EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

Study on the possibilities for improving and developing the *Bulletin on Constitutional Case-Law* and on establishing a computerised data bank on this case-law

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PLAN OF THE STUDY

(Page references)

§ 1.- The project to establish a Documentation Centre on constitutional case-law

1. The European Commission for Democracy through Law decided in September 1991 to establish a Documentation Centre to collect and disseminate case-law coming mainly from the constitutional courts of Europe. The European Court of Human Rights, the European Commission of Human Rights, the Court of Justice of the European Communities and other national high courts. Supreme courts of non-European States could also join this venture, and some have indeed already contributed to it.

Being fully aware of the difficulties involved in such an enterprise, the Commission has proceeded in stages.

With the collaboration of liaison officers, members of the staff of the courts concerned, it launched a *Bulletin on Constitutional Case-law* which since the beginning of 1993 has been publishing three times a year a certain amount of information concerning the activities of the courts and a selection of *summaries* of the the most significant decisions handed down by these courts. The summaries are characterised by a precise identification of these decisions and by reference to two systems of keywords: the first is taken from an already existing *systematic thesaurus*, organised in a tree-like structure; the second results from the choice of the liaison officers and is aimed as constituting an *alphabetical index* of the principal concepts dealt with. At the end of the bulletin there are reference tables, both systematic and alphabetic, to facilitate consultation of the contents.

In addition, each year there is a special issue is devoted to a particular topic.

2. The secretariat of the European Commission for Democracy through Law invited the authors of this report to examine on site, in Strasbourg, how it might be possible to move on to the stage of computerising the data collected. Their presence in the Council of Europe headquarters, from 6 to 13 July 1993, enabled them to observe the conditions in which the *Bulletin* was produced and to make suggestions as to how the process could be improved.

This report records what was noted during this visit and formulates a certain number of concrete suggestions for the development of the Documentation Centre.

§ 2.- General philosophy of the project

3. Today's jurist - and more generally anybody interested in knowing the sources of the law - is assailed by a mass of data which he has to manage as best he can. On top of the need for immediate **information** there is that for research assistance based on reliable **documentation**.

The Documentation Centre being set up is intended to meet these needs.

It is proposed that the content and quality of presentation of the *Bulletin* be very largely retained, to enable it to maintain its essential function of providing immediate **information** on the most recent constitutional case-law[1].

The creation of a large-scale Documentation Centre would appear premature at this stage because of the questions still outstanding, and in particular the infrastructure problems to be solved and the budgetary constraints to be overcome[2]. This objective has nevertheless not been abandoned and the options to be taken in the meantime should take account of it.

It seems possible in the medium term to create at relatively little cost a **computerised data bank** on the basis of the information at present published in the *Bulletin*, which would better meet the **documentation and research needs** than the present cumulative tables appearing in the *Bulletin*[3]. Once created, this data bank could be very quickly disseminated.

§ 3.- **The *Bulletin on Constitutional Case-law***

I.   Introduction

4.   As stated above, the *Bulletin*, the quality of which has been generally acclaimed, should retain its **information** function. It will be seen below that it will be possible to build the computerised data bank on the basis of the greater part of the data appearing in this publication. It is therefore essential to develop a procedure for producing the *Bulletin* which will facilitate rather than hinder the subsequent stages of creating the data bank.

It was observed that there are at present problems in this respect, especially at the stage of producing the printed version. Various difficulties were also seen as regards the form and even the content of the information recorded and the procedure for preparing the *Bulletin*, for example in the compilation of the reference tables.

The very high quality of presentation of the *Bulletin* should be maintained.

The suggestions in what follows are intended to take account of these requirements and should result in improvements in both the content and the automatic production of the tables and the maintenance of the formal quality.

5.   Generally speaking we do not propose here any modification to the structure or formal presentation of the *Bulletin*. But this does not mean that these aspects should not be discussed.

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[1]   *See § 3 below.*

[2]   *See § 5, below.*

[3]   *See § 4, below.*

For example we may question the advisability of retaining the introductory part of the contributions, notably concerning the statistical data, the subjects of the most important decisions, etc. The presentation in columns is not at present called into question, but it could be perhaps if it turns out that this creates problems with certain automation procedures, for example the production of the reference tables. The question of the cumulative nature of these tables is discussed below.

Several of the suggestions formulated below take account of the fact that it is the data contained in the *Bulletin* which are to form the basis for the future data bank. It is thus already in the stage of producing the *Bulletin* that it will be necessary to integrate the elements essential to the design and implementation of the data bank.

II.   Recapitulation of the functions of the liaison officers

6.   The evolution of the project will not significantly change the tasks of the liaison officers in the courts collaborating in the project. Just as today, they will be invited to regularly communicate summaries of the most significant passages of the most important recent decisions of their court. The selection criteria for these data and the methodological aspects of preparing these summaries are recalled below[4].

They will simply be asked in addition to pay particular attention to the formal aspects of the presentation of their summaries because of the need for standardisation inevitably associated with the automation process now under way. It will also be necessary to take more care than in the past with the amendment of the thesaurus and the choice of keywords for the alphabetical index. Proposals on these points are made below[5].

Lastly, there have turned out to be a great many translation problems, to the extent that fairly often the secretariat in Strasbourg has had to redraft certain summaries or substantial parts of them. It really is essential that these texts should be produced by professional translators accustomed to working with legal texts. The European Commission for Democracy through Law might examine to what extent it could provide technical assistance for certain courts which are in a particularly difficult situation from this standpoint.

The biggest changes required to permit a fair degree of automation and the simplification of procedures, concern above all the work of the *Bulletin* secretariat in Strasbourg[6].

III.   Preparation of the summaries - Formal aspects

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[4]   *See IV below.*

[5]   *Regarding the formal aspects of preparing the summaries, see III, below; on the thesaurus and the alphabetical index, see V below.*

[6]   *See VI below.*

7.   Up to now the summaries have been divided into five zones[7]. It is proposed to retain these zones, but to precede them by a blank one in which the secretariat in Strasbourg will insert a unique identification number for the summary[8], and to follow them by two new zones whose purpose will be explained below.

A project such as this, aimed at collecting information from different sources in order to be able to disseminate it implies a certain homogenisation of the working procedures, with the sole aim of improving the final product.

Appendix 1 of this study contains a *note on the formal presentation of the summaries*.

