journal, English Special Edition 1971 (II), p. 416), which provides that an unemployed person who goes to another Member State to seek employment there shall be entitled to benefits from the Member State in which he is entitled to benefits for a maximum period of three months whilst he is abroad. Although the parallels between the fundamental right of freedom of movement of workers and Community rules on social security should not be regarded as determinative of the matter, Community rules on social security being essentially a coordination of national rules rather than a true Community system, in practice an unemployed person is likely to be reliant upon social security benefits.

Having regard to the foregoing considerations, the Commission proposes that the reply to the first question should be that a national of a Member State who enters the territory of another Member State in order to seek employment in that Member State is not to be regarded as continuing to fall within the definition of a 'worker' within the meaning of Article 48 of the Treaty for an indefinite period.

The second question

According to the *applicant in the main proceedings*, the declaration in question is not admissible before a national court or tribunal.

He claims, first of all, that treaties cannot be interpreted in the light of extraneous materials, including declarations made by Member States, which are designed to establish the construction placed by the Member States on particular provisions at a particular time. As Mr Advocate General Mayras stated in his Opinion in Case 1/74 *Reyners* v *Belgium* [1974] ECR 631, at p. 666:

'the States signatories to the Treaty of Rome have themselves excluded all recourse to the preparatory work and it is very doubtful whether the reservations and declarations, inconsistent as they are, which have been relied on can be regarded as constituting true preparatory work. Nor can they be held against the new Members of the enlarged Community by virtue of the Act of Accession.

Above all you have yourselves rejected, on several occasions, recourse to such a method of interpretation by asserting the content and finality of the provisions of the Treaty.'

This reasoning must *a fortiori* lead to the exclusion of the preparatory works of a subsequent directive as an aid to the interpretation of the Treaty.

The EEC Treaty is different from those which reflect traditional relationships between States. The parties to the EEC Treaty cannot limit its meaning by a subsequent declaration, since in the case of the EEC Treaty the parties are not the sole beneficiaries of the rights created thereby.

Moreover, were it possible to refer to a declaration in order to interpret the Treaty, that would be tantamount to 'freezing' the terms of the Treaty, which must be interpreted as part of a living text.

The applicant in the main proceedings observes, secondly, that if a declaration were admissible as an aid to the interpretation of the Treaty, it would be possible to arrive thereby at a meaning different to that which would otherwise have been applied. By this means, the Treaty would be altered, but without respect for the procedural guarantees required in the case of an amendment by Article 236.

The applicant in the main proceedings points out, thirdly, that the declaration in question is unpublished. In accordance with the rules of procedure of the Council (Official Journal 1979 L 268, p. 1) it could only be produced with the agreement of the Council. It appears from the Court's case-law (judgments of 13 June 1958 in Case 9/56 *Meroni* v *High Authority* [1957/1958] ECR 133 at 146 and in Case 10/56 *Meroni* v *High Authority* [1957/1958] ECR 157 at 168) that minutes of meetings of the Council are inadmissible as an aid to interpretation since they are not published.

That practice may be justified by three considerations. First, it is not consonant with the interests of legal certainty that a measure should be interpreted by reference to any material that cannot be obtained by a person whose rights are affected thereby. Secondly, it would violate the principle of *égalité d'armes* to authorize national courts and tribunals to have recourse to such declarations for in such an event they would be available only to Member States and not to individuals who may be in dispute with those States. Thirdly, such declarations commonly exist in the diplomatic rather than the legal sphere and their use, particularly in the lowest courts of the Member States, may provoke some difficulty. It may be difficult, especially in the lowest courts, to assess the weight to be attached to a document adduced as a declaration and its authenticity as an expression of the current views of the Member States.

Fourthly, the applicant in the main proceedings observes that the text of the declaration in question amounts to a restatement by the lawyer-linguists of their understanding of the delegates' agreement. That text, which has not been the subject of successive scrutiny by a variety of Community institutions, cannot affect the meaning of the terms of the EEC Treaty itself.

On the basis of the foregoing considerations, the applicant in the main proceedings proposes that the reply to the second question should be that, in the context of the first question raised, a court or tribunal of a Member State should not take into account the declaration contained in the minutes of the meeting of the Council when the Council adopted Directive 68/360/EEC.

The *United Kingdom* observes that the declaration in question emanates from all the Member States. It is not a unilateral statement of the type considered by the Court in Case 143/83 (*Commission* v *Denmark* [1986] ECR 427).

It considers that the declaration in question stated the Member States' understanding of

their obligations under Directive 68/360/EEC, and is part of the context in which the directive was adopted. Accordingly, the declaration is a factor which is relevant to the proper interpretation of the obligations imposed by the directive.

The United Kingdom proposes that the reply to the second question should be that the declaration contained in the minutes of the meeting of the Council when the Council adopted Directive 68/360/EEC is relevant material in assisting the Court to interpret the relevant obligations of Member States under Directive 68/360/EEC.

The *Government of the Federal Republic of Germany* takes the view that it is not necessary to give a reply to the second question. Even if the declaration in question were binding on the Member States, the obligation would only extend over a period of three months. The national court, on the other hand, is inquiring of the validity of regulations which permit a right of residence of six months.

The *Council* considers that the declaration is internal in nature. It is an undertaking, having effect only amongst the participants, to grant a right of residence of a minimum period of three months to applicants for employment, which is not a right conferred either by the Treaty or by Directive 68/360/EEC. The right of workers to move freely within the territory of Member States is merely to enable them to respond to offers of employment actually made and the right to reside in a Member State is granted only for the purpose of taking up employment.

The *Commission* observes that the declaration may be regarded as a political accord between its signatories but it does not give rise to legally enforceable rights in itself. For this reason it would not be appropriate for a national court to regard such a declaration as interpretative of Directive 68/360/EEC.

The Commission therefore proposes that the reply to the second question should be that the declaration contained in the minutes of the Council meeting at which Directive 68/360/EEC was adopted is not, as such, to be regarded by a national court or tribunal as interpretative of Directive 68/360/EEC.

J. C. Moitinho de Almeida
Judge-Rapporteur