

# **INTRODUCTION TO THE LAW OF THE EUROPEAN COMMUNITIES**

**AFTER THE ACCESSION OF  
NEW MEMBER STATES**



**by P.J.G.Kapteyn and  
P.VerLoren van Themaat**

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## FOREWORD

Students of Community law are, especially at this time, a more varied group than are students of other systems of law, and the shape and content of 'introductions' to the subject need, therefore, to be correspondingly varied. A concentration upon institutional aspects is understandable, as is a concentration upon rules of law looked at as such. For many, either or both those things are unsatisfying, as being too specialized. There is much, too, which is written simply on integration theory, which is of greatest interest within the confines of Universities. Underlying all these aspects are questions of economic policies which have to be implemented by the Communities and through the mechanisms of law.

What Professors Kapteyn and VerLoren van Themaat have essayed is to relate the law to economics and to relate the policies to each other and to the institutional framework, and to give the whole picture. They have done this using the Treaties and derived Community law. The material then was complex and voluminous. There are other difficulties. It is not easy to say that there was any one economic philosophy inscribed in the Treaties. There is often enough ambiguity for each to find that his own views are written in as guiding principles, though others may not agree. For the more general 'students'—a group which includes those whose day-to-day lives will be affected by the Community system—an introduction which relates the legal, political, and economic aspects has an obvious utility. This same treatment should also be welcome for those involved in general teaching. To generalize, by bringing together all those elements, is not to touch lightly on each. It is to attempt a synthesis. Within the applicant states or rather the new members there is a need to know the starting point, the governing ideas, and the development of the Community they have joined. This, Professors Kapteyn and VerLoren van Themaat offer them, at just the right time.

There is one particular advantage of the timing of this book. The Authors have been able to include a treatment of the Accession Treaty, and especially to indicate the chronology of the effects within the United Kingdom. That 'Treaty' in all its various parts is not the easiest to read, and a guide to its consequences is doubly welcome. The particular utility should not, however, distract from the general. It will be increasingly important to see the whole picture—legal, political, and economic: this the reader is here offered, with all the signposts for further study.

November 1972.

J. D. B. Mitchell



## PREFACE TO THE ENGLISH EDITION

This work is a new edition of an introduction to the law of the European Communities, published in the Netherlands in 1970.

The text was concluded on 1 April 1972 so far as it relates to the most important recent developments—the accession of Denmark, Ireland, and the United Kingdom as well as the economic and monetary union. In all the other fields legal developments up to 1 January 1972 have been taken into account. The final revision of the text, however, has made it possible to mention the most important recent legal developments.

As the title indicates, the book represents a concise general guide to this important new field of law. It has been found that such a concise introduction is needed as well as the more voluminous commentaries. The work is addressed to all those who have to deal directly or indirectly with the law of the European Communities. This category includes in the first place all those who as direct participants in the European Common Market want to know the rules of the game. Secondly, officials employed in practically all departments of government as well as in the Community institutions themselves, politicians, and journalists. Furthermore, the lawyers' profession and the judicature have to deal with the numerous self-executing provisions of European Community law to an extent that is growing year by year. Special attention has therefore been devoted to these self-executing rules. Community law increasingly affects more and more parts of municipal law, such as municipal economic and social law, company law, law of execution, law of bankruptcy, patent and trade mark law, tax law, parts of criminal law, and more recently the law concerning protection of the environment. Accordingly anyone dealing with these parts of municipal law also feels a growing need of a general understanding of the Community backgrounds of this influence on the development of municipal law. Finally, a short introductory book on the law of the European Communities is needed for university teaching.

The character of the book is adapted to the categories of readers mentioned above. Consequently it is not intended for the limited group of readers looking at the same time for a full summary of the law and of the commentaries on it in such a book. Of course, in writing the book we were in part inspired by the voluminous literature on the subject which has appeared within and without the Member States. However, as a rule we have deliberately based our argument directly on primary Community law, the several thousands of general implementing rules, the administrative practice of the Community, and the bulky jurisprudence of the Court of Justice of the European Communities. If in all cases we had also made mention of the

views elaborated in the literature, the scope of the book would have been considerably increased. It would, however, have been a more serious drawback that quotations from the literature, which on the whole deals with highly specialized topics in many different languages, would have diverted the reader's attention from the main purpose of the work. This purpose is to give some idea of the specific character of Community law as a new and coherent Community legal system with special emphasis on the interrelation of the various elements of Community law. Here we follow the model of the Court of Justice, which rightly places great emphasis on the special character of Community law and on the links between the different elements of this new field of law.

