

**French — English Glossary
of
French Legal Terms
in European
Treaties**

SWEET & MAXWELL

12

**European Glossary of
Legal and Administrative
Terminology**

**Glossaire européen
de terminologie juridique
et administrative**

LANGENSCHIEDT

Glos
français — anglais
de

**Termes juridiques
français dans les
traités européens**

*European Glossary
of Legal and Administrative Terminology*

VOLUME 12

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of
French Legal Terms in
European Treaties

Selected legal terms in French texts of European Community Treaties, Conventions, Agreements and related documents and of Council of Europe Conventions, Agreements and related documents, explained in the light of the law of France

prepared under the auspices of the Council of Europe and published with the permission of the Controller of Her Britannic Majesty's Stationery Office

SWEET & MAXWELL
LONDON

LANGENSCHIEDT
BERLIN AND MUNICH

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**International Institute for
Legal and Administrative Terminology**

**Institut international
de terminologie juridique et administrative**

*Glossaire européen
de terminologie juridique et administrative*

FASCICULE 12

Glossaire français – anglais
de
Termes juridiques français
dans les traités européens

Termes juridiques sélectionnés dans le texte français des traités conventions et accords des Communautés européennes et des documents y relatifs ainsi que des conventions et accords du Conseil de l'Europe et des documents y relatifs, expliqués à la lumière du droit français

préparé sous les auspices du Conseil de l'Europe et publié avec l'autorisation du Controller of Her Britannic Majesty's Stationery Office

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Introduction

In considering entries and comments in this Glossary, the following points should be borne in mind.

(1) This Glossary arose out of the fact that in 1961/62 serious consideration was being given in the United Kingdom to the possibility of this country joining the European Communities. Translations into English of legislative instruments of the Communities were accordingly made to help that consideration and published in 1962 by Her Majesty's Stationery Office. In the process of the work of translation the legal editors found many terms which in their view required explanation for the benefit of readers not conversant with legal concepts mainly derived from French law and so a first edition of a Glossary was likewise published in 1962. A second edition was published in 1965 and the present Glossary is in effect a revised and amplified third edition containing more terms and including references to Council of Europe documents.

Thanks are expressed to the Controller of Her Britannic Majesty's Stationery Office for giving his permission for that second edition to form the basis of the present revised and enlarged Glossary, and to the above-mentioned gentlemen for similar permission and for preparing and editing the present version.

The French texts of European Community Treaties were chosen as basis because the translations into English above-mentioned were of those texts, and the explanations were related to French law to indicate the kind of background in which the terms concerned originated.

As a result of such explanations and of the references to French sources they contain, the Glossary has gradually, the authors hope, become a suitable means for seeking guidance on the law of France itself, where the reader is unfamiliar with that law but is familiar with English law or the English language.

(2) In Council of Europe documents the French and English languages are declared to be equally authentic, and its Conventions and Agreements have of course been drafted, to a considerable extent, independently of the European Communities. The finding of appropriate French and English equivalencies, particularly of legal terms, is not an exact but a developing science, which explains why equivalencies of the same term in French and in English may be found to be different in a European Communities context from a Council of Europe context or at different times. The fact that there are these differences underlines the need in international circles for harmonisation in the drafting of documents in more than one language, and it is hoped that this Glossary may contribute towards bringing about such harmonisation, first in Europe and then internationally.

(3) The glossary deals with *French* legal expressions as found in *French law*; it does not purport to deal with those expressions as found in the laws of other French speaking countries, e.g. Belgium, Luxembourg and Switzerland, where the meaning to be attached to a given expression may be different from that attached to it in French law.

(4) This Glossary is *not* intended to be an *interpretation* of the terms referred to, either for European Community purposes or for those of the Council of Europe; it is merely the giving and explaining of a *translation* or equivalent of a French legal term as understood in French law.

Interpretation of terms in European Community legislation is for the Court of Justice of the European Communities, and so for interpretation of the effect of a given term, reference should be made to the decisions of that Court.