IV.   Preparation of the summaries - Basic methodological aspects

8.   The previous meetings of the liaison officers of the courts contributing to the *Bulletin* have provided an opportunity to gradually determine the content of the summaries. The experience of producing five issues of the bulletin has made it possible to synthesise the *methodology* to adopt regarding this content. The methodological aspects appear in *Appendix 2* of this study.

V.   Reflections on the thesaurus and the alphabetical index

9.   The systematic thesaurus and the alphabetical index constitute the tools which permit the *use* of a data bank; they are as it were the entrance doors to the search strategy.

10.   This section is devoted to some reflections concerning the *thesaurus*.

a) The main function of the thesaurus, apart from that stated above, is to constitute a guide for the selection of the passages of the decisions to be recorded and for the choice of the keywords to be entered in zone 3 of the summaries.

b) It constitutes a valuable tool for those accustomed to using it, in particular ensuring a certain efficiency and speed of consultation.

c) As explained in the note on the methodological aspects of the content of the summaries[9], the thesaurus cannot remain fixed. If, when looking for the pertinent

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[7]   *See Appendix 2 of the study by R. Ryckeboer and P. Vandernoot of 7 January 1992 [doc. CDL (92) 2], as subsequently set out in Appendix II of the report of the meeting of 10 November 1993 of the Working Party on Constitutional Justice [doc. CDL-JU-PV (93) 5].*

[8]   *See below.*

[9]   *Appendix 2 of this study, 8.*

keywords, liaison officers find any gaps or inadequacies in it, they are requested to kindly inform the secretariat in Strasbourg, which will centralise all such observations so that this point can be discussed at the regular meeting of liaison officers. The people responsible for maintaining the data bank may also formulate suggestions on their own initiative.

d) In the near future, for example at the next meeting of liaison officers to be held in Venice in November 1994, the thesaurus should be examined very seriously. It will be necessary in any event to remove all the appearances of "Etc.", which had no other purpose than to show the non-definitive character of certain enumerations of keywords, but which cannot be used in zone 3 of the summaries. Similarly, the subsidiary keywords, such as "Treaties and *other* domestic legal instruments" or "Constitution and *other* sources of domestic law", should be better qualified. If they remain, which will perhaps be inevitable, they will constitute an invitation for the future to replace them by more adequate keywords better qualifying the categories now absent.

Concretely, the following procedure is suggested:

- The secretariat of the Commission should send a letter to all the liaison officers in August 1994 inviting them to examine Thesaurus 6 and to formulate amendments for 30 September 1994. This letter should be accompanied by the latest version of the thesaurus and the orientations proposed above.

- The liaison officers should send in their amendments by 30 September 1994.

- The secretariat should collate all these amendments, adding its own, with a view to producing a written report to be sent to the liaison officers no later than 31 October.

- One of the items on the agenda for the November 1994 meeting of the liaison officers should be devoted to the discussion of the amendments. The new thesaurus can then be adopted.

A similar procedure could be instituted each year.

11. As regards the *alphabetical index*, some points for reflection already appear in the note on the methodological aspects of the content of the summaries[10], to which the reader is referred.

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[10]   *Appendix 2 of this study, 11.*

VI. Processing of the summaries by the Secretariat in Strasbourg

General observation

12. At present the procedure for producing the *Bulletin* in Strasbourg comprises several phases, among them conversion to "PAO" (a desk-top publishing package) in order to achieve the excellent presentation we all know. This stage, while incontestably leading to a high quality result, has certain major disadvantages, quite apart from the fact that it adds to the time taken for production: it is accompanied by the division of the file created under the Wordperfect word processing package, which serves as the basis for the bulletin, into several separate sub-files in "PAO" and leads to a different pagination of the final "PAO" document as compared with the base document created in Wordperfect. A different, incompatible, software package is used in this stage. This means that it has become impossible to produce the systematic thesaurus and alphabetical index reference tables automatically, something which would be possible if the entire procedure remained in Wordperfect. The present procedure also prevents the *Bulletin* being used as a computerised data bank, again something which would be greatly facilitated if the Wordperfect files were retained throughout[11].

It was also noted that the possibilities offered by Wordperfect are very much under-exploited at present, notably as regards page layout and the use of "macros"[12].

Because of its purpose, this study cannot go into a detailed description of all the functions of Wordperfect in order to encourage their use, but further to the concrete indications given by the authors of this study during their visit to Strasbourg in July 1994, it is recommended that the secretariat make the necessary contacts for this purpose[13].

It will be seen below that, notably for the quality of presentation of the *Bulletin*, Wordperfect *for Windows* might be better suited than the Wordperfect for DOS used at present. This should be born in mind during these contacts.

13. It will also be recalled that in the general philosophy of the project, the *Bulletin* has an information function and the documentary function will be performed by the data bank being created[14].

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[11] *It goes without saying that if some wordprocessing package other than Wordperfect were to be used, we would also recommend the retention of this system right throughout the procedure, provided that it permitted a comparable comfort of use and quality of final presentation.*

[12] *The use of Wordperfect for certain functions, such as the automatic production of the index (by means of ALT-F5) is in fact made impossible at present because "PAO" is used at the end of the procedure.*

[13] *In this respect, the Computer and Telecommunications Division of the Council of Europe, in the person of Mr Marc Baechel (office 0.090 - extension 2475), has already been able to give valuable advice. Similarly, Mr Jean-Marie Lebrun (office 0.100 - extension 2814), in the same service, has been able to explain how the work of the Parliamentary Assembly is recorded and reproduced in a report which makes considerable use of Wordperfect facilities.*

[14] *See 3 above.*

The procedure for producing the Bulletin *in Strasbourg*

14. The different stages in the proposed procedure for producing the *Bulletin* by the secretariat in Strasbourg may be summed up as follows[15]:

- On receipt of the summaries, the secretariat gives each of them an *identification number* in zone 1, which is left blank by the liaison officers[16]. This number will not follow a global chronological order, except perhaps within each contribution.

- The secretariat checks the formal correctness of the summaries, notably with respect to uniform typographic signs[17].

- The linguistic correctness of the summaries is checked.

- From the legal standpoint, it is obviously not intended to criticise the substance of the summary submitted, but rather to check whether the methodological options have been respected, notably as regards the selection criteria[18] and the choice of the keywords of the systematic thesaurus[19] and the alphabetical index, etc.[20].

