

影印版法学基础系列

欧盟法基础

ESSENTIAL

EUROPEAN COMMUNITY LAW

里查德·欧文

Richard Owen

(第三版)

(Third Edition)



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本书导读

本书主要介绍了欧共体法律的基础知识。

长期以来,关于欧共体及欧盟是什么性质的组织曾存在不同观点。有的学者认为它是国际组织,其法律制度是国际法的一部分;有的学者认为它是“超国家组织”,其法律制度类似于国内法律制度。随着对该组织的深入了解,越来越多的学者认为欧共体是一种有别于一般国际组织、自成一体的组织形式,其未来发展趋势尚不明朗。欧共体的法律制度也不同于一般国际法或国内法。读者在读完本书后也会对此问题有一个基本的认识和判断。

在欧洲各成员国中,欧共体法已经成为其国内法律的一个分支。因此,在本书的写作上,作者采取了部门法的写作方法。全书共分为七章。第一章介绍欧共体法律的渊源(法律表现形式)、基本立法和法律的基本原则等内容。了解共同体法律的渊源有助于把握共同体法与成员国法的关系问题。第二章主要介绍共同体法与成员国法的关系,读者重点要掌握共同体法的最高效力的意义。通过本书中有关判例的介绍,了解直接效力对国内法(包括宪法)的影响以及在非直接效力问题上成员国的解释性义务及其国家责任。第三章介绍共同体机构的组成及各机构作用的演变。读者可以通过对各机构作用的介绍体会欧共体组织的特殊性。第四、五、六、七章简要介绍了共同体法律目前主要发挥作用的领域,如对共同体内货物自由流通的规定和判例、竞争法的有关内容、对劳动者自由流动的保护以及男女平等保护的程度。共同体法律正是通过对上述领域事务的规定实现逐步统一欧洲,加强各成员国之间人民的交流和交往的目的。

本书作为了解欧共体法律制度的基本读物,其内容简明扼要,文字表述清晰,相信具备一定英语基础知识的读者不会产生理解上的困难。读者在阅读本书的过程中,如果对有关法律上的问题存在疑问,可以参考英汉对照的《欧盟法》一书。该书由袁发强翻译,武汉大学出版社 2003 年出版。

欧洲共同体法律制度是目前世界上比较特殊的一种法律制度。欧共体的所谓“超国家性”正是通过其特殊的法律制度体现出来的。在欧盟东扩、即将发展为由 25 个成员国组成的超级集团的时候,引进本书、介绍这种特殊的法律制度有利于我们了解欧盟的性质和特征,了解欧共体法律的特殊

性。相信本书的内容对于学习法律、外经贸和国际关系的本科生以及从事涉外实务工作的读者有一定的帮助作用。

本书有关中文的翻译者为武汉大学法学院博士研究生袁发强,不当之处请读者、专家指正。

译 者

2004 年 4 月

Foreword

This book is part of the Cavendish Essential series. The books in the series are designed to provide useful revision aids for the hard-pressed student. They are not, of course, intended to be substitutes for more detailed treatises. Other textbooks in the Cavendish portfolio must supply these gaps.

Each book in the series follows a uniform format of a checklist of the areas covered in each chapter, followed by expanded treatment of 'Essential' issues looking at examination topics in depth.

The team of authors bring a wealth of lecturing and examining experience to the task in hand. Many of us can even recall what it was like to face law examinations!

Professor Nicholas Bourne AM
General Editor, Essential Series
Conservative Member for Mid and West Wales

Preface

This text presents the essential issues from a selection of EC law topics in an accessible manner, under headings that are likely to form the basis of examination or coursework questions.

As the numbering of the EC Treaty Articles has recently changed (by virtue of the Treaty of Amsterdam), the style adopted in this book has been to list the new Article number when it is first mentioned, along with its former number. All subsequent references are to the new numbering, in square brackets, to indicate that the judgment occurred prior to the change. Theoretical references to Treaty Articles are without brackets.

