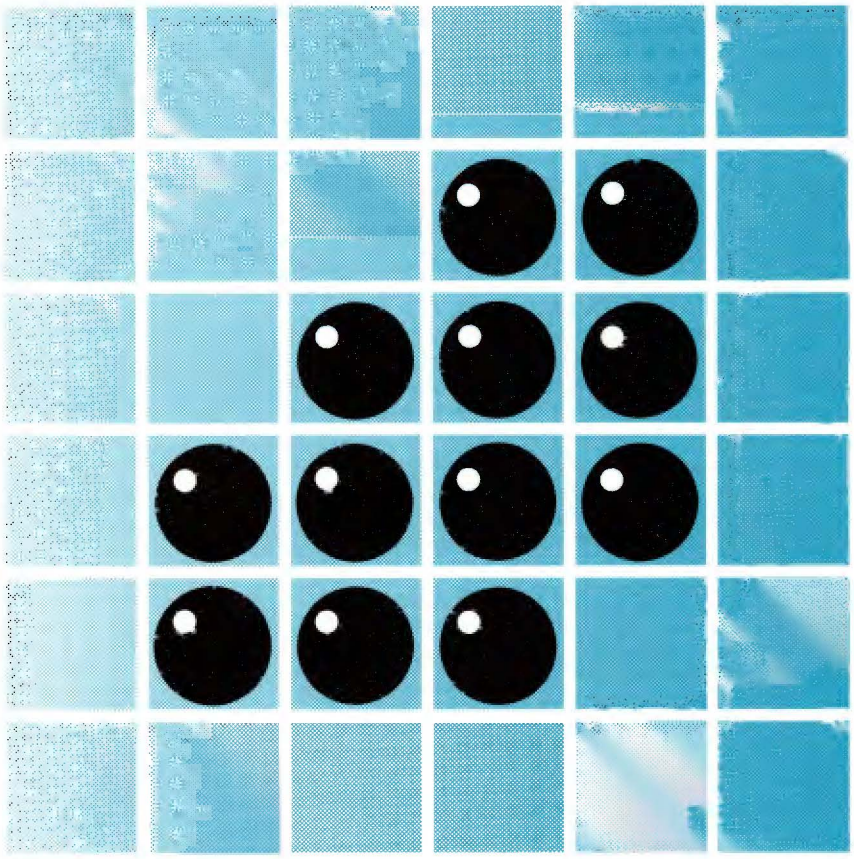
Periodical 2/1986

THE ABC OF COMMUNITY LAW



EUROPEAN DOCUMENTATION

In the same collection

Education of migrant workers' children in the European Community *(out of print)*
The European Community and nuclear safety *(out of print)*
The protection of workers in multinational companies *(out of print)*
The European Community's external trade *(out of print)*
Teacher training in the European Community *(out of print)*
The elimination of non-tariff barriers to intra-Community trade *(out of print)*
The European Community's competition policy *(out of print)*
The European Community and the developing countries *(out of print)*
Worker participation in Europe *(out of print)*
The consumer in the European Community *(out of print)*
25 years of European Community external relations *(out of print)*
The second enlargement of the European Community *(out of print)*
The Community and its regions *(third edition)*
Cultural action in the European Community
The European Community's research policy
The European Community and vocational training
The economic and monetary union *(second edition)*
The European Community's financial system *(third edition)*
Freedom of movement for persons in the European Community
An education policy for Europe *(second edition)*
The European Community's industrial strategy
The agricultural policy of the European Community *(third edition)*
The European Community and the energy problem *(out of print)*
Wine in the European Community
The Court of Justice of the European Communities *(third edition)*
The social policy of the European Community *(third edition)*
The Customs unions *(third edition)*
Europe as seen by Europeans — Ten years of European polling
The European Community's Environmental Policy *(out of print)*
The European Community's Transport Policy *(second edition)*
Women in the European Community
The European Community's Legal System *(second edition)*
The ECU

(continuation on third page of cover)

Originating department:
Division IX/D/5 — Coordination and preparation of publications

The ABC of Community law

(second edition)

By Klaus-Dieter Borchardt
Manuscript completed in February 1986

This publication is also available in the following languages:

ES	ISBN 92-825-6149-6	(to be published later)
DA	ISBN 92-825-6145-3	Fællesskabsrettens ABC
DE	ISBN 92-825-6146-1	Das ABC des Gemeinschaftsrechts
GR	ISBN 92-825-6147-X	Το Αλφάβητο του Κοινοτικού Δικαίου
FR	ISBN 92-825-6150-X	L'ABC du droit communautaire
IT	ISBN 92-825-6151-8	L'ABC del diritto comunitario
NL	ISBN 92-825-6152-6	Het ABC van het gemeenschapsrecht
PT	ISBN 92-825-6153-4	(to be published later)

Cataloguing data can be found at the end of this publication.

