BARTON

the appropriate committee of this Parliament and bring all the relevant evidence. This is an example of using a committee which was designed to deal with some aspects of this situation to deal with the contentious aspects. Even if you are not persuaded by our argument and our eloquence, at least take it to the appropriate committee of Parliament where it will stand a full examination. Mr Beazley and colleagues on the Committee on Economic and Monetary Affairs and Industrial Policy are not in a position to challenge in detail assumptions that you may have. The Committee on Transport and Tourism would be in a position to have that debate. They could deal with the responsible organisations whom I am sure you, like us, respect, in order to take these points through.

I know that certainly Mr Beazley and myself — if the case is proven — will always vote for road safety. But we are not convinced that this way of introducing the matter allows it to be examined in the proper way. It does no credit to the institutions of the EC if they use a different route than the one that is clearly correct. I hope that we will get an assurance from the Commission tonight that they are prepared to take that point on board. Otherwise there will be confrontation. I fear that many people will be confused and led to think that some people are concerned about road safety and others are not. The fact is that all of us are concerned but we want to see the process being carried through thoroughly. If the case is proven when we have a full examination then you will certainly get a vote from this Parliament for road safety.

MATUTES, member of the Commission. — (ES) Mr President, the Commission would like to thank both the rapporteur, Mr Beazley, for his good work, and Mr Barton for his contribution. However, the Commission cannot accept the suggested amendment, because this concerns the most important regulation in the set of regulations made by the Commission, namely the one limiting the maximum power of motorcycles. This would involve doing away with the maximum power of 74 kW. We cannot accept this in our enthusiasm for all measures that may contribute to limiting or reducing traffic accidents, which although often deadly, are unfortunately still very numerous.

Incidentally, on behalf of the executive committee I would like to thank the Parliament's Committee on Transport and Tourism, whose supplementary opinion supports our thesis perfectly by emphasizing the contribution of this proposal to enhancing road safety.

At the time of drafting its proposal, the Commission consulted the manufacturers and based its proposal on two reports. The first was drafted by the BAST (Bundesanstalt für Straßenwesen) and the second was written by a group of high-level experts whom the Commission charged with submitting proposals to improve road safety throughout the Community.

On the other hand, we also based our proposal on similar decisions adopted and implemented in some Member States. The BAST report from April 1990 which I mentioned specifically refers to two-wheeled and high-powered motor vehicles. If you compare the information on vehicles having a power of between 20 and 74 kW with the information on vehicles with greater power, you will come to the conclusion that the latter vehicles are more exposed to the risk of accidents.

The report by the group of high-level experts shows that in all of the countries of the European Community, motorcycles are at a very high level of risk. It can be confirmed that this risk increases as the power of the vehicle increases. The committee of experts expressed its desire to put an end to this situation and to take measures at Community level to prevent the accidents provoked by the use of high-powered vehicles, whose power sometimes greatly exceeds that of most automobiles.

As regards similar decisions adopted in some Member States, I would like to remind you that France has already adopted the measure proposed by the Commission and that Germany is seeking to achieve the same result by means of a voluntary agreement between manufacturers and the relevant authorities. In order to take this decision, the Commission requested the opinion of its working party on motor vehicles. This working party had no objection, nor did European manufacturers of course. Some experts from the working party even favoured a reduction to a figure lower than 74 kW.

Lastly, I would like to reiterate that the majority of these high-powered vehicles are manufactured and sold by a well-known non-member country. For the same safety reasons being put forward in the Commission, this country employs draconian licence-issuing measures to prohibit the use of these vehicles within its borders. The end result is that the high-powered vehicles produced are destined almost exclusively for the Member States of the European Community, a situation which we are trying to correct with this proposal.

IN THE CHAIR: MRS FONTAINE
Vice-President

BEAZLEY, Peter (PPE), rapporteur. — Madam President, I should like to ask the Commissioner why it is that if you look at the accident rate, mopeds, which have the lowest engine capacity, have one of the highest rates of accidents in relation to other motorbikes. We pointed out it is for the police to deal with speed. We all have very strict speed limits. But accidents can happen well within the speed limit and do very much with low-powered bikes. As I said, mopeds have a very high accident rate as compared with faster bikes.