For the various reasons indicated above we have only included particular references to the literature in the text where, exceptionally, we base our views on such literature. For the benefit of those readers who wish to consult more detailed commentaries on a particular subject we have, however, given a survey of the most important recent general commentaries in the opening pages of the book. At the end of each chapter we have also added a list of selected literature on the subjects discussed therein. In this context we have given priority to literature in English. The reader will find for himself further references in all the voluminous general commentaries on the Community Treaties.

We have tried to devote as much attention to the historical, political, economic, and social background of Community law as is necessary to show that the law of the European Communities is not developing independently of that background. Community law in the form of implementing rules is, in particular, usually a compromise between diverse economic interests and political views and hence can attract a good deal of criticism. It appeared useful to us to mention explicitly a number of possible criticisms. We hope that this will incite some of our readers to contribute themselves to steady improvement of Community law. The Community Treaties and a small number of implementing rules contain more permanent principles. Although these principles by interpretation also tend to evolve, nevertheless they constitute a solid foundation ensuring a continuity in the jurisprudence of the Court of Justice. The majority of the implementing rules, however, are liable to repeated alterations. So, the book only contains a summary of the rights and duties of European citizens, Member States, and Community institutions at the dates on which the manuscript was finished. As regards the enlargement of the Community, the text is still based on the assumption that all four applicant Member States would have acceded to the Community by 1 January 1973. After the negative vote of the Norwegian people we added some footnotes on its impact on the institutional and financial rules governing the enlarged Communities. It is our hope, however, that this impact will be of a very temporary nature and that Norway will join the Communities as a full member in the near future. We decided to underline this hope by maintaining all the references to Norway in the text.

Although we regularly conferred with each other, the first author is responsible more particularly for Chapters I, II, IV, V, VI, and XI and the

second for Chapters III, VII, VIII, IX, and X. The final chapter was jointly written by the two of us.

In Chapters IV-VI, which deal with the organs, decision-making, and legal protection, the subject-matter could be gone into slightly more fully than in Chapters VII-XI, in which the substantive law of the Communities is discussed. Whilst the subject-matter of the three former chapters is regulated mainly in the Treaties themselves, the greater part of the substantive law is laid down in several thousands of implementing rules. This Introduction of course could give merely a general idea of the latter. Only the provisions of substantive law from the Treaties themselves could be discussed in greater detail. In this connection the emphasis was placed on the EEC Treaty.

Since the discussion of such an extensive subject-matter by only two authors is bound to show defects, we will be grateful for any critical remarks and suggestions. Criticism and suggestions which were made about the earlier Dutch edition have been taken into account as much as possible. We further owe a debt of gratitude to Messrs H. A. H. Audretsch, P. van Dijk, R. C. van Houten, and Miss Elise C. A. M. Boot for their exhaustive research of the subject-matter and the literature as well as their valuable suggestions. The index and tables were prepared with great care by Miss Boot. Without the conscientious translation by Miss C. Dikshoorn this English edition of our book of course would not have been possible. We are grateful to Professor J. D. B. Mitchell of Edinburgh University, who read much of the text with an eye to an English-speaking public and offered many valuable suggestions for this purpose.

Finally we apologize above all to our British and Irish readers for our inevitably continental way of thinking. We derive some consolation from the consideration that this may prepare them to some extent for further surprises with which they will be confronted in this field in legal practice. They will then find that even within continental thought there are considerable differences between the juridical conceptions in the various original Member States. Scandinavian law, again, has its characteristic features. The Court of Justice, however, is making admirable efforts to develop a common legal attitude. In the future this will no doubt be further enriched by the contributions of lawyers from all the new Member States.