- The summaries and other contents of each contribution (statistical data, etc.) are input in Wordperfect. It should be checked whether Wordperfect for Windows would not be better suited for the procedures proposed than the DOS version used at present.

- The whole of the *Bulletin* is made up, including the presentation in columns, the choice of the different fonts, the insertion of any logotypes[21], etc.

- This document is proof-read and corrected.

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[15] *This is the procedure which will begin only when that in which the liaison officers are involved has come to an end. It is important that these officers also respect the orientations adopted.*

[16] *See the note on the formal presentation of the summaries (Appendix 1 of this study), paragraph 3, for the structure of this identification number.*

[17] *See the note on the formal presentation of the summaries (Appendix 1 of this study), 2 and 16; the latter contains a summary matrix.*

[18] *Notably the innovatory character, the interest from the comparative law standpoint, etc. (see the note on the methodological aspects of the content of the summaries (Appendix 2 of this study), paragraph 13).*

[19] *Particular attention must be paid to checking the completeness of the sequence of key words.*

[20] *See the note on the methodological aspects of the content of the summaries (Appendix 2 of this study).*

[21] *Such as the lion of Venice, for example, symbol of the European Commission for Democracy through Law. Wordperfect should permit this type of insertion, according to what we were told in Strasbourg.*

- The tables are then produced automatically. It is no longer necessary, thanks to the creation of the data bank, to provide for cumulative tables, unless their creation can also be made automatic. As for the alphabetical index, the authors of this study indicated a method to be used during their visit to Strasbourg[22]. For the systematic table, a partially automated system has been proposed[23], but it is highly probable that

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[22]   *Here is a brief reminder:*

    1)   To mark the words:
        - For the first word of zone 4:
          *.   F2($\rightarrow$Search) 4] F4(Indent) * F2 ($\rightarrow$Search) $\rightarrow$*
          *.   F12(Block) * $\leftarrow$ $\leftarrow$*
          .   ALT-F5 (Mark Text) 3 Return Return
        - For any following words in this zone:
          *.   F2($\rightarrow$Search) * F2($\rightarrow$Search) $\rightarrow$*
          .   ALT-F5 (Mark Text) 3 Return Return

    2)   To produce and generate the index:
        - Go to the end of the document, where the index is to be inserted;
        - To define the index:
        ALT-F5 (Mark Text) 5 3 Return 5
        - To generate the index:
        ALT-F5 (Mark Text) 6 5 y(yes)

    These functions can be automated by using macros.

[23]   *Here is a brief reminder:*

    1°)   Reproduce the thesaurus at the end of the document

    2°)   Note the last word of each series, as follows:
        - For the first series of zone 3:
          .   F2($\rightarrow$Search) 3] F2($\rightarrow$Search)
          .   F2(Search) # F2(Search)
          *. $\leftarrow$ $\leftarrow$ Shift-F2($\leftarrow$Search) * F2($\rightarrow$Search) $\rightarrow$*
          .   F2($\rightarrow$Search) [Write the key word]
        - For any following series in this zone 3:
          .   F2($\rightarrow$Search) 3] F2 ($\rightarrow$Search)
          .   F2(Search) # F2(Search) (possibly several times, until the cursor is beyond the end of the series which has just been processed)
          .   F2(Search) # F2(Search)
          *. $\leftarrow$ $\leftarrow$ Shift-F2($\leftarrow$Search) * F2($\rightarrow$Search) $\rightarrow$*
          .   F2($\rightarrow$Search) [Write the key word]

    3°)   Note the page on which this key word is found

    4°)   F2($\rightarrow$Search), possibly several times, until the systematic thesaurus is reached, and each time this key word appears in zone 3 of another summary, at the end of the same series of key words, again note the page on which this key word appears [this annotation is thus not to be made when the word (e.g. "lawyer") or combination of words (e.g. "professional secrecy") appears in another zone (essentially zones 4 and 5) or if it appears in this zone 3, but in another series of key words]

    5°)   When the systematic thesaurus is reached, continue in this way (hit F2) until the cursor

with the aid of a Wordperfect expert a more completely automated system can be found. In particular, efforts should be made to set up a system by means of which each series of keywords would be attributed a numerical code[24], reproduced in the systematic thesaurus, which would not only permit greater automation of the production of this table, but would also have significant advantages from the documentation standpoint[25] [26].

- The document thus completed is printed.

- The cover is produced.

- The *Bulletin* is sent to correspondents and subscribers. In this connection consideration should be given as to whether subscriptions should be paid by institutions and persons who do not contribute to the *Bulletin*.

§ 4.- The prospects for creating a computerised data bank

The content and prime functions of the data bank to be created

15. It results from contacts with various services of the Council of Europe and institutions connected with it[27] that the structure of the documentation base contained in the *Bulletin on Constitutional Case-law* could constitute the basis for a computerised data bank, if it were appropriately adapted in some way, such as by using the methods described in § 3 above.

The creation of a Documentation Centre would imply prior studies on a larger scale, and in

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arrives at the required place in the thesaurus, i.e. at the key word situated in the same series

6 °) *Insert here the pages noted in stages 4 and 5.*

Several of these functions can be automated by using macros.

[24] *For example, the series "**Constitutional justice** * Types of litigation * Restrictive proceedings * The banning of political parties" would carry the number 1.2.5.1 or 01.02.05.01.*

[25] *For example, each numerical code could be the name of a macro which would refer to the complete series of key words. This should permit better automation of the search strategies.*

[26] *Assuming that numerical codes are adopted, care must be taken with a number of associated problems, connected in particular with the fact that these codes will change over time, and it will therefore be necessary to modify past codes.*

[27] *In particular, in the Computer Division of the Council of Europe, Mr Coeckelenbergh, Head of this service (Office 0.017 - ext. 2212), Mr Marc Baechel (Office 0.090 - ext. 2475), Ms Cécilia Rudal (ext. 2471) and Mr Jean-Marie Lebrun (Office 0.100 - ext. 2814); in the Human Rights Information Centre of the Council of Europe, Ms Maggie Nicholson; in the Audiovisual Observatory (76 Allée de la Robertsau, Strasbourg), Mr John Hunter, consultant (tel. 88.14.44.00); in the documentation service of the Conseil constitutionnel, Mr Stéphane Cottin (2 rue de Montpensier, F-75001 Paris - tel.: 40.15.30.48).*

particular a feasibility study[28]. The data bank envisaged here has more modest ambitions.