Luxembourg: Office for Official Publications of the European Communities, 1986

ISBN 92-825-6148-8

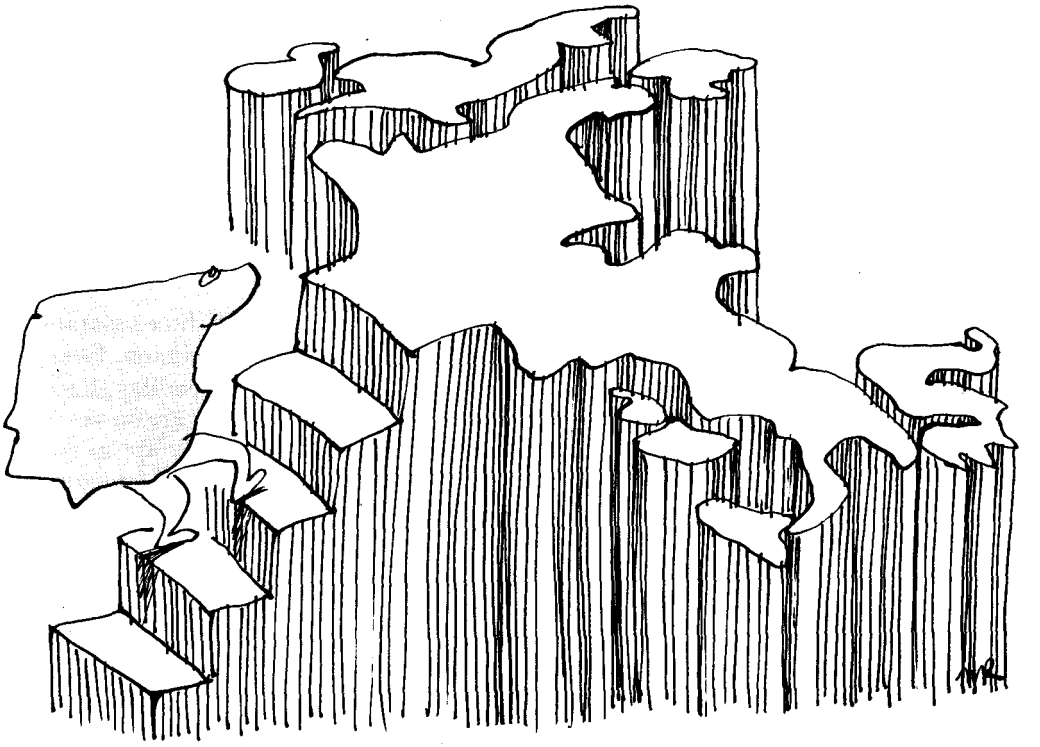
Catalogue number: CB-NC-86-002-EN-C

Printed in the FR of Germany

I. Contents

3 • 4

I. Introduction



Until shortly after the end of the Second World War our concept of the State and our political life had developed almost entirely on the basis of national constitutions and laws. It was on this basis in our democratic States that the rules of conduct binding not only on citizens and parties but also on the State and its organs were created. It took the complete collapse of Europe to give a new impetus to the idea of a new European order, at least in Western Europe. The foundation stone of a European Community was laid by the then French Foreign Minister Robert Schuman in his declaration of 9 May 1950, in which he put forward the plan he had worked out with Jean Monnet to combine European coal and steel industries in a European Community for Coal and Steel. By this means, he declared, an historic initiative would be taken for an organized and vital Europe, which was indispensable for civi-

lization and without which the peace of the world could not be maintained. This plan became a reality with the conclusion of the founding Treaty of the European Coal and Steel Community (ECSC) on 18 April 1951 in Paris (Treaty of Paris) and its entry into force on 23 July 1952. A further development came some years later with the Treaties of Rome of 25 March 1957 which created the European Economic Community (EEC) and the European Atomic Energy Community (Euratom). The founding States of these Communities were Belgium, the Federal Republic of Germany, France, Italy, Luxembourg and the Netherlands. On 1 January 1973 Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland acceded to the Community; the accession of Norway, which had been planned to take place at the same time, was rejected by a referendum in October 1972.

In 1976 and 1977 Greece, Portugal and Spain submitted applications for accession to the Community. This 'southward extension' of the Community was completed with the accession of Spain and Portugal on 1 January 1986, Greece having already become a member on 1 January 1981. Twelve European States are now united in the Community.

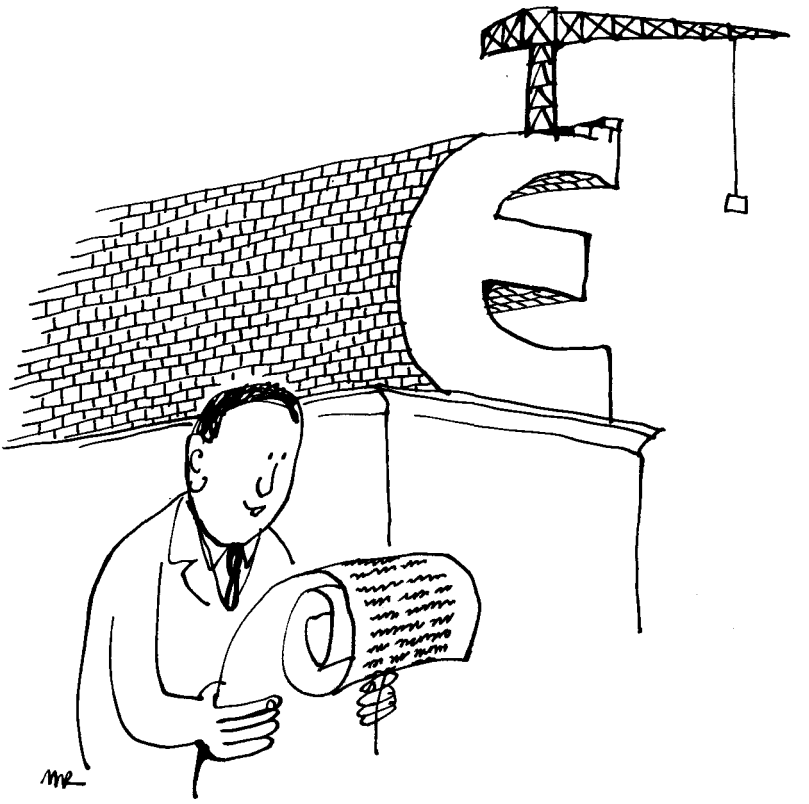
Since the entry into force of the Treaties of Rome on 1 January 1958 three separate Communities have existed, each based on its own instruments of foundation. From a legal point of view this situation has remained unchanged to the present day, since no formal merger of the three Communities has ever taken place. There are however good reasons for regarding these three Communities, different as they are in the fields they cover, as constituting one unit so far as their political and legal structure is concerned. They have been set up by the same Member States and are based on the same fundamental objectives, as expressed in the preambles to the three Treaties: to create 'an organized and vital Europe', 'to lay the foundations of an ever closer union among the peoples of Europe', and to combine their efforts for 'the constant improvement of the living and working conditions of their peoples'. This approach was also adopted in the Resolution of the European Parliament of 16 February 1978, which proposed that the three Communities should be designated 'the European Community'. Common usage too, both in the media and in everyday life, has long since come to regard the three Communities as one. For these reasons, and in order to simplify the presentation it is proposed here also to use the expression 'the European Community'.

The legal order created by the European Community has already become an established component of our political life.

Each year, on the basis of the Community treaties, thousands of decisions are taken which crucially affect the lives of the Community's Member States and of their citizens. The individual has long since ceased to be merely a citizen of his town, district or State; he is also a Community citizen. For this reason alone it is of the highest importance that the Community citizen should be informed about the legal order

which affects him personally. Yet the complexities of the Community and its legal order are not easy for the citizen to grasp. This is partly due to the wording of the treaties themselves, which is often somewhat obscure and the implications of which are not easy to discern. An additional factor is the unfamiliarity of many concepts with which the treaties sought to break new ground. The following pages are an attempt to clarify the structure of the Community and the supporting pillars of the European legal order, and thus help to lessen the incomprehension prevailing among Community citizens.

II. The 'constitution' of the European Community



Every social organization has a constitution. By means of a constitution the structure of a political system is defined, that is to say the relationship of the various parts to each other and to the whole is specified, the common objectives are defined and the rules for making binding decisions are laid down. The constitution of the European Community, as an association of States to which quite specific tasks and functions have been allotted, must thus be able to answer the same questions as the constitution of a State.

This Community constitution is not, as in the case of most of the constitutions of its Member States, laid down in a comprehensive constitutional document, but arises from the totality of rules and fundamental values by which those in authority regard themselves as bound. These rules are to be found partly in the founding treaties or in the legal instruments produced by the Community institutions, but they also rest partly on custom.