Similarly, although French and English are both authentic languages of Council of Europe Conventions and Agreements, insofar as this Glossary is an explanation of French legal terms by reference to French law, such terms are commented upon in that light, and for that reason in some cases equivalent English terms may here be put forward different from those in the English text of the document concerned. But those Conventions, etc. were drafted simultaneously in English and French and the use of a particular term in either language will no doubt have been adopted for good reason. This likewise is a matter of *interpretation* for which resort should be had to Council of Europe sources, in particular, as to *Human Rights* to decisions of the *European Court of Human Rights*.

(5) Any views on an appropriate translation or equivalent are those of the editors, for which the responsibility is fully theirs.

(6) For general purposes dictionaries are available and this Glossary is aimed not at being a substitute therefor but as a corollary thereto; its purpose is to draw attention to a selected number of French legal expressions which have no counterpart in English and to others of which there appear to be direct equivalencies in English, but which in fact have different meanings in the two languages, adding a brief comment where thought necessary on the background of the expression referred to.

(7) In general it can be borne in mind that French law and Italian law both stem from the *Code Napoleon* of some 150 years ago, and while each has since developed in its own way, there are many close similarities of conception, law and procedure. German law and Dutch law have each developed in their own separate way, but fundamentally the laws of all four of these countries stem from Roman law, and very broadly speaking the general framework of both law and procedure in all four countries is on similar lines.

(8) The aim of this Glossary being to help English speaking readers in general, the legal terminology of England and Scotland being different in many respects and a reader from another European country being possibly unfamiliar with much of that terminology, technical legal terms are as far as possible avoided in this Glossary.

(9) Acknowledgements are paid to the works of reference listed under "Framework, abbreviations and bibliography" and to those others to which reference is otherwise made.

(10) This Glossary does not contain references to the law subsequent to the 15th October 1969. The translations published by Her Britannic Majesty's Stationery Office to which references are made are:—

European Economic Community Treaty S.O. Code No. 59-130-0-67

European Atomic Energy Community Treaty S.O. Code No. 59-132-9-67

European Coal and Steel Community Treaty S.O. Code No. 59-133-0165

Framework, abbreviations and bibliography

1. Each entry in the Glossary is in four parts:

- | | |
|-----------|-----------------------------------------------------------------------------------------------------------------------------------------|
| firstly: | The French expression |
| secondly: | The English expression which has normally been adopted
(1) in a European Communities context,
(2) In a Council of Europe context. |
| thirdly: | Comments |
| fourthly | Identification of the document as published in French
and of the passage in which the expression is to be found. |

It will be noticed that a number of references in the fourth part only have a European Communities reference under (1). Where there is no (2) the inference to be made is that no instance has been drawn to the attention of the editors, in which the expression occurs in a Council of Europe context. Conversely if there is only a (2) and no (1) attention has not been drawn to a similar entry in a European Community context, unless of course such a reference is quoted in the comments themselves.

2. The following abbreviations refer to:

- | | |
|-------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Ag. | Agreement |
| Art. | Article |
| C. of E. | Council of Europe |
| Conv. | Convention |
| Conv. F. J. | E.C. Convention of 27 September 1968 on the jurisdiction of the Courts and enforcement of judgments in civil and commercial matters: not published in the <i>Journal Officiel</i> |
| C.T.P. | Convention containing the Transitional Provisions (E.C.S.C.) |
| Daloz Dic. | Daloz: <i>Dictionnaire de Droit</i>
2nd edition 1966 |
| Daloz Enc. | Daloz: <i>Encyclopédie Juridique</i> |
| Dec. | Decision |
| Dir. | Directive |
| E.A.E.C. | (Treaty setting up the) European Atomic Energy Community. |
| E.C. | European Communities |
| E.C.C.J. | European Communities Court of Justice |
| E.C.S.C. | (Treaty setting up the) European Coal and Steel Community |
| E.E.C. | (Treaty setting up the) European Economic Community |
| E.P. | European Parliament |
| E.T.S. | European Treaty Series of Agreements and Conventions of the Council of Europe |