16. Mr S. Cottin demonstrated the present exploitation, in the French Conseil constitutionnel, of the data appearing in the *Bulletin on Constitutional Case-law* using a documentation package called Folio, for which there are network (Folio-VIP) and single workstation (Folioviews) versions. This system has the undeniable advantage of prooving that the documentation contained in the *Bulletin* can be exploited at moderate cost, but it does not permit tree searches of the systematic thesaurus. It is not exactly user-friendly, but it would appear that this aspect could be improved. There are other software packages [29] with comparable functions, which should also be looked into.

17. The fact remains that it is possible right now to envisage the development of a data bank giving access to the main information in the *Bulletin*. Access to the summaries would be organised on the basis of the keywords of the existing systematic thesaurus and alphabetical index. Initially, input to this data bank would be organised on the basis of the *Bulletin*. It would be so organised that it could be disseminated on diskette, CD-Rom or in some other way to each court which contributes to the *Bulletin* and to any other outside institution, possibly with a fee being charged. The investment costs of the hardware and software required for accessing the data bank should remain modest[30].

The procedure for creating the data bank

18. The procedure leading to the creation of a data bank must take account of the fact that in September 1994[31], the presidents of the constitutional courts of Europe could envisage the creation of a data bank similar to that planned by the European Commission for Democracy through Law. It would appear highly desirable that there should be close collaboration between the Commission and the presidents of the constitutional courts[32] in developing what could become a joint project.

This procedure might be the following:

1)   Decide, at the November 1994 meeting of the liaison officers, on the principal *functions* to be performed by the data bank to be created, taking account of the modest character of

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[28]   *See below, § 5.*

[29]   *Dataware, for example.*

[30]   *For example, in addition to the usual PC, it may be necessary to have a CD-Rom reader and a Windows program or a licence to use the data bank software.*

[31]   *The reference here is to the meeting in Paris, with a view to preparing the 11th Conference of Constitutional Courts of Europe to be held in Budapest in 1996, at the invitation of the Constitutional Court of Hungary.*

[32]   *The meeting between Ms Rémy-Granger, of the Conseil constitutionnel, Mr G. Buquicchio, Mr P. Vandernoot and Mr R. Ryckeboer enabled all concerned to learn about the progress of the different projects.*

the project at this stage, in which the following functions must nevertheless be available:

. search for summaries via the branches of the systematic thesaurus;
. search for summaries via the isolated keywords of the systematic thesaurus and the alphabetical index, and by the Boolean combination[33] of them;
. search by country;
. search by date of the decisions which are the subject of the summaries;
. full text search;
. and possibly search by period).

It would be good if there were representatives of the Conference of Constitutional Courts of Europe at this meeting, notably with a view to deciding the conditions for the desired collaboration.

2) Examination by the secretariat of the Commission of the *concrete possibility of setting up such a data bank*, by adaptation of existing software to the system used for collecting the summaries, taking account of the desired functions, the budgets available and the possibilities for subsequent development in the context of a future Documentation Centre[34] [35]. During this phase it will be decided just how the consultation of the data bank will be organised: by CD-Rom, diskette or any other method. The data bank should be ready by the end of March 1995.

3) *Presentation of the data bank* to the liaison officers in May 1995 to receive any observations with a view to provisional approval.

4) *Presentation of the data bank* to the presidents of the constitutional courts contributing to the data bank and to the liaison officers in May 1995 to receive any observations with a view to *final approval* and a decision as to the *operating budget* and the *staff requirements*.

5) *Installation of the data bank* on 1st January 1996.

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[33]   *Functions of association, combination, exclusion, etc.*

[34]   *A provisional budget estimate was sent by the authors of this report to the Secretary of the European Commission for Democracy through Law on 20 July 1994. This is reproduced in Appendix 3 of this study.*

[35]   *The secretariat could be assisted by two jurists specialised in constitutional law and legal documentation and by an expert on computerised documentation.*

§ 5.- The prospects for creating a Documentation Centre of constitutional case-law

19. It was pointed out above that the creation of a fully-fledged Documentation Centre would be a more ambitious project. The following questions would arise in particular, quite apart from the inevitable institutional and budgetary issues:

- Which courts should collaborate in the venture, bearing in mind that the case-law sources of constitutional law are not limited to decisions of the specialised constitutional courts?

- Should other high courts be associated with it?

- Should account be taken of the constitutional case-law of lower courts?

- Should the data collected be increased (complete text of the decisions, constitutional theory, commentaries on the decisions, opinions of the Attorney-General, or other entities close the courts, constitutional proceedings, legislation, etc.)?

- What would the supplementary functions of the Centre be (augmentation and refining of search strategies, provision of the full text of the decisions, services for people outside, within what limits, aid with research, collaboration with Universities, Research Centres, other institutions, foreign states which are not members of the Council of Europe or the European Commission for Democracy through Law, etc.)?

- Should a network be organised, possibly to become interactive at a later stage?

- Should a translation service be created, and of what size?

- Should some or all past decisions be collected? How should they be systematised?

- Could certain aspects of the data bank be marketed?

- Etc.

20. It would be premature to take any decisions on these points at this stage. They should be the subject of broad consultation, followed or accompanied by a feasibility study. The fact remains, however, that as from now we need to do everything possible to make the future data bank capable of permitting extensions and we need to consider the staff structures necessary so as to leave all options open.

§ 6.- Organisation of the central secretariat of the data bank

21. Whatever its degree of automation, a data bank does not simply constitute a technical instrument: it has to be conceived, organised and managed so as to maintain its quality and

thought must always be given to its future development. At the same time, the *Bulletin* itself must go on receiving all the attention it deserves.