In the Member States the body politic is shaped by two overriding principles: the rule of law and democracy. All the activities of the Community if they are to be true to the fundamental requirements of law and democracy, must be both legally and democratically legitimated: foundation, construction, competence, functioning, the position of the Member States and their institutions and the position of the citizen.

What answers, then, does the Community order afford to these questions concerning its structure, its fundamental values and its institutions?

1. Structure of the Community

(a) The tasks of the Community

In its structure the Community order resembles the constitutional order of a State. This is immediately apparent from the list of tasks entrusted to the Community. These are not the narrowly circumscribed technical tasks commonly assumed by international organizations, but fields of competence which, taken as a whole, form essential attributes of Statehood. Under the ECSC Treaty the Community is competent for the Community-wide administration of the coal and steel industries, which play a key role in the national economies. The European Atomic Energy Community has common tasks to perform in research for, and utilization of, atomic energy. Finally, the EEC does not aim, like the other two Communities, at the closer interlocking of specific sectors of the economy (so-called economic integration). Rather, its task is, by establishing a common market which unites the national markets of the Member States and on which all goods and services can be offered and sold on the same conditions as on an internal market, and by the gradual approximation of the national economic policies in all sectors of the economy, to weld the Member States into a community. Specific matters covered are free movement of goods, free movement of workers, freedom of establishment, freedom to provide services and freedom of capital movements, agriculture, transport policy, social policy and competition. Only a few, albeit important, aspects of State sovereignty are withheld from the Community, such as defence, diplomacy, education and culture; but even in these spheres certain partial aspects are subject to Community competence.

(b) The powers of the Community

The similarities between the Community order and that of a State become even more striking if we consider the extent of the powers with which the Community institutions are endowed for the performance of the tasks entrusted to the Community. Generally speaking the founding treaties do not confer on the Community and its institutions any general power to take all measures necessary to achieve the objectives of the treaty, but lay down in each chapter the extent of the powers to act (principle of specific attribution of powers). This method has been chosen by the Member States in order to ensure that the renunciation of their own powers can be more easily monitored and controlled. The range of matters covered by the specific attributions of power varies according to the nature of the tasks allotted to the Community. It is very far-reaching, for instance, in the sphere of common transport policy, where any appropriate provisions may be enacted (Article 75 (1) (c) EEC Treaty), in the field of agricultural policy (Article 43 (2), Article 40 (3) EEC Treaty) and in the sphere of freedom of movement of workers (Article 48 EEC Treaty). On the other hand, in the sphere of competition law (Article 85 et seq. EEC Treaty) the scope for discretion on the part of the Community and its institutions is limited by narrowly defined conditions. In addition to these special powers to act, the Community treaties also confer on the institutions a power to act when this proves necessary to attain one of the objectives of the treaty (see Articles 235 EEC Treaty, 203 Euratom Treaty, 91 (1) ECSC Treaty — subsidiary power to act). These articles do not however confer on the institutions any general power enabling them to carry out tasks which lie outside the objectives laid down in the treaties. Their application is thus out of the question in connection with defence policy, foreign policy (apart from foreign economic policy) and most aspects of cultural policy. In practice, the possibilities afforded by this power have been used with increasing frequency. This is because the Community is nowadays confronted with tasks which were not foreseen at the time the founding Treaties were concluded, and for which accordingly no appropriate powers are conferred in the treaties. Examples are the protection of the environment and of consumers, the establishment of a European regional fund as a means of closing the gap between the developed and underdeveloped regions of the Community and the numerous research programmes concluded since 1973 outside the European Atomic Energy Community. Finally, there are further powers to take such measures as are indispensable for the effective and meaningful implementation of powers which have already been expressly conferred (implied powers). These powers have acquired a special significance in the conduct of external relations. They enable the Community to assume obligations towards non-Member States or other international organizations in fields covered by the list of tasks entrusted to the Community. An outstanding example is provided by the *Kramer* case decided by the Court of Justice of the European Communities.

This case concerned the competence of the Community to cooperate with international organizations in fixing fishing quotas and, where thought appropriate, to

assume obligations on the matter under international law. The Court inferred the necessary external competence of the Community from its competence for fisheries in the context of the common agricultural policy.

On the basis of the powers thus conferred on them, the Community institutions can enact legal instruments as a Community legislature legally independent of the Member States. Some of these instruments take effect directly as Community law in the Member States, and thus do not require any transformation into national law in order to be binding, not only on the Member States and their organs, but also on the citizen.

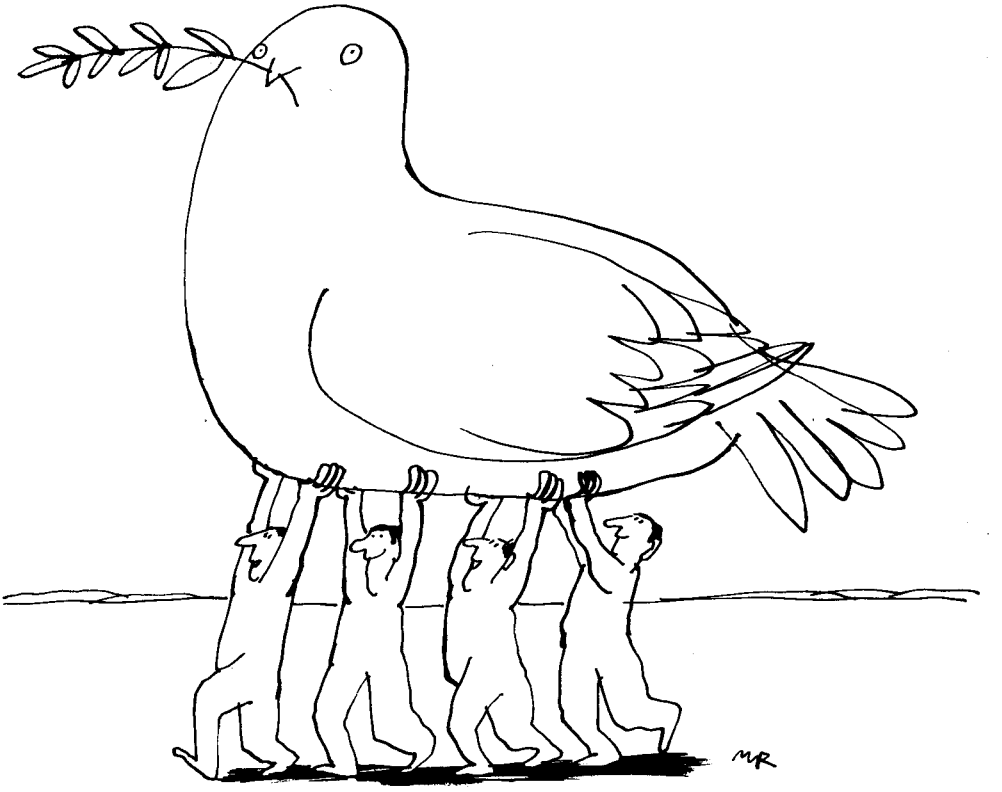
(c) The Community is not a State

These points of resemblance between the Community order and the internal order of a State do not however suffice to confer on the Community the legal character of a (federal) State. Sovereign powers have been conferred on the Community institutions only in the limited spheres mentioned above, and those institutions have not been given any power to increase their competence merely by their own decisions. Thus the Community lacks both the universal competence characteristic of a State and the power to create new fields of competence.