F.Tr.	"Fusion Treaty": Treaty setting up a single Commission of the European Communities, Brussels, 8 April 1965, entered into force 1 July 1967: translation published by H.M.S.O. 1967, S.O. Code No. 59-168
*H.R.	Human Rights (Council of Europe)
*H.R. Comm.	Commission of Human Rights (of the said Council)
*H.R. Court.	Court of Human Rights (of the said Council)
J.O.	<i>Journal Officiel des Communautés Européennes</i>
Perraud Charmantier	Perraud Charmantier: <i>Petit Dictionnaire de Droit</i> , 3rd edition 1967, now described as Raymond Barraine: <i>Dictionnaire de Droit</i>
Prot.	Protocol
Prot. C.J.	Protocol on the Statute of the E.C. Court of Justice
Prot. P.I.	Protocol on Privileges and Immunities
Reg.	Regulation
R.P.	Rules of Procedure

All documents referred to are identified as far as possible by use of the above abbreviations, e.g.: —

E.E.C., Reg. No. 3, Art. 1 (b)	Regulation No. 3 of the European Economic Community, Article 1 (b)
C. of E. Agr. P.I.	General Agreement on Privileges and Immunities of the Council of Europe.
E.E.C., Prot. P. I.	Protocol on Privileges and Immunities of the European Economic Community.
E.T.S. No. 19 (Establishment) Art. 10	European Treaty Series of Agreements and Conventions of the Council of Europe No. 19: "European Convention on Establishment", Art. 10.

3. The attempt has not been made to refer to every instance of the occurrence of the expression on which a note is made. As far as possible a reference is given to at least one instance in each Treaty, Convention or Agreement, and occasionally in another document, in which the expression occurs.

*The Convention for the Protection of Human Rights and Fundamental Freedoms, five Protocols thereto, the Rules of Procedure of the European Commission of Human Rights, of the European Court of Human Rights and other documents relating thereto, are all contained and available in one volume in both English and French, entitled "Council of Europe: European Convention on Human Rights: Collected texts: Fifth edition: September 1966".

acte / document, instrument, action, operation, measure, step, record of proceedings, writ (according to context)

The word *acte* by itself normally refers to a document recording something or other but it can also refer to something which is done, e.g. any contract, decision or measure duly made or taken by an authority and certain commercial operations (*actes de commerce*) which are listed in Arts. 632 and 633 of the *Code de Commerce*.

An *acte authentique* is an instrument or an official record made and kept by a public officer and admissible as evidence of what it says without further formality, including an *acte notarié* cf. under *forme titre exécutoire* and *Code Civil* Art. 1317.

An *acte de procédure* includes all such documents as *requête*, *mémoire*, *défense*, *observations*, *réplique* (See under *requête*) and also the despatch or service of a document.

In English law the expression writ is primarily associated with the document initiating civil proceedings. In a C. of E. context in Art. 7 of E.T.S. No. 30 writs are given as the equivalent of *actes de procédure*; it is suggested that a better equivalent of the French term would, in most cases, be that given below under *acte de procédure*.

(1) E.E.C., Art. 142

E.A.E.C., Art. 146

E.C.S.C., Art. 25

E.E.C., and

E.A.E.C., Prot. C.J., Arts. 3 and 19

E.C.S.C., Prot. C.J., Art. 3

E.C.C.J.R.P., Arts. 15, 37, 41, 53, 62

(2) E.T.S. No. 30 (Mutual Assistance in Criminal Matters) Art. 7

E.T.S. No. 56 (Arbitration Annex 1: Uniform Law) Art. 31 (1)

Examples of different translations of the same word

1. Les *actes* de l'Assemblée sont publiés dans . . .

The Assembly's *proceedings* shall be published in . . .

E.E.C. Art. 142

E.C.S.C. Art. 25

2. La Cour de Justice contrôle la légalité des *actes* du Conseil . . .

Supervision of the legality of the *measures* taken by the Council

. . . shall be a matter for the Court of Justice

E.A.E.C. Art. 146

E.E.C. Prot. C.J.

Art. 19

3. Les juges jouissent de l'immunité de juridiction. En ce qui concerne les *actes* accomplis par eux, y compris leurs paroles et écrits, en leur qualité officielle, ils continuent à bénéficier de l'immunité après la cessation de leurs fonctions.

