Regarding the subject of the *Constitutional Courts' case law* for this meeting in my opinion firstly, the relationship between Spanish constitutional jurisprudence and Community Law (I); and secondly, the *constitutional traditions common to the Member States* as a limit to the European Law (II) are worthy of particular attention. Finally, I will make some comments on the Lisbon Treaty (III).

1. Spanish constitutional jurisprudence and European Law

On this matter, I will make a brief statement on (1.1.) constitutional limitations to the process of European integration, (1.2.) the relationship between primary European Law and the Spanish Constitution and (1.3.) the fundamental rights of Community Law.

1.1. Constitutional limitations to the process of European integration

On two occasions – July, 1992 and December, 2004 – the Constitutional Court has pronounced in monographic form on the relationship between original European Law and the Spanish Constitution. In the first case the comment was made that previous control over international treaties 'is explained by the need to satisfy a dual requirement: on the one hand, that of safeguarding the supremacy of the Constitution and, on the other preventing a situation of a state suffering international legal sanction for not meeting its international commitments, due to domestic constitutional demands'. As for the depth of the question, that is non-conformity with the Constitution of art. 19 of the European Community Treaty, the Declaration of July 1, 1992 ended by demanding, in order to ratify the Treaty of Maastricht, prior reform of art .13.2 of the Spanish Constitution. It was thus restricted to ordering 'add the subsection' and passive 'to the qualification of the possible right of foreigners to vote in municipal elections'.

The Spanish Court recognised the binding force of both primary and secondary Union Law for Spain, which through the application of art. 93 SC (Spanish Constitution) constitutes in itself a legal order and prevails over the judicial bodies of Member States. In subsequent judgements the Constitutional Tribunal reiterated 'recognition of the primacy of Community, primary and secondary Law over national legislation, and its direct effect for citizens', assuming the character that the Court of Justice of the European Union (CJEU) had granted to such primacy and efficacy in its judgements *van Gend & Loos* (1963) and *Costa* / E.N.E.L. (1964).

1.2. Relationship between primary European Law and the Spanish Constitution

Finally, the Constitutional Court has considered the relationship between the Spanish Constitution and Community Law in terms of the primacy of Community Law and supremacy of the Constitution (Declaration TC 1/2004). The proclamation of the primacy of Union Law by art. 1-6 CTfE of the Treaty (abolished in the Treaty of Lisbon) does not contradict, in the judgement of the Constitutional Court the supremacy of the Constitution. From the date of entry, the Kingdom of Spain is bound to the Law of the European Communities, primary and secondary, which constitutes their own legal order, integrated in the legal system of the Member States and which takes precedence over its own judicial bodies. Such a binding force does not mean that, 'because of art. 93 SC, the regulations of European Community Law have been vouchsafed the constitutional range and force of constitutional Law, nor does it mean that any possible infringement of those regulations by a Spanish ruling is perforce a violation of art. 93 of the Constitution. On the basis of the disposition of art. 93 SC, … the Court sees no contradiction between art. 1-6 CTfE (abolished in the Treaty of Lisbon) and art. 9.1 SC'.

In the wake of the Italian and German constitutional courts, the Spanish Tribunal played safe by defining material limits: 'In the hard to imagine case that in the subsequent dynamic of European Union Law, this Law were to become irreconcilable with the Spanish Constitution, without the hypothetical excesses of European Law with regard to the European Constitution itself being remedied by means of the normal channels laid down in it, in the final instance preserving the sovereignty of Spaniards and the supremacy of the Constitution, as granted by the latter, might lead the Tribunal to tackle the problems that would arise in such a situation, ones which, from the present standpoint would be considered as non-existent, by means of the relevant constitutional procedures'.

In the Court's opinion, 'art. 93 SC in its present version is sufficient for the integration of a Treaty such as the one being analysed by it'. In the Declaration 1/2004, the Court concludes that 'an assumption of the need for constitutional reform is lacking, since no contradiction is apparent between the precepts of the Treaty and the Spanish Constitution'.

1.3. The fundamental rights of Community Law

On the subject we are concerned with, the claims reaching the Spanish Constitutional Court cite particularly the fundamental rights of Community Law. The interpretative value that the Charter will possess in questions of fundamental rights will not give rise in our legal order to any greater difficulties than those which the Treaty of Rome produces at the present time. Simply, this is because both our constitutional doctrine (on art. 10.2 SC) and the selfsame art.52 CFR operate with a set of references to the European Convention which end up raising the jurisprudence of the Strasbourg Court as an obligatory code for the establishing of common minimum elements of interpretation.

That reduction of the complexity inherent in the concurrent combination of criteria for interpretation 'means, quite simply, that the Treaty assumes as its own the jurisprudence of a Court, whose doctrine is integrated via art. 10.2 SC in our legal order'. So, as the Tribunal argues, there are 'no new or greater difficulties to prevent the articulation of our system of law'.

As for the rest, art. 53 CFR lays down that none of the regulations of the Charter 'shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms, in their respective fields of application, by Union Law and international Law and by international agreements to which the Union or all Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions'.

The Tribunal concluded thus, in 2004, that 'no contradiction exists between the Spanish Constitution and arts. II-111 and II- 112 of the Union Treaty'.

2. The constitutional traditions common to the Member States as a limit to European Law

In accordance with the Union Treaties in force, any dogmatic consideration of Community Law is excluded outside the *constitutional traditions of Member States*, specifically, the *Spanish constitutional tradition*. This makes it a particularly opportune moment to return, to some cases where the Kingdom of Spain has been a party.

Recent decisions from the Court of Justice call attention, above all, to the by no means negligible consequences of the string of privatisations in the last two decades arising from the liberalisation of public utilities, as a result of Community Law, the time has come, therefore, as we go deeper into the matter, to think aloud about another burning question: for example, the steady breaking up and red-blooded privatisation of public services. Is this not a case of following the path to destroy basic macroequilibria not just for relationships between private enterprise, the growing commercialisation of wide areas of our existence and the state-guaranteed general interests but also for protecting citizens' rights?

The liberalisation of the electrical sector has opened up the market of the big business operators. But the act of going private in which energy firms are involved clashes strongly with the public service tradition and consequent administrative protection which characterises the electrical sector. The privatisation process has given rise to an electricity market in which bids for the sale and purchase of energy are the determinants of price. This has brought about supply shortages and behaviour contrary to the rules of free competition: a market which favours free competition may, as a result of the anti-competitive behaviour of operators with power in the market, turn against consumers. That is why the tensions between free competition and public service cannot be overlooked. What is more to what extreme does a no-holds-barred privatisation in Spain, which has left France, Italy and Germany behind with regard to the shape of the electrical sector, not convert our society into a mere tool of financial capitalism?

In this sense, I shall review recent jurisprudence concerning the relationship between the free movement of capital and the national public service of electrical energy (2.1.). And I shall point out all in all, the very own limits of Community Law and the *constitutional traditions of Member States*, in matters of public service, as barriers to the free flow of capital and the principle of free competition (2.2.).

In the importance of *constitutional traditions* there is an abundance of signals that taking care of rights in the Charter has as its aim, not so much to end cases of violation of rights but, rather, the harmonising of the fundamental rights of the Member States themselves, as evidenced from the State constitutions, the documents of international Law and the most advanced pronouncements of doctrine and jurisprudence. In