Even if the Community is not (yet) a State, it is certainly more developed than an organization set up under traditional international law. Its only essential point of similarity with traditional international organizations is the fact that it, too, was created by treaties taking effect under international law. But these treaties are at the same time the foundation documents establishing independent Communities endowed with their own sovereign rights and competence. The Member States have pooled certain parts of their own legislative powers in favour of these Communities and have placed them in the hands of Community institutions in which, however, they are given in return substantial rights of participation. The Community is thus a new form of relationship between States, something between a State in the traditional sense and an international organization. The concept of 'supranationality' has become accepted among lawyers as a means of describing their legal nature. This is intended to indicate that the Community is an association endowed with independent authority, with its own sovereign rights and a legal order independent of the Member States to which both the Member States and their citizens are subject in matters for which the Community is competent. It would, however, be wrong to infer that the European Community has thus already achieved its final form; on the contrary it is still a developing system, the ultimate contours of which are not yet predictable. The development of the system lies primarily in the hands of the Member States. Above all it depends on their will whether the Community develops further in the direction of a European federal State or of a European union.

2. *Fundamental values of the European Community*

The foundations for constructing a united Europe were formed from fundamental ideas and values to which the Member States also subscribe and which are translated into practical reality by the Community's operational institutions. These acknowledged fundamental values include the securing of a lasting peace, unity, equality, freedom, solidarity, and economic and social security.



(a) The Community is guarantor of peace

There is no motive for European unification which is surpassed by the desire for peace. In Europe, this century, two world wars have been waged between countries that are now Member States of the European Community. Thus, a policy for Europe means at the same time a policy for peace, and the establishment of the Community simultaneously created the centre-piece for a framework for peace in Europe which renders a war between the Community's Member States impossible. More than 40 years of peace in Europe are proof of this.

(b) Unity as the Community's leitmotiv

Unity is the Community's leitmotiv. Present day problems can be mastered only if the European countries move forward along the path which leads them to unity. Many people take the view that without European integration, without the European Community, it is not possible to secure peace both in Europe and in the world, democracy, law and justice, economic prosperity and social security and guarantee them for the future. Unemployment, inflation and inadequate growth have long ceased to be merely national problems; nor can they be resolved at national level. It is only in the context of the Community that a stable economic order can be established and only through joint European efforts that an international economic policy can be secured which improves the performance of the European economy and contributes to strengthening a State based upon social justice. Without internal cohesion, Europe cannot assert its political and economic independence from the rest of the world, win back its influence in the world and retrieve its role in world politics.

(c) Equality must be the rule

Unity can endure only where equality is the rule. This means equality not only as between citizens of the Community but also as between the Member States. No citizen of the Community may be placed at a disadvantage or disciminated against because of his nationality. All Community citizens are equal before the law. As far as the Member States are concerned, the principle of equality means that no State has precedence over another and natural differences such as size, the population of a country and differing structures must be dealt with only in accordance with the principle of equality.

(d) The fundamental freedoms

Freedom results directly from peace, unity and equality. Creating a larger territorial area through the linking up of what are now 12 States immediately affords freedom of movement beyond national frontiers. This means, in particular, freedom of movement for workers, freedom of establishment, freedom to provide services, free movement of goods and freedom of capital movements. These fundamental freedoms under the founding treaties, as they are called, guarantee entrepreneurs freedom of decision making, workers freedom to choose their place of work and consumers freedom of choice between the greatest possible variety of products. Freedom of competition permits entrepreneurs to offer their goods and services to an incomparably wider circle of potential customers. Workers can seek employment and change their place of employment according to their own ideas and interests throughout the entire territory of the Community. Consumers can select the cheapest and best products from the far greater wealth of goods on offer that results from increased competition.

(e) The principle of solidarity

Solidarity is the necessary corrective to freedom, for ruthless exercise of freedom is always at the expense of others. For this reason, if a Community framework is to continue to endure, it must always recognize also the solidarity of its members as a fundamental principle, and share both the advantages, i.e. prosperity, and the burdens equally and justly amongst its members.

(f) The need for security

Lastly, all these fundamental values are dependent upon security. In the most recent past, particularly, a period characterized by movement and change, and by the totally unknown, security has become a basic need which the Community must also endeavour to satisfy. Every action by the Community institutions must pay heed to the need to render the future predictable for Community citizens and firms and to lend permanence to the circumstances upon which they are dependent. This is the case not only as regards job security but also as regards decisions taken by entrepreneurs in reliance on the continuance of existing general economic conditions and, lastly, the social security of all citizens of the Community.

(g) Fundamental rights in the Community

Since reference has now been made to fundamental values and the concepts which underlie them, the question necessarily arises of the fundamental rights of individual citizens of the Community. This is particularly so, since the history of Europe has, for more than 200 years, been characterized by continuing efforts to strengthen the protection of fundamental rights. Starting with the declarations of human and civil rights in the 18th century, fundamental rights and civil liberties are firmly anchored in the constitutions of most civilized States. This is particularly so in the case of the Member States of the European Community whose legal systems are constructed on the basis of observance of the law and respect for the dignity, freedom and right to self-development of the individual. There are, moreover, numerous international conventions concerning the protection of human rights, among which the European Convention for the Protection of Human Rights and Fundamental Freedoms, of 4 November 1950, is of very great significance.

A search through the Community treaties for express provisions concerning the fundamental rights of individual Community citizens is disappointing. In contrast to the legal systems of the Member States, the Community treaties contain neither a list of fundamental rights nor any generally binding commitment to respect and protect the fundamental rights and freedoms of Community citizens as, for example, was laid down in the European Defence Community Treaty of 27 March 1957. The Community treaties do not even mention the terms 'fundamental right' or 'human rights'.

What is the reason for this silence in the Community treaties?