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In the above we have tried to indicate what might be some of the tasks of those responsible for this project. They may be summed up as follows:

- verification of the formal correctness of the summaries submitted by the liaison officers;

- checking of the content of the summaries (notably the pertinence of the choice of summaries and the correspondence of the keywords of the thesaurus and index with the summary), in cooperation with the liaison officers;

- organisation of a translation system;

- assistance and advice to liaison officers;

- management of the alphabetical index (cross-references, proposals for keywords, etc.);

- centralisation of observations on the systematic thesaurus and alphabetical index;

- initiation of observations on the thesaurus and index;

- centralisation of observations on the *Bulletin* and on the data bank in general;

- initiation of observations on the *Bulletin* and on the data bank in general;

- updating of the data[36]

- maintenance of the system;

- contacts with potential users; the outside dissemination of the *Bulletin* and of the data bank;

- development of the functions of the *Bulletin* and of the data bank;

- expansion of the documentation collected (for example to include the complete text of all or some of the decisions);

- submission of proposals and opinions to the European Commission for Democracy through Law;

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[36] *For example, indication of the date of official publication a decision recorded (in zone 2, sub-zone **g**)), additions to zone 6 (for example the mention of case law which has become established precedent).*

- sundry contacts with the secretariat of the European Commission for Democracy through Law;

- study of the possible creation of a Documentation Centre on Constitutional Courts;

- Etc.

§ 7.- Other aspects of the documentation likely to be collected

22.   At present the *Bulletin* collects systematised extracts and summaries of case-law. We have seen that initially the data bank would be based on this same source. In addition, a special issue of the *Bulletin* was devoted to the presentation of the different courts which contribute to it[37].

Retaining these basic options for the immediate future should not prevent us from starting right now to think about making additions to the type de documentation currently available.

23.   The courts could be invited to systematically send *all their decisions* to the secretariat in Strasbourg, which would be archived there according to a simple system based on a chronological classification by country. The most practical solution would be for the official law reports to be sent to Strasbourg as soon as they appear, and as an interim measure the reports for previous years could be sent in the near future. If there is a long delay between the adoption of the decisions and their official publication, the courts could send typed copies of their decisions in the meantime.

It is however necessary to check whether the secretariat has the necessary space and equipment, and in particular staff, to be able to do this.

24.   Thought should be given to the *theme of the next special issue* of the *Bulletin*. It is proposed that it should be devoted to the simple reproduction of the Constitutions of the States contributing to the *Bulletin* and possibly the legal texts relating to the constitutional courts. By "legal texts" we mean the laws, regulations, official decrees, rules of procedure adopted by courts, etc., excluding doctrinal or case-law data except where this is justified by circumstances[38].

25.   The data contained in the special issues could also be included in the data bank. The liaison officers should therefore pay special attention to the updating of the texts sent. In addition, courts which have not yet sent a presentation text to the secretariat could be invited to

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[37]   *It was decided that a special issue should be published each year.*

[38]   *For example, it is difficult to understand the extent of the powers of the French "Conseil constitutionnel" without a knowledge of its 1971 decision on the freedom of association. Similarly, the basis of the powers of the Supreme Court of the United States lies as much in the Marbury/Madison decision of 1804 as in the American Constitution.*

do so, for publication in the 1994 special issue. Even if it turns out to be no longer possible to publish it, this text could still be included in the future data bank.

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A P P E N D I X I

Note on the formal presentation of the summaries

The division of the summaries into eight zones

1.   It is recalled that the summaries are divided into eight zones:

- Zone 1[39]: *Identification number of the summary* (one number per summary): this zone is left blank by the liaison officers; it is filled in by the secretariat in Strasbourg.

- Zone 2[40]: *References of the summary* (zone divided into seven sub-zones, labelled **a)** to **g)**).

- Zone 3[41]: *Keywords of the systematic thesaurus.*

- Zone 4[42]: *Keywords of the alphabetical index.*

- Zone 5[43]: *Summary.*

- Zone 6[44]: *Supplementary information* (optional).

- Zone 7[45]: *Possible cross-references* (to other summaries or to the complete text of the decision) (to be left blank at present)[46].

- Zone 8[47]: *Languages* (of the official decision - possibly the languages of

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[39]   *New zone.*

[40]   *Former zone 1.*

[41]   *Former zone 2.*

[42]   *Former zone 3.*

[43]   *Former zone 4.*

[44]   *Former zone 5.*

[45]   *New zone.*

[46]   *It is useful to provide for this zone now, ready for its possible use in the computerised system.*

[47]   *New zone.*

translations approved by the court) (to be left blank at present)[48].

The compulsory content and characters for each zone

2. For each zone and for the whole summary, it will be necessary to proceed as follows, even if the particular zone does not have to be completed:

- begin the zone with its order number, from 1 to 8;

- follow this order number by a right-hand square bracket "]";

- follow this square bracket by a text indent (in Wordperfect 5.1 this is {Indent}, created by the "F4" function key);

- end *all* zones[49] with the hash character "#"[50].

These suggestions are intended to permit the automatic identification of zones for programming purposes and for subsequent searches for zones and their component parts. They permit automatic processing by means of appropriate software.

Zone 1

3. As *each* summary arrives, the secretariat of the *Bulletin* enters in zone 1, left blank by the liaison officers, an identification number which will be identical for each language version. A unique structure is proposed, making it possible to give each summary a unique reference, which will certainly be useful for identification as a DOS file. This structure is as follows:

- the first six characters are a sequence number, 000001 to 999999;

- the next two characters identify the country of the court concerned, using a unique two-letter country code to be determined by mutual agreement (for example "SP" for "Spain", "FR" for "France", "HU" for "Hungary", "PO" for "Poland")[51]; it will also be necessary to have a code for the bodies of the European Convention on Human Rights and for the Court of Justice of the European Communities in case, which is highly desirable, they should collaborate on the project (for example "CM" for "European Commission of Human Rights", "CR" for "European Court of Human Rights", "CJ" for "Court of Justice of the European Communities").

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[48] *It is useful to provide for this zone now, ready for its possible use in the computerised system.*

[49] *Including those for which there is no entry.*

[50] *The summary as a whole, at the end of zone 8, might be ended some other special character, for example "□".*

[51] *It is recalled that the identification number will be the same for each language in which the summary appears, so this two-letter country code must also remain the same.*

- these first eight characters are followed by a stop or decimal point ".";

- after the "." the next two characters identify the year of publication of the bulletin (for example "92" for "1992") [52];

- finally, the last character is the number of the issue of the bulletin for the year concerned (for example, the figure "3" for the third issue).

This will give, for example, for the 579th summary published in bulletin 2 of 1993, a summary sent by the Polish Constitutional Court, the following identification number: "000579PO.932".