Richard Owen
March 2000

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1 Legislative Acts

You should be familiar with the following areas:

- founding Treaties: ECSC, EURATOM, EC, Single European Act, Treaty on European Union and Treaty of Amsterdam
- other types of agreement between Member States: subsidiary conventions, acts of representatives between Member States
- general principles of Community law: fundamental human rights, equality, proportionality, legal certainty, professional privilege, due process and natural justice, good faith, fairness and *force majeure*
- international agreements: agreements between the Community and third countries, 'mixed' agreements and agreements between Member States and third countries
- types of legislative act: regulations, directives and decisions
- non-legally binding acts: recommendations and opinions

Sources of law

There are four sources of European Community (EC) law:

- law enacted by the Member States, which are the founding Treaties (primary legislation), and law enacted by the EC (secondary legislation);
- general principles of law recognised by the European Court of Justice (ECJ);
- international agreements with non-Member States; and
- decisions of the ECJ.

Primary legislation

One of the main characteristics of the European Union (EU) legal order is that it is based on a written constitution. The constitutive Treaties are as follows:

- European Coal and Steel Community Treaty 1952 (ECSC);
- EC Treaty 1957;
- European Atomic Energy Community Treaty 1957 (EURATOM);
- Convention on Certain Institutions Common to European Communities;
- Merger Treaty 1967;
- First and Second Budgetary Treaties 1970 and 1975;
- Treaties of Accession 1973, 1981, 1986 and 1995;
- Single European Act 1986 (SEA);
- Treaty on European Union 1993 (TEU);
- Treaty of Amsterdam 1999 (TA).

European Coal and Steel Community Treaty (ECSC)

The ECSC was established by the Treaty of Paris in 1951. Its purpose was to create a common market for coal and steel products. Accordingly, the ECSC set itself certain tasks:

- to contribute to economic expansion, growth of employment and a rising standard of living in the Member States;
- to ensure the most rational distribution of production, while safeguarding continuity of employment and taking care not to provoke fundamental and persistent disturbances in the economics of the Member States.

The ECSC set itself the following goals:

- to abolish import and export duties and charges having equivalent effect on coal and steel products;
- to abolish quantitative restrictions on coal and steel products;
- the prohibition of measures or practices which discriminate between producers, purchasers or consumers on the basis of nationality;
- to place restrictions on the Member States to grant subsidies or aid in order to promote domestic production;

- the prohibition of restrictive practices which tend towards the sharing or exploiting of markets.

The ECSC Treaty was the first of the constitutive treaties. It exhibits a functionalist approach to integration, which attempts to integrate economies sector by sector. A criticism of this approach is that it is an unnatural operation because the integrated sector retains indissoluble links with the other sectors of the economy which still keep their national character. Its justification is that it is a first step and is to be followed by the integration of other sectors of the economy until the whole economy is eventually integrated.

An innovative feature of the ECSC Treaty was the creation of four supranational institutions:

- Council of Ministers – representing the Member States;
- High Authority – intended as a supranational executive, consisting of independent individuals rather than government representatives, empowered to take legally binding decisions and to procure funds, fix maximum and minimum prices for certain products and fine businesses in breach of competition rules;
- Assembly – a parliament composed of delegates appointed by respective Parliaments of the Member States;
- Court of Justice – to review the legality of the Acts of the High Authority or, in some cases, businesses.

European Atomic Energy Community Treaty (EURATOM)

EURATOM was established by a Treaty of Rome in 1957. The purpose of EURATOM was to create a specialist market for atomic energy, distribute it through the Community, develop nuclear energy and sell surplus quantities to non-Community States. It set itself the following goals:

- to promote research and ensure dissemination of technical information throughout the Community;
- to establish uniform safety standards to protect workers and the general public;
- to promote investment in the nuclear energy industry;
- to maintain regular and reliable supplies of ores and nuclear fuels;
- to make certain that nuclear materials are not diverted for aims other than peaceful purposes.

EURATOM had its own Commission (which was the equivalent to the ECSC's High Authority) and Council of Ministers, but shared an Assembly and Court of Justice with the ECSC and European Economic Community. EURATOM is another example of sectoral or functional integration.