PRESIDENT. — The debate is closed.

The vote will take place at 6.00 p.m. on Wednesday.

10. Copyright in the field of intellectual property

PRESIDENT. — The next item is the recommendation for the second reading (Doc. A3-0297/92) on behalf of the Committee on Legal Affairs and Citizens' Rights on the common position established by the Council (C3- 0287/92 — SYN 319) with a view to the adoption of a directive on rental right and lending right and on certain rights related to copyright in the field of intellectual property (Rapporteur: Mr Anastassopoulo).

ANASTASSOPOULOS (PPE), rapporteur. — (GR) Madam President, for perhaps the first time in the history of the European Parliament, the Council of Ministers has agreed — in its common position established with a view to the adoption of a directive on rental right and lending
right and on certain rights related to copyright in the field of intellectual property — to at least 70% and maybe even 80% of the amendments tabled by the European Parliament. The European Commission has certainly led the way by adopting — if not always the letter then surely the spirit — of almost all the amendments tabled by the European Parliament. In doing so, it has improved the original proposal. The surprising thing however in this case is that the Council listened to the Commission. And if one is aware of the statistics which show that the Council accepts on average around 30% of the amendments made by Parliament, we can reliably assert that after much laborious effort over one-and-a-half years the European Parliament can rightfully claim that it had more influence on the final shape of the text of the directive than any other institutional body. Thus, even with the Luxembourg Single Act — which predates Maastricht — and thanks to the process of cooperation, Parliament played its full legislative role. By maintaining a democratic deficit which has been shown to push citizens away from the Community, the governments of the Twelve have demonstrated that they do not yet fully understand the role Parliament can play.

Nevertheless, the achievement of concrete results is nothing but good news to your rapporteur from the Committee on Legal Affairs and Citizens’ Rights, which is competent in this area, as are the Committee on Economic and Monetary Affairs and Industrial Policy and the Committee on Culture, Youth and the Media, which gave expert opinions, as well as — I believe — the entire Parliament.

The European Commission and the Council agreed with us on the basic principles which we laid down for the protection of copyright in the field of intellectual property and the fight against piracy. They respected the balance which we endeavoured to create. They even adopted some of the innovations which your rapporteur proposed and they did not remove much of the basic philosophy of the European Parliament. With these adjustments, which at certain points, of course, influenced the national legislations by making the corresponding adjustment, the directive which we are examining in the second reading deserves to be the first one to be published and put into action the ambitious harmonization programme of the Commission, which is included in its well-known Green Paper.

One basic point of disagreement between myself and the Council remains unresolved, Madam President, namely the adjustment which was reserved for lending rights. There is no doubt that lending rights undermine the common position. Even within Parliament, the position of this rapporteur has not been fully adopted. For this reason, I am not — at this time — going to table new amendments challenging the Council's adjustments.

The same will not be true as regards reciprocity. In its modified proposal the European Commission has approved the relevant 19 positive concepts, but the Council disagreed. I am obliged to return to this topic with Amendment No 1, because I believe that the European Community needs to make clear its intentions for the future shaping of a new framework of adjustments vis-a-vis non-member countries. Amendments Nos 2 and 3 were submitted according to subject. This rapporteur personally had initially suggested similar adjustments to those which the Council finally approved in Article 2(7) of the draft directive. The Committee on Legal Affairs and Citizens’ Rights and the plenary session of Parliament had, however, proposed the simple transfer, subject to the usual opposing arrangements. For reasons of consistency relating to this position, I felt duty bound to table the two amendments mentioned.