Zone 2

4. Zone 2 contains the references necessary for the identification of the decision presented.

5. It is divided into seven sub-zones, not all of which will necessarily have to be completed by all liaison officers:

a) country;

b) name of the court;

c) chamber (if appropriate);

d) date of decision;

e) number of decision;

f) title (if appropriate) of decision;

g) publications (if appropriate).

Sub-zones a, b and d must always be completed.

6. Each sub-zone should be preceded and followed by a space (space-bar) and an asterisk ("*"). Between each sub-zone, there is therefore a space, and asterisk and another space. At the end of the zone, immediately following the last asterisk, is the hash character "#"[53].

Each sub-zone identification letter ("a", "b", etc.) is followed by a right-hand round bracket, ")",

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[52]   *It should be stressed that this is the year of the Bulletin, and not that of the decision summarised. Thus if the summary of a decision of November 1992 is published in the Bulletin in 1993, these characters will be "93" and not "92".*

[53]   *See paragraph 2 above.*

both in bold type, (for example "**c)**").

The date, appearing under **d)**, is given in three parts separated by a stop: the first gives the day of the month (for example "06"), the second the month of the year (for example "10" for "October") and the third the year in full (for example "1993"), which for a decision of 6 October 1993, gives the entry "**d)** 06.10.1993".

The indication, under **e)**, of the number of the decision should be limited to this number only, not preceded by anything else, such as "Decision". The entry should simply be limited to, for example, "**e)** B 568/93".

7.   Thus for example, zone 2 for decision B 568/93 of 6 October 1993 of the Constitutional Court of Austria, will be as follows:

2]   * **a)** Austria * **b)** Constitutional Court * **c)** * **d)** 06.10.1993 * **e)** B 568/93 * **f)** * **g)** *#

Zone 3

8.   Zone 3 gives the keywords of the systematic thesaurus, respecting the latter's tree structure and logic.

9.   Each of the keywords of the series should be preceded, separated and followed by an asterisk ("*"), with a space between this asterisk and the beginning or end of the key word.

In addition, the end of each series of keywords should be marked by the hash character "#". If there are two series, for example, each of them should end with "#".

Furthermore, if there are several series of keywords, each series should begin on a new line.

The first key word should be in bold type.

10.   This gives for example the following presentation for zone 3:

3]   * **Institutions** * Courts * Legal assistance * Bar * Discipline *#

        * **Institutions** * Courts * Legal assistance * Bar * Status of members of the Bar *#

Zone 4

11.   Zone 4 receives the keywords of the alphabetical index.

12.   If there are several keywords, they follow one another, preceded, separated and followed by an asterisk ("*"), with a space between this asterisk and the beginning or end of the key word. If there is only one, it its preceded and followed by an asterisk ("*") in the same way.

Again, at the end of the zone, immediately following the last asterisk, comes the hash character

"#"[54].

13. This gives for example the following presentation for zone 4:

4] * Lawyer * Professional secrecy * Discipline *#

Zone 5

14. Zone 5 contains the summary proper, as in the following example:

5] The provision of the law on the status of lawyers, concerning the obligation to respect professional secrecy, is in accordance with the Constitution. #

Zones 6, 7 and 8

15. Zones 6, 7 and 8 are either optional[55], or are for future use[56]. For the purpose of these zones see the general directives in 2 above.

These zones are thus entered as follows, for example:

6] Settled case-law #

7] #

8] #□

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54   *See paragraph 2 above.*

55   *This is the case with zone 6, intended for supplementary information.*

56   *This is the case with zones 7 and 8.*

The summary matrix

16.　　Liaison officers and the secretariat are advised to set up a matrix for the summaries; word processing packages can store them, possibly in the form of macros. For Austria, for example, this matrix should take the following form:

1]　　#

2]　　* **a)** Austria * **b)** Constitutional court * **c)** * **d)** .. * **e)** * **f)** * **g)** *#

3]　　* * *#

4]　　* *#

5]　　#

6]　　#

7]　　#

8]　　#□

Example of a complete summary

17.　　If the instructions given above are followed, the summary might appear as follows:

1]　　#

2]　　* **a)** Austria * **b)** Constitutional court * **c)** * **d)** 06.10.1993 * **e)** B 568/93 * **f)** * **g)** *#

3]　　* **Institutions** * Courts * Legal assistance * Bar * Discipline *#

　　　　* **Institutions** * Courts * Legal assistance * Bar * Status of members of the Bar *#

4]　　* Lawyer * Professional secrecy * Discipline *#

5]　　The provision of the law on the status of lawyers, concerning the obligation to respect professional secrecy, is in accordance with the Constitution. #

6]　　#

7]　　#

8]　　#□

18.　　On its receipt in Strasbourg, the secretariat will give it an identification number in zone 1, for example:

　　　　　　1]　　　000579AU.933 #

A P P E N D I X II

Note on the methodological
aspects of the content of the summaries

The division of the summaries into eight zones

1. The summaries are divided into eight zones[57]:

- Zone 1[58]: *Identification number of the summary* (one number per summary): this zone is left blank by the liaison officers; it is filled in by the secretariat in Strasbourg.

- Zone 2[59]: *References of the summary* (zone divided into seven sub-zones, labelled **a)** to **g)**).

- Zone 3[60]: *Keywords of the systematic thesaurus.*

- Zone 4[61]: *Keywords of the alphabetical index.*

- Zone 5[62]: *Summary.*

- Zone 6[63]: *Supplementary information* (optional).

- Zone 7[64]: *Possible cross-references* (to other summaries or to the complete text of

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[57] *The purely formal aspects of the presentation of these summaries are described in Appendix 1 of this study.*

[58] *New zone.*

[59] *Former zone 1.*

[60] *Former zone 2.*

[61] *Former zone 3.*

[62] *Former zone 4.*

[63] *Former zone 5.*

[64] *New zone.*

the decision) (to be left blank at present)[65].

- Zone 8[66]: *Languages* (of the official decision - possibly the languages of translations approved by the court) (to be left blank at present)[67].

2. It is also recalled that zone 1 should remain blank so that the secretariat in Strasbourg can enter a unique identification number for the summary[68]. Zones 7 and 8, the content of which will be determined at a later date, should also remain blank, but here again it is advisable to provide for them now in preparation for the planned computerisation.

In what follows we shall therefore limit ourselves to some general indications regarding zones 2 to 6[69]. These will be discussed in turn, but it goes without saying that in actually preparing a summary for submission it will be logical to start by completing zone 5, which contains the summary of an important passage of a decision. The other zones can then be completed in turn.