It would certainly be wrong to suppose that those who brought the Community into being had absolutely no regard to the fundamental rights and the fundamental freedoms of Community citizens. They, of course, took it as self-evident that the fundamental rights of Community citizens would remain unaffected by the establishment of the Community. They were, however, convinced that it would be relatively improbable that a Community, the activities of which are limited to economic and social fields, would encroach upon fundamental rights and freedoms. They therefore considered that the creation of a list of fundamental rights, specially tailored to the Community, could be dispensed with. This view, particularly in recent years, when there has been increasing discussion of the protection of human rights, no longer holds good. Superior national as well as European courts have handed down important judgments concerning the safeguarding of fundamental rights. In France, the Court of Cassation has declared, in a leading judgment, that the European Convention on Human Rights is applicable at national level. In the United Kingdom, the enactment of a Bill of Rights is under discussion and in Belgium and the Netherlands, also, consideration is being given to the improvement of the protection of fundamental rights against encroachments by the legislature. Lastly, at the Helsinki Conference on European Security and Cooperation, the protection of human rights was the most important demand made by Western countries.

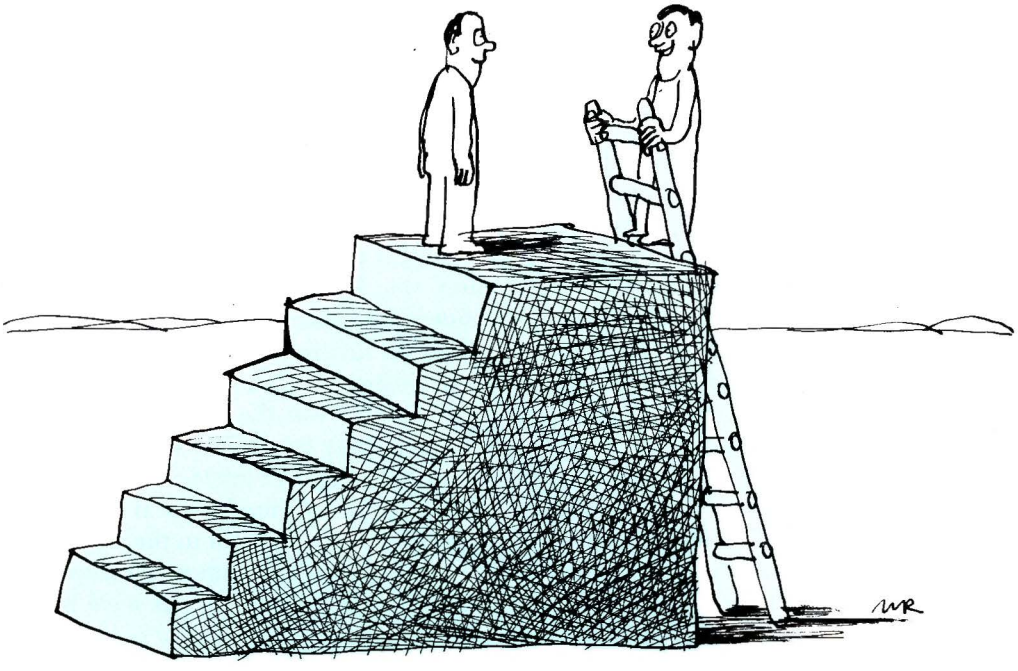
Against this background it is not surprising that the deficiencies in the protection of fundamental rights in the legal system of the European Community have become the subject of impassioned discussion, especially in Germany and Italy. Here, particular regard must be had to two viewpoints. On the one hand, the European Community is a Community established by States whose constitutions are characterized by respect for the rights and freedoms of their citizens. The Community itself, which can, through its institutions — even if only to a limited extent — enact legislation and make decisions the effects of which apply, in part, directly to the citizens of the Member States, affords, however, at first sight, no guarantee should an act of the Community institutions infringe one of their fundamental rights. On the other hand it is by no means the case that the manifold activities of the Community institutions, which affect the lives of Community citizens to an increasing extent, leave the fundamental rights of those citizens untouched. For example, the common agricultural market embodies prohibitions in relation to marketing and processing which encroach, in certain circumstances, on the rights of ownership and freedom to choose and practise a profession and upon the principle of equality. The officials and other staff of the Community are also, to a large extent, subject to rules which have a considerable influence on their fundamental rights. Convicing proof of this is afforded by the *Prais* case which concerned freedom of religion of the individual. The plaintiff, Mrs Prais, brought an action in the Court of Justice because she considered that her fundamental right to freedom of religion had been infringed because the date of a competition for recruitment into the Community's public service had

been fixed on a day that was a holiday according to the religion she practised. Although this case concerns only the law governing employment with the Community, which constitutes only a limited area of Community activity, it is nevertheless characteristic of possible infringements of fundamental rights by the Community institutions, for a few years ago it appeared hardly conceivable that the Community could find itself in conflict with freedom of religion. These examples, many more of which could be adduced at will, show that the protection of fundamental rights constitutes a pressing problem in the legal order of the Community, which it was, and still is, essential to solve.

In the following paragraphs, therefore, a closer look is taken at the present situation regarding fundamental rights in the European Community as well as the prospects for further development of the protection of fundamental rights.

If one gives up looking for express guarantees of fundamental rights, one finds that there are provisions scattered throughout the treaty texts whose content is intended to protect Community citizens and which are very similar to certain of the Member States' guarantees of fundamental rights.

This is especially the case as far as the numerous prohibitions on discrimination are concerned which, in specific circumstances, express particular aspects of the general principle of equality. Examples are to be found in Article 7 of the EEC Treaty con-



cerning the prohibition of any discrimination on grounds of nationality, Articles 48, 52 and 60 of EEC Treaty on equal treatment of Community citizens in regard to the right to work, freedom of establishment and freedom to provide services, Article 85 et seq. of the EEC Treaty on freedom of competition and Article 119 of the EEC Treaty concerning equal pay for men and women.

The Community rules which establish the four fundamental freedoms of the Community, which guarantee the fundamental freedoms of professional life, can be regarded as constituting a Community fundamental right to freedom of movement and freedom to choose and practise a profession. The rules in question are those relating to the freedom of movement of workers (Article 48 of the EEC Treaty), the right of establishment (Article 52 of the EEC Treaty) and freedom to provide services (Article 59 of the EEC Treaty) and freedom of movement of goods (Article 9 et seq. of the EEC Treaty).

Lastly, other spheres of fundamental rights are recognized in individual provisions of the Community treaties. Those of particular significance here are the right of association (Article 118 (1) of the EEC Treaty and the first paragraph of Article 48 of the ECSC Treaty), the right to submit comments (second paragraph of Article 48 of the ECSC Treaty) and the protection of business and professional secrets (Article 214 of the EEC Treaty, Article 194 of the Euratom Treaty and the second and fourth paragraphs of Article 47 of the ECSC Treaty).