The Judges shall be immune from legal proceedings. They shall continue to enjoy such immunity after their functions have ceased in respect of *actions* taken in the course of the performance of their official duties, including words spoken or written.

E.E.C. Prot. C.J. Art. 3

4. Il est tenu . . . un registre . . . sur lequel sont inscrits à la suite et dans l'ordre de leur présentation tous les *actes de procédure* . . .

A register . . . shall be kept . . . recording . . . in the order of their occurrence or submission all *procedural documents* . . .

E.C.C.J.R.P. Art. 15

5. Le Greffier établit un procès-verbal de chaque audience. Ce procès-verbal . . . constitue un *acte authentique*.

The Registrar shall draw up a record of every sitting. This record . . . shall constitute an *official record*.

E.C.C.J.R.P. Art. 53, 62

See also E.C. Conv. F.T. Art. 50

6. Je demande à la Cour de *prendre acte* de ma déclaration.

I request the Court to *take note* of my statement.

7. Je demande à la Cour de me *donner acte* de ma déclaration.

I request the Court to *make a formal record* of my statement.

acte authentique / official record

see under *acte*

(1) E.C.C.J.R.P. Arts. 53, 62.

E.C. Conv. F.J. Art. 50

acte de commerce / commercial operation

see under *acte*

French Commercial Code, Arts. 632 and 633

acte de l'état civil / official record relating to civil status

The following matters are the subject of such a record, births, marriages, deaths, adoption and legitimation of a child, and judgments of separation, divorce and nullity of marriages. See also under *acte*.

French Civil Code, Art. 34

acte de procédure / procedural document or step

Any form of written statement made for the purpose of legal proceedings would be an *acte de procédure* (procedural document) equally a procedural step by way e.g. of personal attendance. In the H.R. Comm. R.P. Rules 13 and 48 "pleadings" are given as the equivalent of (written) *actes de procédure*. In English Court procedure a "pleading" must state the material facts in summary form and not law, and it must not state the evidence by which the facts are to be proved. In Scotland the equivalent document indicates the points of law relied upon and states the facts intended to be proved. In France the practice is for a *requête*, *mémoire*, *duplique*, etc. (see under *requête*) to contain not only the material facts and the *moyens de*

preuve (means of proof available), but also the law relied upon. It is therefore suggested that "procedural document (or) step" is to be preferred to "pleading" as an equivalent of *acte de procédure*.

E.C.C.J.R.P. Instructions to Registrar, Art. 14

E.C.C.J.R.P., Art. 37

acte notarié / notarial act

see under *formule exécutoire*

French Civil Code, Art. 1317

acte sous seing privé / document under hand

A document (not in fact under seal in spite of its name) drawn up and signed by the person or persons concerned, as distinct from an *acte authentique*, which must be drawn up by official authority (see under *acte*). Cf. document "under hand" as contrasted with "document under seal" in English law.

French Civil Code, Arts. 1322 to 1332

activité non salariée / self-employed, non-wage-paid occupation

Although *Salaire* means "Wages", in the context of French social legislation and in particular that of social services, and in the three European Community Treaties, the expression *salarié* is used to refer to a person working under a contract of employment (whether express or implied), and whether remunerated in wages, in kind or in any other form, as distinct from a worker who is self-employed (*non-salarié* or *indépendant*). Cf. *activité professionnelle*. In a C. of E. context the equivalent given of *salariés* is "wage earners" cf. Section VI (b) Prot. to E.T.S. No. 19 (Establishment).

(1) E.E.C., Art. 54 (3) (d)

activité professionnelle (rémunérée ou non) / (paid or unpaid) occupation or employment

"Occupation, calling, trade" is the translation given by the *Dictionnaire moderne, français-anglais/anglais-français*, Larousse, 1960 for *profession* in the context of activity, and this is the sense in which the words *profession* and *professionnel* are used in the European Community Treaties. The word "profession" in English is not wide enough to cover all kinds of "employment" and "self-employment", which the French word *profession* does cover. The word "occupation" has therefore normally been used to translate *profession*, but occasionally "employment" may be appropriate.