Zone 2

3. Zone 2 contains the references necessary for the identification of the decision presented.

4. It is divided into seven sub-zones, not all of which will necessarily have to be completed by all liaison officers:

a) country;

b) name of the court;

c) chamber (if appropriate);

d) date of decision;

e) number of decision;

f) title (if appropriate) of decision;

g) publications (if appropriate).

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[65] *It is useful to provide for this zone now, ready for its possible use in the computerised system.*

[66] *New zone.*

[67] *It is useful to provide for this zone now, ready for its possible use in the computerised system.*

[68] *See the note on to the formal presentation of the summaries (Appendix 1 of this study), 3.*

[69] *Former zones 1 to 5.*

Sub-zones a, b and d must always be completed.

5.   In completing this zone it is necessary in particular to pay attention to the formal aspects set out elsewhere[70].

We would simply recall that the date, appearing in sub-zone **d)**, is to be entered as three numbers separated by a point: the first gives the day of the month (for example "06"), the second the month of the year (for example "10" for "October") and the third the year in full (for example "1993"), which for a decision of 6 October 1993, gives the entry "**d)** 06.10.1993".

The indication, under **e)**, of the number of the decision should be limited to the actual number only, not preceded by anything else, such as "Decision". The entry should thus simply be, for example, "**e)** B 568/93".

Certain sub-zones can if necessary be completed after the summary has been sent in, or even after its publication in the *Bulletin*; the secretariat will then make these modifications to update the computerised data bank. This could be the case for example with the title of the decision (sub-zone **f)**) or, more frequently, the publications (sub-zone **g)**), including the official publications, which are not always known by the time the summaries are sent off to Strasbourg.

6.   Thus for example, zone 2 for decision B 568/93 of 6 October 1993 of the Constitutional Court of Austria, will be as follows:

2]   * **a)** Austria * **b)** Constitutional Court * **c)** * **d)** 06.10.1993 * **e)** B 568/93 * **f)** * **g)** *#

Zone 3

7.   Zone 3 gives the keywords of the existing systematic thesaurus, respecting the latter's tree structure and logic[71].

8.   The quality of these keywords depends on that of the thesaurus, to which part of the study is devoted.

At this stage, it is recalled that in principle the series of keywords in the thesaurus should be used. If, when seeking relevant keywords it is found that there are gaps or that certain keywords seem inappropriate, liaison officers are requested to point this out to the secretariat in Strasbourg, who will centralise all such observations with a view to discussing this point at the regular meeting of liaison officers. Exceptionally, a key word may be added to the thesaurus between two meetings if its absence would make it totally impossible to qualify the summary correctly by means of the existing thesaurus.

Generally speaking, the people responsible for *the Bulletin* and the data bank have the task of

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[70]   *See the note on the formal presentation of the summaries (Appendix 1 of this study) paragraphs 6 and 7.*

[71]   *See the note on the formal presentation of the summaries (Appendix 1 of this study), paragraphs 9 and 10.*

checking the quality of the summaries submitted, as regards both the format and the methodology used.

In particular, if a key word of a subsidiary character is reached, for example "**Institutions** * Courts * *Other courts*", il is useful to propose a qualification proper to the notion analysed.

It is necessary to use the entire series of keywords, starting with one of the four principal keywords of the thesaurus ("**Constitutional justice**", "**Institutions**", "**Fundamental rights**" or "**Sources of constitutional law**") and ending with the key word of the series corresponding to the notion involved in the decision which is the subject of the summary. For example, it is not correct to simply enter "Referendums"; it is necessary to reproduce the series "* **Constitutional justice** * Types of litigation * Electoral disputes * Referendums *#". At this stage the numbering of the thesaurus, which is still likely to be subject to modification, should not be used.

It goes without saying that when a given summary concerns several notions, several concepts, zone 3 will contain several series of keywords taken from the thesaurus.

9.   This gives for example the following presentation for zone 3:

3]   * **Institutions** * Courts * Legal assistance * Bar * Discipline *#

        * **Institutions** * Courts * Legal assistance * Bar * Status of members of the Bar *#

Zone 4

10.   Zone 4 receives the keywords of the alphabetical index. It leaves greater freedom of choice to the liaison officers.

11.   These keywords may be different from those of the systematic thesaurus. They permit the use of the notions specific to the legal system of the country concerned or concepts more precise than those appearing in the thesaurus.

They are to be included in an index in straight alphabetical order which permits direct search by notion and thus a different, more pragmatic search strategy than that of using the systematic thesaurus. It must in fact be borne in mind that using the thesaurus implies a knowledge not only of the basic notions employed, but above all of the philosophy underlying it. Its tree structure, for example, might not always suit users in the first instance.

The choice of keywords for the alphabetical index must nevertheless remain clear and coherent; it must maintain the comparative law perspective which dominates the project. It is recommended that the keywords of the systematic thesaurus be used whenever possible, but this time just the individual entry, not the whole series. There is no objection to these keywords repeating those used in zone 3, for example the last word of a series. Phrases cannot be used, only words, possibly combined.

Lastly, the keywords are limited to evoking the notion or the institution concerned in the

proposed summary. It raises the question, it does not suggest the reply. Thus for example, even when a decision is a finding of lack of jurisdiction of an authority, the key word used will be "jurisdiction".

Such an index will demonstrate its full value however only once it can be controlled independently by the data bank managers, for example by adding concepts, the introduction of a system of cross-references, the organisation of a search system using combinations of keywords, etc.

It is possible that certain summaries may have this zone completed after their arrival in Strasbourg.

Zone 5

12. Zone 5 obviously contains the essential information of the summary: the actual summary of a passage of the decision.

13. *Regarding the selection* of the summaries, it is worth while recalling the following principles:

a)   They are intended to be summaries, not reproductions of word-for-word extracts of the decisions concerned.

b)   A single decision should be the subject of several summaries if it has several interesting aspects. A summary thus covers not a decision but a passage of a decision.

c)   A passage of a decision should be selected only if it is of particular interest *from the standpoint of comparative law*. In this respect the following *selection criteria* are suggested. These criteria are *cumulative*, except where a passage of a decision confirms for the first time since the creation of the *Bulletin* an important well-established line of decisions[72]:

     1)   As stated above, the passage summarised should be of *interest from the comparative law standpoint*. This means that its interest must extend beyond its significance in national law. The matter settled by the court must be one that is liable to arise in other States[73][74].