My more general conclusion is clear: despite our disagreements and reservations, the common position of the Council deserves to be approved by us too. Just as the Commission expressed in its modified proposal and just as the European Parliament expressed in its studied positions which were inspired by the other two institutional bodies, the Council too — with its common position — is helping to strengthen European intellectual property and artistic creation arising from the immense wealth of our ancient continent. It is contributing to the achievement of more efficient and powerful arrangements for combating piracy, a phenomenon which detracts from intellectual and artistic creation and costs billions of ECU's every year. It is contributing to the shaping of those conditions which will be capable of ensuring the better and more dynamic exploitation of European intellectual and artistic works, with a proposal which aspires to strike a fair and appropriate balance between the original parties. It is combining a new, more harmonized system and better legal protection with respect for certain fundamental principles of democratic societies, such as the principle of freedom of contracts or the respect for rights and commitments which existed before the publication of the directive.

With these findings, this assessment and these objectives, we have examined the common position of the Council. I would request this House to accept it, with the conviction that in this way we will, I hope, be making a valuable contribution to the development of the European intellectual structure.

(The sitting was suspended at 8.05 p.m. and resumed at 9.00 p.m.)

IN THE CHAIR: MRS ISLER BEGUIN

Vice-President

PRESIDENT. — The next item is the recommendation for the second reading (Doc. A3-297/92) on the common position established by the Council (C3-287/92 — SYN 319) with a view to the adoption of a directive on rental right and lending right and on certain rights related to copyright in the field of intellectual property (Rapporteur: Mr Anastassopoulos)

BRU PURÓN (S). — (ES) Madam President, this draft directive, presented by Mr Anastassopoulos during the first part of this session, is a key component in the legislative proposals on intellectual property rights put forward by the Commission of the Communities — of the Community, we will say once the Treaty of Maastricht has come into force — for the establishment of an internal market. This directive is of fundamental importance, not only on account of the rights that it is to harmonize — exclusive rights to hire out, exclusive rights to loan, neighbouring rights to copyright —, but also because it is the first draft that has been examined by the Parliament and by the Council — a common position was obtained during the latter which the Parliament
should bear in mind during the second reading — and, others will certainly follow — such as copyright and neighbouring rights concerning satellite broadcasting and cable retransmission, or harmonization of the period during which copyright and neighbouring rights are protected —, it is important that certain basic points be defined in this first directive which, we hope, will soon come into force. It is important, in view of the degree of consensus — notwithstanding certain difficulties in the Council — obtained regarding the basic principles, namely, that a minimum harmonization is necessary on copyright and the most recent modes of communication, retransmission and practice, as well as regarding what might be called 'second degree' rights concerning straightforward use, hire, etc., covered in this report. These are essential elements in promoting and strengthening the foundations of a European cultural industry and promoting the creativity of our fellow citizens.

Mr Anastassopoulos’ work during the first and second reading has been very important, a number of amendments have been adopted in the common position which was unanimously adopted with a single abstention. It contained such important points as rights of the main director as author of the audiovisual recording or the regulation of performers’ rights.

The fact that Mr Anastassopoulos is submitting amendments — three, to be precise — is proof of his consistency as rapporteur, although we might question the political timeliness of approving them, given the precariousness of the consensus obtained in the common position. Bearing this in mind, as well as the old saying that ‘the best is frequently enemy of the good’, the Socialist Group will assess the consistency of the amendments and their timeliness before deciding how it will vote.

INGLEWOOD, The Lord (PPE). — Madam President, to someone like me who comes from the Anglo-Saxon legal tradition, some of the aspects of this particular proposed directive seem somewhat alien. But, nonetheless, if we are to have a single market we must find a way of fusing the various different legal traditions that exist in the Community. For it seems to me that for the single market to be complete, not only must we have a system of intellectual property that is consistent throughout that market, but if we look at the other side of the equation, the advances in information technology and the progress that has been made with the various systems of communication around the world mean that we have to find a way of bringing together these various traditions in order to serve the public. At the end of the day we sometimes forget that our job here is to try to serve those who send us to this Parliament.