In French law, when it is desired to convey the narrower (English) meaning, the expression *les professions libérales* is used, translated as "the professions" in E.T.S. No. 19 Art. 10, and following English official practice, as "professional occupations" in E.E.C., Art. 60.

E.T.S. No. 64 Preamble (a) gives "business occupations" as the equivalent of *activités professionnelles*. For the reasons given above it is suggested that the word "business" should have been omitted.

(1) E.E.C., E.A.E.C., and E.C.S.C., Prot. C.J., Art. 4

(2) E.T.S. No. 19 (Establishment) Art. 10

E.T.S. No. 64 (Use of detergents in washing and cleaning) Preamble (a)

adjudication / (according to context and in both cases to the best bidder)

(1) sale by public auction

(2) (formal procedure leading to) award of contract after public invitation to tender

In French law according to the nature of the contract *adjudication* relates to a sale by public auction or a procedure for

award or the actual award of a contract for services or supplies after an invitation to tender. For some purposes, French law requires that *adjudication* should occur (*adjudication judiciaire* or *adjudication forcée*) e.g. where agreement cannot be attained on division in kind of beneficiaries' shares in a deceased's estate and moveables are sold for distribution in cash of the proceeds of sale; but a person may of his own free will agree to such procedure in certain circumstances (*adjudication volontaire*)

According to the prescribed circumstances, Government contracts for public works and supplies can be by *adjudication* by way of award of contract after an invitation to tender, or by "private treaty" i.e. private arrangement. When used to indicate a type of tendering procedure, *adjudication* means that the contract goes to the maker of the best offer in money terms: for this reason it is sometimes translated as "automatic public tendering", to distinguish it from *appel d'offres* translated as "discretionary tendering".

Either of these may, furthermore, be "open" or "selective". French law prescribes the procedure for *adjudication*, according to the circumstances, and who may or may not be *adjudicataire*, a beneficiary of the operation; Decree No. 64-729 of 17.7.64 Arts 83-92, to be found in Dalloz *Petit Code Administratif*, 1966 edition under "*Marchés de Fournitures et Travaux*" p 597-599

Examples of different translations of the same word

1. Formalités à remplir entre le jugement qui ordonne la vente et l'*adjudication*
Formalities to be accomplished between the judgment ordering sale and the *sale by public auction* Dalloz Dic: *Vente publique d'immeuble*

2. Le mode normal de passation des marchés de travaux publics est l'*adjudication publique ouverte*

The normal method of entering into contracts for public works is by *award after public and open* invitation to tender: Dalloz Dic.

(1) Reg. No. 101/64/EEC., Art. 5
Conv. of Association between the E.E.C.
and the African and Malagasy States
associated therewith, Art. 25, and
Financial Reg. (Relating thereto) of the
European Development Fund, Art. 47

administrateur / director (of a "société anonyme")

The Directive referred to deals with achieving freedom to provide services as between Member States of the Community and its Art. 4 lists restrictions which are to be abolished. In relation to France it refers *inter alia* to the necessity of French nationality as a qualification in the case of certain *sociétés* to be chairman of the *conseil d'administration*, to be *administrateur délégué, gérant, directeur*.

The day to day management of a *société anonyme* (company limited by shares: see under *société*) is in the hands of its *conseil d'administration* (Board of Directors) and more particularly of its *président* (Chairman) who is by law *Directeur général* of the *société*; the members of the *conseil* are known as *administrateurs*, and a *président* unable temporarily to act as such may delegate his powers of management to one of the *administrateurs*, who is then known as *administrateur délégué*. For auditing of accounts and check on the financial conduct of affairs, wide powers are given to *commissaires aux comptes* (see thereunder).

In a *société en nom collectif* (similar to a partnership), in a *société en commandite* (similar to a limited partnership, having working partners, *commandités* with full liability and sleeping or dormant partners, *commanditaires* with limited liability), and in a *société à responsabilité limitée* (nearest parallel a private company, but with some features of a partnership: see thereunder), the management is in the hands of one or more *gérants* who have the widest powers, but need not be members of the *société* and in the case of some *sociétés* auditing and check on financial conduct

of affairs is effected by a committee of members of the *société* known as *conseil de surveillance* (see thereunder).