Although in the case-law of the early years, the Court of Justice of the European Communities did not regard the application of fundamental rights within the Community as an issue with which it had to concern itself, since 1969 it has continually developed and added to these initial attempts at protecting the fundamental rights of Community citizens. The starting point in this case-law was the *Stauder* judgment, in which the point at issue was the fact that a recipient of welfare benefits for war victims regarded the requirement that he give his name when registering for the purchase of butter at reduced prices at Christmas time as a violation of his human dignity and the principle of equality. Although the Court of Justice came to the conclusion, in interpreting the Community provision, that is was not necessary for recipients to give their name so that, in fact, consideration of the question of a violation of a fundamental right was superfluous, it declared finally that the general fundamental principles of the Community legal order, which the Court of Justice has to safeguard, include respect for fundamental rights. This was the first time that the Court of Justice recognized the existence of a Community framework of fundamental rights of its own. In later judgments the Court of Justice then made clear the criteria according to which it intended to ensure protection of fundamental rights at Community level. These are, firstly, the concepts that are common to the constitutions of the Member States and, secondly, the international conventions concerning the protection of human rights to whose conclusion the Member States have been party or to which they have acceded. The Court of Justice has gradually recognized

a number of fundamental rights on this basis and has incorporated them into the Community legal order. Examples are the right of ownership, the general right of privacy, freedom to engage in business and to choose and practise a profession, freedom of association, freedom of religion, privacy of correspondence, the general principle of equality, the right to a fair hearing and the principle of proportionality as between means and ends.

With all due recognition of the achievements of the Court of Justice in the development of unwritten fundamental rights, this process of deriving 'European fundamental rights' has a serious disadvantage; the Court of Justice is confined to the particular case in point. The result of this can be that it is not able to develop fundamental rights from the general legal principles for all areas in which this appears necessary or desirable. Nor will it be able to elaborate the scope of and the limits to the protection of fundamental rights as generally and distinctively as is necessary. As a result, the Community institutions cannot assess sufficiently precisely whether they are in danger of violating a fundamental right or not. Nor can any Community citizen who is affected judge in every case whether one of his fundamental rights has been infringed. The Federal Constitutional Court of the Federal Republic of Germany has availed itself of the legal uncertainty inherent in this situation to declare in its ruling of 29 May 1974 that the protection of German fundamental rights from encroachments on the part of the European Community was a matter for the German courts for so long as the Community itself lacked a system for the protection of fundamental rights that was equivalent to the Basic Law and had been decided upon by the European Parliament. In its Judgment No 183 of 18/27 December 1973, the Italian Constitutional Court expressed itself in similar terms on this question, albeit it in a much more cautious manner.

The extent to which the national constitutional courts adhere to their own views depends not least on the further development of the protection of fundamental rights in the Community. A significant step has already been taken with the joint declaration by the European Parliament, the Council and the Commission of 5 April 1977. In this, the Community institutions emphasized the importance of fundamental rights to the Community and solemnly promised to respect fundamental rights in the exercise of their powers and in the pursuit of the objectives of the Community. In their declaration on democracy at the summit meeting in Copenhagen on 7 and 8 April 1978, the Heads of State and of Government of the Member States endorsed this declaration on fundamental rights. Although these declarations do not establish any direct rights for the citizens of the Community, they nevertheless have considerable *political importance* because of the universal recognition of fundamental rights at Community level.

In the final analysis, it will be possible to resolve the problem of fundamental rights in the European Community only through the creation of a list of fundamental rights that applies specifically to the Community. Prerequisites for this, however,

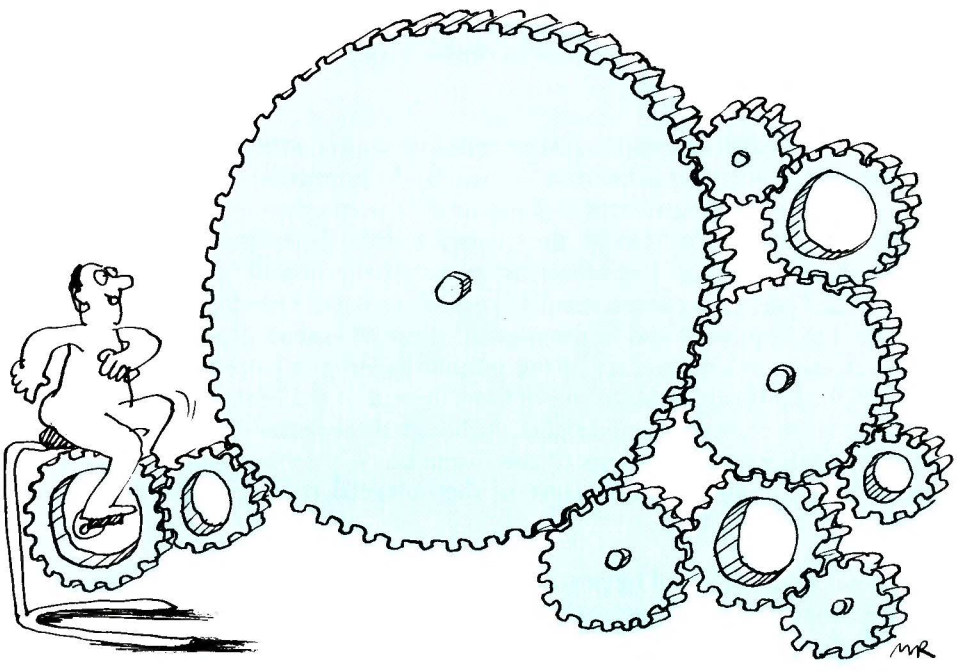
are changes in the existing Community treaties and a consensus on the part of all Member States regarding the content of fundamental rights.

3. *The institutions of the European Community*

The third question arising in connection with the constitution of the European Community is that of its organization. What are the institutions of the European Community? Since the Community exercises functions normally reserved for States, does it have a government, a parliament, administrative authorities and courts like those with which we are familiar in the Member States?

The institutions of the Community are the Commission, the Council, the European Parliament and the Court of Justice of the European Communities.

Of these institutions the Court of Justice and the Parliament, or Assembly as it used to be called, were from the outset common to the three Communities. This was provided for in a Convention between the original six Member States which was signed in 1957 at the same time as the Rome Treaties. The process of creating common institutions was completed in July 1967 by the 'Treaty establishing a Single Council



and a Single Commission of the European Communities' (Merger Treaty). Since then all three Communities have had the same institutional structure.

(a) The Commission

Following the accession of Greece, Portugal and Spain, the Commission consists of 17 members (two members each from France, the Federal Republic of Germany, Italy, Spain and the United Kingdom, and one member from each of the other Member States) appointed by 'common accord' of the governments of the Member States for a term of four years.

The Commission's functions may be broken down as follows:

(i) The Commission is first of all the motive power behind Community policy. It is the starting point for every Community action, as it is the Commission that has to submit proposals and drafts for Community rules to the Council (this is termed the Commission's right of initiative). The Commission is not free to choose its own activities. It is obliged to act if the Community interest so requires. The Council may also ask the Commission to draw up a proposal.

