

A Guide to European Community Law

Third Edition



P. S. R. F. Mathijsen

Sweet & Maxwell

A Guide to European Community Law

by

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Preface

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To my daughters Claire
Bénédicte
Stéphanie
Valérie
Olivia
Daphné

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The author is an official of the Commission of the European Communities; the views expressed in this book are his and may not be attributed to any of the Community organs.

FOREWORD TO THE THIRD EDITION

THE first edition of this book covered the development of Community law up to the middle of 1972 and was published shortly before Denmark, Ireland and the United Kingdom joined the European Communities.

The second edition, which consisted mainly in an updating of the first, appeared in June 1975, just after the negotiations regarding Britain's continued membership of the European Communities were concluded.

This third edition comes out just before the accession of Greece. It is rather different from the previous ones: the structure of the book has been profoundly modified. The considerations regarding Community law now constitute the last chapter, as a kind of conclusion, rather than an introduction as was the case before. Also the chapters on the Institutions and the Community acts have been brought forward in order to allow the reader to grasp the formal aspects before tackling the substantive law. As regards the latter, the emphasis still is on the characteristics of the common market, agricultural policy, competition and external relations, but the chapter on regional policy also receives particular attention.

To simplify the text and facilitate the reading everything not strictly essential to the matter under discussion, together with the references to treaty provisions and the case law of the Court of Justice, have been transferred to the footnotes, which consequently have increased in size and importance.

The object of the book has not changed, *i.e.* to give the reader an overall view of the state of development of Community law. This development has to be placed, necessarily, within the larger context of the progress made by the European Communities as such. In this respect it will be noted that in the past five years they have not merely survived the economic and energy crisis but have continued to develop both internally and externally. The most impressive of the various events which marked the last five years should be briefly mentioned.

The relations between the Community and a number of developing countries took a new turn : in 1975, the first Lomé Convention was signed with 46 African, Caribbean and Pacific States; four years later, the second Lomé Convention was signed with 58 States, thereby considerably enlarging the Community's influence in the third world. The European Unit of account was adopted and is now widely used; the European University Insti-

Foreword to the Third Edition

tute in Florence was officially instituted; in the British referendum of 1975, 67.2 per cent. voted in favour of the United Kingdom remaining as member of the Community, while Greece, Portugal and Spain applied to join; freedom to provide services and in certain cases the right of establishment for doctors, lawyers, dentists and veterinary surgeons took effect; the Court of Auditors replaced the Audit Board and a trade agreement was concluded with China.

Then there are the Declaration on Human Rights, the establishment of the European Monetary System, the signature of the Greek Accession Treaty, the first elections to the European Parliament by direct universal suffrage and the conclusion of the multi-lateral trade negotiations.

All these events bear witness to the remarkable vitality of the European Communities and the economic and political integration which take place within their context.

As for the law of the European Community it will be seen that it not only continues to develop in scope, but also in precision, thanks mainly to the Court of Justice. It might be useful in this respect to mention, *e.g.* the judgment in the *Defrenne* case where the Court held that the principle of equal pay for men and women is directly applicable, the *Kramer* case where it was stated that in the field of external relations the Community enjoys the capacity to enter into international commitments over the whole field of the objectives defined in Part One of the Treaty and the Court's opinion in the *International Agreement on Natural Rubber* case where the Community's exclusive competence to conclude certain agreements was reaffirmed. Finally, in the competition field the Commission and the Court continued to clarify certain basic concepts such as "abuse of a dominant position" in cases like *United Brands* and *Hoffman-La Roche*.

Notwithstanding the slowness of the progress and the inevitable failures, the European Community remains for all of us a fascinating experience which is bound to succeed for the simple reason that there is no political or economic alternative for the peoples of Europe.

PREFACE

PROFESSOR Mathijsen's book first appeared at the time of enlargement from Six to Nine. The third edition comes out at a time when the Treaty for the next enlargement to Ten has been signed (and on the institutional side takes account of that) and at a time when negotiations for further enlargement to Twelve are in hand. In between times the second edition had appeared when one might have assumed that a "running-in" period was nearing its end. Yet that edition had to deal with a so-called re-negotiation. Writing in March 1980 one has then to look back, to look forward, and also to look at the current scene. One must confess that it is easier to lecture on the Communities than it is to write about them: easier because (without any loss of face) the dogmatism that one may use in one Autumn term may be changed, as a result of continuous observation, into speculation by the next. The printed word is harsher. Writing now some of the certainties which one might have expressed in 1975 or 1976 might perhaps be expressed with more circumspection. In short, even the ambition that Professor Mathijsen first had of presenting a photograph of the Communities at any one point of time becomes more difficult.

Looking back over the years between the second edition and this one, three events stand out. Two are obvious. Internally there was the fact of Direct Elections to the European Parliament. Win, lose, or draw that event matters, even though its consequences are not yet clear, and will only become apparent in the context of the shifts of balance in other institutional relationships. Externally there has been the signing of the second and enlarged Lomé Convention and the creation of the STABEX system, which demonstrates at least an evolution of the Communities in the eyes of others. There has been movement, even if not as much as might have been hoped, and movement which provokes fresh thought. Hence the third "event"—which may be miscalled—it is the arrival of a mood of formal introspection. In their different ways both the Spierenburg Report and the Report of the Three Wise Men, though springing from quite different sources, mark that mood. Both can be called technical in the sense that they lack the fundamental quality of the Spaak Report and its progenitor declarations. It is this combination of circumstances which makes a new edition even of an established *Guide* important. Even against a background of major hopeful happenings, there are immediate uncertainties of varying orders of significance to which must be added the prob-

lems springing from the perspective of further enlargement. Any judgment on those uncertainties, and any answers which one may give in that questioning require as clear a knowledge as is possible of where we are and how we have got to wherever that may be.

It is helpful, in making such assessments, that Professor Mathijssen has brought forward the passages on the structure of the Communities before entering on the consequences of that structure. It is also helpful that, although the book is called a guide to Community law, the content deals also with the substance of policies. What has happened at lower levels also matters (though a Director General of Regional Policy may not like the evolution of the Regional Development Fund being thus classified). In that respect Professor Mathijssen has correctly used the information available to him as a member of the Commission staff. Even details may matter, such as, in the Budgetary debate, the information that he gives on terms like commitment and appropriation payments. The *Guide* then serves its own purposes and also gives the background for the debate which should go on. Indeed one commends the virtue of those who set out to write a *Guide* and, even in the third edition, keep the book that way.

Because it remains a guide, but because it proclaims itself as one to Community law, a final point should be made, which will no doubt irritate the professional political scientists. No-one can discuss, or even understand, the problems of Community/Member State relationships, or even some of the evolution (or hesitations in the evolution) of policies without the background of the "legal basis" in question. In March 1980 one writes that sentence with many underlying thoughts in mind. In that respect too things are no longer simple, and a realistic guide becomes all the more useful.

In life, and in writing, I will no doubt (as in the past) happily continue to argue with Pierre Mathijssen about things in and out of this book. Meanwhile it is a pleasure to write a preface to a *Guide* coming from the pen of one who knows so well the machinery from the inside.

March, 1980

J. D. B. Mitchell

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