A mere *directeur* is never the equivalent of a Director on the Board of Directors of a company in the U.K.; he is a person employed as head of an undertaking – school, stores, factory – or of a department, in e.g. a Government office. In a *société* he is a person employed in a superior capacity (e.g. *directeur technique*) or as one of its heads of departments and may generally be termed a manager (e.g. sales manager). In a *société anonyme*, a *Directeur général* is equivalent to a General Manager, and the *Président du conseil d'administration*, being in charge of the management of the affairs (*direction*) of the *société* becomes thereby its *Président directeur général* and can be described as "Chairman and Managing Director". The whole of the governing organisation can then be referred to loosely as *la direction* and the managing body or board of some organisations is called a *conseil de direction*.

Since the Council Directive referred to below was published, French company law has undergone a thorough reform and re-codification in the form of two new Laws, Nos. 66-537 and 538 of 24 July 1966, which repeal earlier enactments, including Arts. 18 to 46 of the *Code de Commerce*.

The principal changes affecting matters dealt with in the present entry are:

(1) The appointment of an *administrateur délégué* is now made by the Board (Art. 112).

(2) As an alternative to a *conseil d'administration* and a *Président directeur-général* (with or without one or two *Directeurs généraux* sharing his powers of management – Art. 117), a *société anonyme* may be governed by a *Conseil de Surveillance* and a *Directoire*, or a *Directeur général unique* (Arts. 118 to 150).

Certain other changes introduced by these new Laws are indicated hereafter under the relevant headings, but in

general reference should also be made to Regulations made under those laws.

(1) E.E.C. Dir. of the Council of 28.2.66, Art. 4: J.O. No. 42, 8.3.66, p. 584/66

arbitrage / currency arbitrage

arbitrage transactions in France correspond to currency transactions similarly referred to in the United Kingdom money market and consist in operating on different exchange markets simultaneously so as to make a profit. Distinguish *arbitrage* in the sense of arbitration and *compromis d'arbitrage* (see thereunder).

(1) E.E.C., Prot. re European Investment Bank, Art. 23

arrêt / judgment

In France a judgment given by the superior courts, in particular the *Cour de Cassation*, the *Conseil d'Etat*, the various *Cours d'Appel*, the *Cour des Comptes* and the *Commission régionale d'appel de Sécurité Sociale* is known and described as an *arrêt*. So also is a judgment of the Court of Justice of the European Communities, but on subsidiary matters it may be an *ordonnance*, either an *arrêt* or an *ordonnance* being spoken of in general terms as a *décision*: cf. under *ordonnance*, *jugement*, *dispositif*.

The formal judgment of the European Court of Human Rights is described as an *arrêt*, but it may for incidental matters take decisions (*décisions*). H.R. Court R.P. Rules 47, 48, 50 (k), 52.1. and in general *décisions* is used to cover all kinds of decisions, *ibid* Rule 20 und Rule 46 (3) H.R. Comm. R.P.

(1) E.C.C.J.R.P., Art 63

E.C. Conv. F.J. Art. 25

(2) H.R. Conv., Arts. 51, 52, 54.

H.R. Court R.P., Arts. 50, 51.

artisanat / small craft industries

There is a difference between the meaning of the word "artisan" in French and

English. In both, the term denotes a manual worker, skilled in a given trade (*qualification professionnelle*) but whereas in the U.K. one so skilled remains an "artisan" even though working as an employee, in France an *artisan* must work on his own account (whether using his own, or customers' materials and with or without members of his family and/or limited outside assistance such as a mate or apprentice); he thus belongs to the category of *non-salariés* (see under *activité non-salariée*) though his establishment is necessarily a small one.

In the entry relating to Italy in Annex 1 to the C. of E. "European Interim Agr. on Social Security Schemes relating to Old Age, Invalidity and Survivors", under the headings relating to Federal Republic of Germany (b), Luxembourg (d) and Saar (b) the equivalent of *artisans* (French) is given as "artisans" (English).