Under the ECSC Treaty, however, the Commission also has law-making powers. In this case, the Council has a right of veto in certain circumstances which enables it to overrule Commission measures.

(ii) The Commission is also the guardian of the Community treaties. It sees to it that the treaty provisions and the measures adopted by the Community institutions are properly implemented. Whenever they are infringed the Commission must intervene as an impartial body and, if necessary, refer the matter to the Court of Justice. The Commission has so far performed this role very effectively.

(iii) Closely connected with the role of guardian is the task of defending the Community's interests. As a matter of principle, the Commission may serve no interests other than those of the Community. It must constantly endeavour, in what often prove to be difficult negotiations within the Council, to make the Community interest prevail and seek compromise solutions which take account of that interest. In so doing, it also plays the role of mediator between the Member States, a role for which, by virtue of its neutrality, it is particularly suited and qualified.

(iv) Lastly, the Commission is — albeit to a limited extent — an executive body. The classic example of this is the law on restrictive practices and the administration of the protective clauses contained in the treaties and derived legislation. Much more extensive than these 'primary' executive powers are the 'derived' powers devolved on the Commission by the Council. These essentially involve adopting the requisite detailed rules for implementing Council decisions. As a rule, however, it is the Member States themselves that have to ensure that Community

rules are applied in individual cases. This solution chosen by the treaties has the advantage that citizens are brought closer to what is still to them the 'foreign' reality of the European system through the workings and in the familiar form of the national system.

(b) The Council

The Council is made up of representatives of the governments of the Member States. All 12 Member States send one or more representatives — as a rule, though not necessarily, the Minister or Secretary of State responsible for the matters under consideration, such as the Minister for Foreign Affairs, Economic Affairs, Finance, Labour, Agriculture, Transport or Technology.

It is in the Council that the individual interests of the Member States and the Community interest are balanced and reconciled. Although the Member States' interests are given precedence in the Council, the members of the Council are at the same time obliged to take into account the objectives and needs of the European Community as a whole. The Council is a Community institution and not a meeting place for governments. Consequently it is not the lowest common denominator between the Member States that is sought in the Council's deliberations, but the highest between the Community and the Member States.

In the case of the two more recent Communities, the Council is the supreme legislative body. It takes the most important political decisions of the Community. With regard to the ECSC, on the other hand, it is an endorsement body which has to deal only with a few, especially important decisions. Under the Community treaties, majority voting in the Council is the rule. Where no express provision is made to the contrary, a simple majority suffices, and each State has one vote. Normally, however, a 'qualified' majority is required. The treaties stipulate a weighting of votes so that the larger States exert a greater influence. Thus France, the Federal Republic of Germany, Italy and the United Kingdom each have 10 votes, Spain eight votes, the Netherlands, Belgium, Greece and Portugal five votes, Denmark and Ireland three votes and Luxembourg two votes. The importance of majority voting lies not so much in the fact that it prevents small States from blocking important decisions, as such members could as a rule be brought into line by political pressure. What the majority principle does is make it possible to outvote large Member States which would withstand political pressure. This principle thus contributes to the equality of Member States and must therefore be regarded as a cornerstone of the Community constitution. Despite this original and intrinsically well-balanced approach, the importance of the majority principle has in practice remained small. The reason for this dates back to 1965 when France, afraid that its vital interests in the financing of the common agricultural policy were threatened, blocked decision-making in the Council for more than six months by a 'policy of the empty chair'.

This dispute was resolved only by the 'Luxembourg Agreement' of 29 Jaunary 1966, which states that in the case of decisions where very important interests of one or more partners are at stake, the Council will endeavour, within a reasonable time, to reach solutions which can be adopted by all the members of the Council while respecting their mutual interests and those of the Community. In this connection the French delegation emphasized that it considered that in these cases the discussion must be continued until 'unanimous agreement' was reached. The Luxembourg Agreement provides no solution for cases where such agreement still proves impossible, but confines itself to stating that a divergence of views on this point still exists among the Member States. This Agreement did succeed in putting an end the deadlock in the Council, but it also in practice spelt an end to the majority principle. It provides no criteria for determining within the Council whether in fact very important interests of one or more partners are at stake. It is left purely to the Member State concerned to decide this, so that in effect any Member State can demand unanimity for any major decision in the Council. Thus each Member State has in practice a right of veto. The Heads of State or Government of the Community Member States, at their summit conference on 2 December 1985 in Luxembourg, indicated their readiness to return to a system of voting on important questions more in keeping with the Treaty and more likely to achieve results. This declaration of intent by the governments of the Member States has yet to prove itself in terms of day-to-day political decision-making. Even now, much will still depend on the goodwill of the Member States governments.

(c) The European Parliament

The European Parliament, which gave itself this name in 1958 after its establishment and appears in the Community treaties under the title 'Assembly', is elected by the citizens of the Member States by direct universal suffrage, as a result of a Council Decision of 20 September 1976, which entered into force on 1 July 1978.

The mere existence of a parliament cannot, however, satisfy the fundamental requirement of a democratic constitution that all public authority must emanate from the people. That calls not only for the transparency of the decision-making process but also for the representative character of the decision-taking institutions and the involvement of those concerned. In this respect the present organization of the Community leaves something to be desired. It is therefore rightly described as a still 'underdeveloped democracy'. The European Parliament exercises only symbolically the functions of a true parliament such as exists in a parliamentary democracy. Firstly, the European Parliament does not elect a government. This is simply because no government in the normal sense exists in the European Community. Instead, the functions analogous to government provided for in the treaties are performed by the Council and the Commission according to the division of work described above. Parliament has powers of supervision only over the Commission, and

not over the Council. The Council is subject to parliamentary control only in so far as each of its members is, as a national minister, subject to the control of his national parliament. The Commission is supervised mainly by means of its accountability to Parliament and the need for it report annually to the latter. Its conduct has to be defended in open session and it can be compelled to resign following a vote of no confidence. However, Parliament has no influence over the new composition of the Commission, so that the governments of the Member States could in theory reappoint the old Commission with the same membership. The European Parliament has direct decision-making powers in the legislative process only to a limited extent. It is consulted, however, by the legislative decision-making organ, i.e. the Council, on all important matters, even where the treaties do not so provide, but the outcome of the consultations is not binding on the Council. They often have an impact only if the Commission successfully advocates Parliament's views in the Council.

On this point the summit conference of Heads of State or Government on 2 December 1985 in Luxembourg took a step forward, even if only a modest one. They agreed on a 'cooperation procedure' between Parliament and the Council of ministers for all important decisions on completing the internal market. This procedure gives Parliament power to reject or amend Council decisions within three months by an absolute majority of Parliament's members. If Parliament rejects a proposal, the Council may adopt it on a second reading only if the Council is unanimous. If Parliament proposes amendments, the Commission re-examines its proposals in the light of these amendments and sens a fresh proposal to the Council, which can be rejected only if the Council is unanimous. However, the Council of Ministers still has the last word in the Community law-making process.