During the progress of this piece of legislation through Parliament — here I am sure I am speaking for all my colleagues on the Committee on Legal Affairs and Citizens’ Rights — we have been bombarded by lobbyists with various points of view on which they try to convince us. It seems to me that this has been an entirely legitimate exercise, albeit the outcome reached is one that cannot satisfy everybody. As I said earlier, what we are trying to do is to bring together and fuse the various different traditions in this area of the law. What we have achieved is a compromise that is acceptable. I will be quite candid. Speaking as an Anglo-Saxon lawyer, various aspects of this proposal do not suit me entirely. That is not the point. What everyone has done is to give a bit in order to achieve a result which will be of benefit to everyone. Against that background, the one point I should like to make is to ask the Commission whether, once this particular piece of legislation has gone on to the statute book, it will monitor the way it works. It may be that some of the solutions we have reached are not actually the best solutions to the problems we have been trying to resolve. Against that background, certainly I should like to support this proposal.

BJÖRNVIG (ARC). — (DA) Madam President, in the Danish sub-group, broadly speaking, we think it should be sufficient for the Member States to be parties to international conventions such as the Berne Convention and the Rome Convention. We are also extremely concerned that, by classifying everything from waste to works of art as goods, Article 100A can be used as a legal basis, and maximum directives adopted by means of a majority vote. We would question the usefulness of complete harmonisation of authors’ rights, e.g. in large and small language areas.

Even after the adoption of this common position, we shall be worried about the chances of being able to keep the library scheme, so necessary for Danish authors. But we are pleased, in fact, to see an attempt is being made to do something about the rights of performing artists, including more rights for film producers. We fear, however, that the so-called rules of presumption are still too vague. In reality, it is in the secondary use of a production that many performing artists gain the greater part of their income. In spite of good intentions, their rights in the future will still hang by a thread.

Then again, if others with rights, and these form a large group, including publishers, record companies, video and perhaps later on film companies too, are to have a share of the library sector copyright, it will probably be at the expense of the creative artists, who will then have to share the existing pool with the performing artists.

As regards the possible harmonisation of the period of copyright protection, there are some Member States that wish to have a period of up to 70 years. In several countries a 50-year period applies, and we do not think this ought to be extended. In having a very long period of protection, one is in fact considering the interests of the dead above those of the living. We regret that on account of these points of uncertainty we are unable to vote in favour of Mr Anastassopoulos’ recommendation, but we acknowledge the hard work that has been done, and will not vote against, either.

BLAK (S). — (DA) Madam President, this proposal is about cultural policy, and I do not think it can be dealt with under Article 100A. But, sadly, the Council has turned a deaf ear. During the committee stage, I tried to get the part on lending removed entirely from the directive, but that, too, was impossible, even though this section quite clearly deals with cultural policy. However, during the course of the Council’s work, a number of changes have been introduced which make the proposal much more acceptable, because it no longer poses a threat to national library systems.

It remains to be seen why the Commission took it upon itself to table a proposal which the Member States in Council did not hesitate to alter very substantially. None of the ministers in Council were apparently interested in supporting the proposal which the Commission put for-
WARD, with strong backing from the international music industry, and against the better judgement of performing artists and national libraries. This is perhaps one proposal whose background bears closer examination if the Commission wants to try and practise self-criticism, as it has, after all, been asked to do in various quarters. This would show that in this instance, the Commission has extended its practice of hearings to only one or two of the many interest groups.

BANGEMANN, Vice-President of the Commission. — (DE) Madam President, I believe it is fair to say, as Mr Bru Puron and Lord Inglewood have emphasised, that following these two years of intensive discussion we now have a very reasonable proposal. Its present form owes much to the proposals from the rapporteur, for which I wish to thank him in its common position. After the Commission had incorporated many of the rapporteur’s and Parliament’s amendments, the Council included them in its common position. This proposal is not only important for the artists concerned but above all for the Commission’s further activity in the field of copyright. We have developed a harmonized concept for the rental and lending of copyright material and for combating illegal copying effectively. That in itself was a major achievement and an important step towards completing the internal market. Consequently, Article 100a is an entirely appropriate legal basis which was not even called into question by the Council.