November 1972—June 1973

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# RECENT GENERAL COMMENTARIES, COLLECTIONS OF SOURCES OF LAW, AND ABBREVIATIONS USED

## I. PRINCIPAL RECENT GENERAL COMMENTARIES ON COMMUNITY TREATIES, WITH TITLE FOR REFERENCE

*A. Campbell*, Common Market Law, 2 vols, sec.ed., Longmans, London 1969.

*Commentario C.E.E.*: R. Quadri, R. Monaco, A. Trabucchi ed., Trattato istitutivo della Comunità economica europea, Commentario, Vol. I-IV, Milano 1965.

*Commentario C.E.C.A.*: R. Quadri, R. Monaco, A. Trabucchi ed., Trattato istitutivo della Comunità europea del carbone e dell' acciaio, Commentario, Vol. I-III, Milano 1970.

*Ganshof van der Meersch*: Droit des communautés européennes, Les Nouvelles; sous la direction de W. J. Ganshof van der Meersch, Brussels 1969, 1193 pp. (with comprehensive bibliography).

*Groeben-Boeckh*, Handbuch für Europäische Wirtschaft, herausgegeben von H. von der Groeben und H. von Boeckh, Vols 1-16, Nomos Verlagsgesellschaft, Baden-Baden (continuous loose-leaf edition of text with commentary).

*Ipsen*, Europäisches Gemeinschaftsrecht, J. C. B. Mohr (Paul Siebeck), Tübingen 1972.

*J. Mégret* ed., Le droit de la communauté économique européenne, vol. 1-4 (autres volumes en préparation). Presses Universitaires de Bruxelles 1970-1972 (with comprehensive bibliography).

*Schrans*: Guy Schrans, Inleiding tot het Europees Economisch Recht, Gent-Leuven 1969, 579 pp. (with carefully selected bibliography). Second edition 1972.

*Wohlfarth*: Wohlfarth, E., Everling, U., Glaesner, H. J. und Sprung, R., Die E.W.G., Kommentar zum Vertrag, Berlin, Frankfurt, 1960 (Second edition in course of preparation).

## II. COLLECTIONS OF JURISPRUDENCE

*Rec (X)*: Jurisprudence of the Court of Justice of the European Communities (Vol. X of the collection of its jurisprudence edited by the Court of Justice itself).

*CMLRep*: Common Market Law Reports, Common Market Law Reports Ltd, London.

*Asser-Bundel*: Loose-leaf volume: Commentaries on the jurisprudence of

the Court of Justice of the European Communities (as well as on important national jurisprudence). Uitgave Interuniversitair Instituut voor internationaal recht—T.M.C. Asser Instituut—The Hague.

### III. OTHER ABBREVIATIONS

- AJIL*: American Journal of International Law  
*AJCL*: American Journal of Comparative Law  
*AWD*: Aussenwirtschaftsdienst der Betriebsberater  
*Bulletin*: Bulletin of the EEC (since 1968: of the European Communities)  
*CDE*: Cahiers de Droit Européen  
*CMLRev*: Common Market Law Review  
*E.M.*: Europese Monografieën (in Dutch), numbered series, published by Kluwer, Deventer  
*ICLQ*: International and Comparative Law Quarterly  
*Int.Org.*: International Organization  
*JCMS*: Journal of Common Market Studies  
*JWTL*: Journal of World Trade Law  
*J.O.*: Journal Officiel des Communautés Européennes  
*NTIR*: Nederlands Tijdschrift voor Internationaal Recht (Dutch International Law Review)  
*Rec. des Cours A.D.I.*: Recueil des Cours de l'Académie de Droit International de La Haye  
*RMC*: Revue du Marché Commun  
*RTDE*: Revue Trimestrielle de Droit Européen  
*SEW*: Sociaal-Economische Wetgeving. Belgico-Netherlands journal for European and economic law.  
*SMA*: Sociaal Maandblad Arbeid. Netherlands journal for labour law.

### IV. BIBLIOGRAPHICAL CHRONICLES

In *CMLRev* are regularly published summaries of articles on European law in various periodicals as well as book notices or reviews in the field of European law. The journals *Cahiers de droit européen*, *Europarecht*, *Revue trimestrielle de droit européen*, *Rivista di diritto europeo*, and *SEW* also regularly devote attention to new publications on the law of the European Communities.

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