European Community (formerly the European Economic Community) Treaty

The European Economic Community (now known as the EC) was established by a separate Treaty of Rome from EURATOM in 1957 and its name was amended to the EC Treaty by the Treaty on European Union 1993 (TEU). The aim in the preamble was 'to lay the foundations of an ever closer union among the peoples of Europe'. It set itself the following objectives:

- a harmonious development of economic policies;
- continuous and balanced expansion;
- an increase in stability;
- an accelerated raising of the standard of living;
- closer relations between States.

These objectives have since been amended to the following:

- a harmonious, balanced and sustainable development of economic activities;
- sustainable and non-inflationary growth;
- a high degree of competitiveness and convergence of economic performance;
- a high level of protection and improvement of the quality of the environment;
- a high level of employment and social protection;
- the raising of the standard of living and quality of life;
- economic and social cohesion and solidarity among Member States;
- equality between men and women.

The establishment of a common market and the progressive approximation of economic policies of Member States were intended to achieve these objectives. Approximation of economic policies has now been changed to an economic and monetary union. The EC set itself the following goals:

- the elimination between Member States of customs duties and quantitative restrictions on import and export of goods and all measures having equivalent effect;
- a common customs tariff and common commercial policy towards third countries;
- the abolition between Member States of obstacles to movement of goods, persons, services and capital;
- the creation of a common agricultural policy;
- the creation of a common transport policy;
- the creation of an EC competition policy;
- an approximation of laws of Member States to the extent necessary for the functioning of a common market;
- the creation of a European Social Fund to improve employment opportunities for workers;
- the establishment of a European Investment Bank to facilitate the economic expansion of the EC;
- an increasing association with overseas countries and territories to increase trade and promote economic development.

These activities have been supplemented by later treaties to include:

- a common commercial policy;
- measures concerning entry and movement of persons;
- a common agricultural and fisheries policy;
- a system ensuring competition is not distorted;
- a policy in the social sphere comprising a European Social Fund;
- the strengthening of economic and social cohesion;
- a policy in the sphere of the environment;
- the strengthening of the competitiveness of EC industry;
- the promotion of research and technological development;
- the encouragement and establishment of trans-European networks;
- a contribution to the attainment of a high level of health protection;
- a contribution to education and training of quality and a flowering of cultures of Member States;
- a policy in the sphere of development co-operation;
- an increasing association with overseas countries and territories in order to increase trade and promote economic and social development jointly;

- a contribution to the strengthening of consumer protection;
- measures in sphere of energy, civil protection and tourism;
- the promotion of co-ordination between employment policies of the Member States, with a view to enhancing their effectiveness by developing a co-ordinated strategy for employment.

In order to achieve economic and monetary union, the TEU added the following activities in the economic field:

- the adoption of an economic policy based on the close co-ordination of Member States' economic policies;
- an internal market, conducted in accordance with the principle of an open market economy with free competition;
- an irrevocable fixing of exchange rates, leading to a single currency;
- the creation of the European Currency Unit (the ECU);
- the definition and conduct of a single monetary policy and exchange rate policy;
- support for the general economic policies in the EC.

These activities shall ensure compliance with the following principles:

- stable prices;
- sound public finances and monetary conditions;
- a sustainable balance of payments.

The EEC, as it was then known, had its own separate Commission and Council of Ministers, but it shared an Assembly and Court of Justice with EURATOM and the ECSC.

The Treaty of Rome embodied a very different approach to integration from the ECSC and EURATOM Treaties. Where the latter attempted to integrate sector by sector, the EEC Treaty concentrated on types of activity, rather than particular industries (with the exception of agriculture and transport), and aimed to ensure the effective functioning of the market together with free and fair competition. Another characteristic of the Treaty of Rome was that it laid down general principles which were left to the Institutions to work out in detailed measures. Policy making and regulation were also left to the Institutions. Timetables were laid down for the elimination of mutual trade barriers and a common external tariff. Through these methods, the founders hoped to achieve economic integration which was intended to be the forerunner of political integration. The Treaty was intended as a first step, to be followed by later Treaties, which would build on the progress made.