For the reasons given above it is suggested that a better equivalent in English would be "persons working on their own account in small craft industries".

(1) E.C.S.C., Art. 80

(2) Annex 1 to the C. of E. European Interim Agr. on Social Security Schemes relating to Old Age, Invalidity and Survivors (as at 1.2.66 not numbered in the E.T.S. series) regarding Italy (g)

assistance judiciaire / legal aid

(1) E.C. Conv. F.J. Arts. 44, 47

association en participation / undisclosed partnership

In France, this particular entity (which is unknown in U.K. law, though certain similarities exist - see below) was until recently governed by Art. 42-45 *Code de Commerce*. Though considered a *société* (see thereunder) it is not a *personne morale* (see thereunder), has no capital of its own and no shares and not only is not required to publicise its existence, but may not do so. Accordingly it exists legally only between its

members and has no effect in relation to third parties. The manager, or managing partner, (*gérant*) acts in regard to strangers in his own name and is alone liable for his actions. However, any member who intermeddles in the affairs of the *association* may render himself liable (cf. the doctrine of "holding oneself out" as a partner, in U.K. partnership law), and if all take part together the *association* will be ipso facto converted into an *association de fait*, all the members of which are liable for all its debts without limit. In such cases it will generally be treated as a *société en nom collectif* (see thereunder) but as void for lack of due formalities and as such liable to be wound up.

It will thus be seen that the rights and liabilities of the members bear some resemblance to the position of "dormant" partners in an "undisclosed" or "secret" partnership in the U.K., but with the important distinction that mere disclosure of their existence may, in the U.K., suffice to render the dormant partners liable.

The above covers the situation where one partner runs the business and the other or others merely provide finance. There may however be cases where all the parties are equally active in pursuing what appear to be their own respective businesses, whilst having a private agreement to share profits and losses in some form or another. Such an arrangement may also be an *association en participation* in France, and is somewhat similar to that arising in England under what is termed a "syndicate agreement" in the "Encyclopedia of Forms and Precedents".

Arts. 42-45 *Code de Commerce* were repealed by the Law of 24 July 1966 (Art. 505) and are now replaced by Arts. 419-422 of that Law. The new provisions adopt the name *société en participation*, thus eliminating any confusion with non profit-making *associations* (see under *sociétés qui ne poursuivent pas de but lucratif* and under *d'utilité publique*, below).

(1) E.C.S.C. Decision 14-67 J.O. 127: 27.6.67: p. 2512/67 Preamble, paragraph I (2) (c)

astreinte / periodic penalty payment

Neither French judicial procedure nor that laid down in the Treaties visualises power to commit to prison for neglect or refusal to obey an order of a civil court. It is however possible to bring pressure on a recalcitrant party by the imposition of a penalty payment of so much for every day (or week, or month etc.) during which the wrongful act or omission continues, so that the ever-increasing total will frighten the debtor into compliance. Such a power is given to a Court in France and to certain institutions of the Communities. This must be distinguished from a fine (*amende*), which punishes something done or omitted in the past, and from damages (*dommages-intérêts*), which compensate for, and should be commensurate with, the injury suffered; it is also distinct from a lump sum penalty stipulated in a contract, such as that mentioned as *dédit* in E.C.S.C., Art. 65 (5).

(1) E.E.C., Art. 87 (2) (a); E.C.S.C., Art. 68 (6); E.C.S.C., Prot. C.J., Art. 43; E.C.S.C., C.T.P., Art. 5; E.C. Conv. F.J. Art. 43

astreinte à domicile / obligation to live in a particular place

The term occurs in the context of *allocation pour astreinte à domicile*, i.e. an allowance arising from the fact that e.g. owing to the circumstances of his work a person is obliged to live in a particular place. Such an obligation and an allowance therefor can arise in the Netherlands and E.A.E.C. Regs. 11/65 and 2/66 prescribe certain conditions which are to apply to staff of the Joint Nuclear Research Centre employed in the Netherlands.