But this proposal also takes account of existing economic interests which cannot simply be set aside: a work of art has to be produced. In order for this to happen, considerable financial resources are needed because the spread of duplicates is not possible without the availability of such economic resources. On the other hand it is perfectly obvious that there must be protection for creativity, the artist’s originality which must be properly remunerated. This has been achieved here for the first time. Lord Inglewood is perfectly correct: one could concentrate on all manner of minor details which perhaps could have been dealt with in a different way but the important thing is that we have arrived at a reasonable compromise between economic interests and the interests of the artists. This has also been generally accepted. It is quite simply rubbish, if I may say so, Madam President, to say that the views of a particular lobby have prevailed. If you will not allow me to say that, then I will say that such a view is unjustified.

We have incorporated all the amendments proposed by Parliament at its first reading and these were retained by the Council in its common position. The Council has therefore not only taken up the proposals from Parliament and the rapporteur but the common position is firmly based on Parliament’s views. I therefore hope you will understand if I ask the rapporteur and his colleagues in Parliament not to jeopardize this very delicate compromise by any further amendments.

Notwithstanding the quality of certain recitals, ultimately the important thing is that we have arrived at this common position. We for our part would not welcome any further amendments. The time has come to adopt the directive as it stands. We should not shrink from taking this important step because we can all be very satisfied with what we have achieved. I should like to thank the rapporteur, without whose intensive work we could not have arrived at this result.

ANASTASSOPOULOS (PPE), rapporteur. — (GR) Madam President, I think we could agree with most of what Commissioner Bangemann has said. Because it is accurate, and my colleagues and I have already remarked that in the specific draft directive the proportion of amendments by the European Parliament that were accepted by the Commission amounted to about 95-98%, a proportion unprecedented in parliamentary history, while the Council too accepted about 80%, a clear record which we nevertheless hope will be broken quite soon. At present, however, it stands as a record far removed from other directives, where only 10, 20 or 30% of our amendments are accepted. Consequently, we have no basic disagreement with what Mr Bangemann said. We also ought to concur with the Commission’s great desire for cooperation, as indeed we should accept that this proposed directive, which will be the first to be published among the Commission’s entire ambitious programme as presented in the Green Paper, represents a historic event. This is because in the final analysis its aim is to protect Europe’s artistic and intellectual creativity, which is one of the greatest, perhaps even the greatest, asset of our ancient continent. From then on, however, will the Vice-President of the Commission allow my colleagues and myself to consider whether the few amendments tabled may not improve the text still further, or whether we ought to abandon them? That is a question he should allow us to reflect upon at length until Wednesday, the day on which the voting is due to take place.

PRESIDENT. — The debate is closed.

The vote will take place at 6.00 p.m. on Wednesday.

11. Public limited liability companies

PRESIDENT. — The next item is the recommendation for the second reading (Doc. A3-0274/92), on behalf of the Committee on Legal Affairs and Citizens’ Rights, on the common position established by the Council (Doc. C5-0288/92 — SYN 317) with a view to the adoption of a directive amending Directive 77/91/EEC on the formation of public limited liability companies and the maintenance and alteration of their capital (Rapporteur: Mr Pereau de Pinninck Domenech).

PERREAU DE PINNINCK DOMENECH (RDE), rapporteur. — (ES) Madam President, fellow Members, this position is in line with the measures taken by the Commission and supported by this Parliament to eliminate legal obstacles to takeover bids by one company for another, that is Public Offer to Purchase. The fact that we are removing legal obstacles to takeover bids does not necessarily mean that we want to encourage them. Quite rightly, our Community institutions have expressed themselves neither for nor against them, although, on more than one occasion, they have recognized their contribution to the modernization of the Community’s economic fabric. When we talk about removing legal obstacles to takeover bids, we are in fact talking about eliminating practices which may stand in the way of the sovereign will of shareholders in a company subject to a takeover bid which, freely and in proportion to its shareholding in the company, decides whether or not to accept the conditions proposed by the company making the bid. One practice used by administrators of companies to hinder another from making a takeover bid on it is