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[72]   *This departs from the criterion according to which the passage of the decision concerned should be innovatory in national case law.*

[73]   *It may be assumed for example that passages of decisions concerning delicate issues connected with fundamental freedoms, the separation of powers or the functioning of institutions would come into this category.*

[74]   *It might even happen that a decision may be relatively innocuous in national law, for example because of its established nature or the traditions particular to the State concerned, but will be of interest for other States. It should therefore be submitted.*

2) The notion or the institution concerned in the passage of the decision should in principle be able to be found in the *systematic thesaurus*[75].

3) The passage of the decision contains an *explicit lesson*. Those which contain an implicit lesson are not accepted, unless this lesson is certain.

4) The passage has a certain *legal importance*. This criterion may be evaluated using the following indications: a passage is considered to be important when it has one of the following characteristics in particular:

   - It is a new and original position, not the confirmation of previous decisions.

   - It is a decision presenting itself as being one of principle.

   - The passage concerned has had an important impact on doctrine.

   - The passage concerned has had political or social repercussions[76].

   - It is a decision finding a violation of an important provision of the Constitution.

   - It is a decision concerning a problem of society involving sensitive issues[77].

   - ... etc.

d) The summary should be kept short[78]. If the passage of the decision to be summarised appears itself to be too long, it should be split into several parts.

14. *Regarding the content of the summaries*, it is of course impossible to ensure uniformity, but the following recommendations should be followed:

a) The summary should contain the *general lesson* of the passage concerned, and not concern itself with the particular context of the case.

b) As an exception to the above principle, the *context* of the case, notably the facts of the case, are to be given - but very briefly - if, and only if, they are essential for an understanding of the summary or the sense of the decision. If appropriate the context

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[75] *If any gaps or inevitable shortcomings are found in the thesaurus however, see paragraph 8 above and the procedure to be followed in this case.*

[76] *For example concerning a law marking an important political choice, a fundamental right, a matter connected with the flushing out of agents of a previous political regime, etc.*

[77] *For example euthanasia, the fight against racism, etc.*

[78] *Half a page can be considered to be the absolute maximum.*

can be indicated in zone 6[79].

c)   As regards *the legal rule or decision contested*[80], it should be briefly indicated by a summary of its content; it is not necessary to cite it using the usual references of date, title and publication.

d)   The same applies for the *reference legal rule*, for example for the constitutional provision with respect to which control is exercised: it is essentially a matter of outlining its content rather than giving its references, for example the article number of the Constitution.

e)   The legal concepts should be qualifiesd using terminology common to the majority of legal systems, disregarding the notions used in national law; the thesaurus constitutes a guide in this respect.

15.   For example, a summary of the type shown below seems to conform with the above indications:

5]   The provision which limits the right of access of candidates in a public service recruitment examination to a certain part of the jury's report violates the right of citizens to be informed by the Administration, associated with the right of access to administrative archives and registers. #

Zone 6

16.   Zone 6 is optional and can be used to put cases more clearly in context, for example by using such entries as: "settled case-law", "compare with such and such a decision", "see such and such a text, such a reference legal theory", etc.

It is also possible to put important aspects of the context of the case here.

This zone may very usefully be completed later, for example for references to legal theory, subsequent commentaries on the decision concerned if it should later become settled case-law, etc.

Zones 7 and 8

17.   The purpose of zones 7 and 8 cannot yet be determined, but it is desirable to provide for them now in order to be able to organise a system which will permit a certain flexibility in the future.

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[79]   *"Supplementary information".*

[80]   *For example the law challenged or the decision brought before the court with a view to having it set aside.*

Zone 7 could for example be used to identify the languages of the decision and of any official or unofficial translations, etc.

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A P P E N D I X   III

Estimated budget necessary for setting up a
computerised database
on Constitutional Case-Law

The European Commission for Democracy through Law plans to create a Documentation Centre on Constitutional Justice.

As a first step, it created the *Bulletin on Constitutional Case-law* which publishes three times a year the summaries of the most significant extracts of the decisions of the constitutional courts of Europe, the European Court of Human Rights, the Supreme Court of the United States and other high courts of Europe, using to a documentation system permitting a certain automation of the collection and reading of the information concerned. These institutions actively contribute to this project.

In this context, the Commission has in particular fixed the medium-term objective of establishing a computerised data bank of this information.

It emerged from the exploratory contacts of the secretariat of the Commission it was technically possible to create such an instrument at fairly modest cost.

Several systems may be envisaged, the choice among which still has to be made. This document describes the conditions under which an initial project could be implemented, and the costs involved.

Projected budget
_____

Budget item	Hardware or software to be acquired	Cost in French francs (estimate)
Basic hardware	PC - IBM compatible . RAM: minimum 2 Mb . processor: INTEL 486/25 MHz	7 000
Operating system	(MS) DOS 5.0 + Win-dows 3.1	2 000
Database management software (Data entry and consultation system)[81]	To be chosen from among the following: (MS) Access 2.0 (MS) FoxPro (Borland) Paradox 4.5 (Borland) D Base IV	4 500
Automatic indexing software[82] [83]	To be chosen from among the following: Dataware (Foliodev) Folio-VIP	15 000
Training in the use of the above-mentioned software[84]		24 000
Fees and expenses of two legal experts and a computerised documentation		

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[81]   Data entry management. This package also permits the preparation of the automatic publishing of the Bulletin, including the indexing and mailing.

[82]   This software permits user-friendly interrogation of the database and allows the results of searches to be printed. It is essential for the preparation of the subsequent production of the CD-Rom or any other comparable system for the diffusion of the data bank.

[83]   Possibly with the payment of a licence for reading software for each workstation.

[84]   Training for two people for one week, at +/- FF 12 000 per person, or a total of FF 24 000.

[85]   FF 10 000 per person, or FF 30 000, plus the travel expenses, estimated at FF 3 000 per person, i.e. FF 9 000 and a grand total of FF 39 000.

specialist to create the data bank[85]	39 000
Reproduction of the data bank on CD-Rom:	
. CD-Rom matrix	5 000
. Production of CD-Rom copies[86]	1 000
Total	**97 500**

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[86]   *FF 20 per CD-Rom, or FF 1.000 for 50 disks.*