The position is different in the fields of budget law. Parliament's influence has increased in this area owing to the fact that, since 1975, it has drawn up the budget in conjunction with the Council and under certain conditions has had the power to make amendments which even the Council may not oppose. This extension of Parliament's powers gives grounds for expecting that the European Parliament will in future be able to acquire further true decision-making powers. The history of the parliamentary system of government shows that in the 19th century parliaments were first vested with budgetary powers before becoming, sometimes after a hard struggle, the legislative organ.

(d) The Court of Justice of the European Communities

A system will endure only if its rules are supervised by an independent authority. What is more, in a community of States the common rules — if they are subject to control by the national courts — are interpreted and applied differently from one State to another. The uniform application of Community law in all Member States would thus be jeopardized. These considerations led to the establishment of a Community Court of Justice as soon as the ECSC was created.

Since Greece, Portugal and Spain became a member of the European Communties, the Court of Justice has consisted of 13 judges, appointed by common accord of the governments of the Member States for a term of six years. The Court is assisted by six advocates-general whose term of office corresponds to that of the judges.

The Court has to deal with a wide variety of Community issues ranging from questions relating to the steel industry, agricultural and social matters, customs duties and taxation, competition matters and patents to personnel matters.

Community law lives only in the judgments of the Court. Its judgments convey a feeling of the justness of European law and hence give it the necessary authority *vis-à-vis* governments, authorities, parliaments and citizens.

(e) The auxiliary institutions of the European Community

In addition to the above-mentioned constitutional institutions there are a number of auxiliary institutions. The most important of these, because it is vested with general powers, is the *Economic and Social Committee.* The Economic and Social Committee advises the Council and Commission on economic matters. It is a forum for such economic and social categories as manufacturers, farmers, carriers, employees, businessmen, small tradesmen and the self-employed. As a result of its composition and its political and technical mandate, it exerts a strong influence on the Community's decision-making process. Through its opinions, not only does it provide valuable assistance to those responsible for formulating Community policies, but it also forms a link between the various occupational groups, which ultimately feel directly the practical effects of Community measures, and the European reality.

As financing agency for a 'balanced and smooth development' of the common market, the Community has at its disposal the *European Investment Bank.* This provides loans and guarantees in all economic sectors to promote the development of less-developed regions, to modernize or convert undertakings or create new jobs and to assist projects of common interest to several Member States.

Lastly, mention must be made of the *European Court of Auditors,* which was set up by the Treaty of 22 July 1975 and started work in Luxembourg in October 1977. It consists — in line with the present number of Member States — of 12 members appointed for six years by the Council following consultations with the European Parliament. The Court of Auditors performs the task of examining whether all revenue has been received and all expenditure incurred in a lawful and regular manner and whether the financial management has been sound. The results of its activity are summarized after the close of each financial year in an annual report and published in the *Official Journal of the European Communities.*

III. The Community as a legal reality

The constitution of the European Community described above, and particularly the fundamental values it establishes, can be brought to life and given substance only through Community law. This makes the Community a legal reality in three different senses: it is created by law, it is a source of law, and it forms a legal order.

1. The Community is created by law

This is what is entirely new about the Community, what distinguishes it from earlier efforts to unite Europe. It works not by means of force or domination but simply by

means of law. Law is to do what 'blood and iron' have for centuries failed to do. For only unity based on a freely-taken decision can be expected to last: unity founded on the fundamental values such as freedom and equality, and protected and translated into reality by law. That is the insight underlying the treaties which created the Community.

2. *The Community is a source of law*

When we speak of a 'source of law' we may mean one of two things. In its fundamental sense the term means the original cause of the law, the grounds on which the law is created. In this sense the source of Community law would be international solidarity, and the desire to preserve peace and to build a better Europe through economic integration: these are the two motive forces to which the Community owes its existence. However, the expression 'source of law' more commonly refers to the way the law is made, the formal foundation it rests on.

(a) The founding treaties as primary source of Community law

The first source of Community law in this sense is provided by the three treaties, with the various annexes and protocols attached to them, and their later additions and amendments: these are the founding acts which we have already looked at when we discussed the Community's constitution. Because the law contained in the treaties was created directly by the Member States themselves, it has come to be known in legal language as primary legislation. This founding charter is mainly confined to setting out the objectives of the Community, establishing its mechanisms, and laying down a timetable within which the objectives are to be achieved. It sets up institutions with the task of filling out the constitutional skeleton, in the interest of the Community as a whole, and confers on them legislative and administrative powers to do so.

(b) The Community legal acts as secondary source of Community law

Law made by the Community institutions in the exercise of the powers conferred on them by the treaties is referred to as secondary legislation, the second great source of Community law. It covers a range of types of legislative act which had to be devised afresh when the Community was set up. It had to be decided first and foremost what forms Community legislation should take and what effects these forms should have. The institutions had to be able to align the disparate economic, social and not least environmental conditions in the various Member States, and do so effectively, thus without depending on the goodwill of the Member States, so that the best possible living conditions could be created for all the citizens of the Community; but on the

other hand they were not to interfere in the domestic systems of law any more than necessary. The Community legislative system is therefore based on the principle that where the same arrangement, even on points of detail, must apply in all Member States, national arrangements must be replaced by Community legislation; but where this is not necessary due account must be taken of the existing legal orders in the Member States.

(c) The Community's range of tools

Against this background a range of tools was developed which allowed the Community institutions to work on the national legal systems in varying measures. The most drastic action is the replacement of national rules by Community rules. Then there are Community rules by which the Community institutions act on the Member States' legal systems only indirectly. Thirdly, measures may be taken which affect only a defined or identifiable addressee, in order to deal with a particular case. Lastly, provision was also made for legal acts which have no binding force, either on the Member States or on the citizens of the Community. These basic categories of legal act are to be found in all three Community treaties. There are differences in the actual form they take, and in their titles, between the coal and steel Treaty on the one hand and the EEC and the Euratom Treaties on the other. The coal and steel Treaty makes provision for only three types of legal act — decisions, recommendations and opinions (Article 14 ECSC); the EEC and Euratom Treaties provide for five forms — regulations, directives, decisions, recommendations and opinions (Article 189 EEC and Article 161 Euratom). The changes in the pattern arose because it was recognized that the forms developed for the ECSC would not adequately meet the needs of the EEC and Euratom. The new titles were intended to avoid the conceptual shortcomings in the legal acts provided for in the earlier treaty. It was felt that the distinctions between the two sets of concepts would simply have to be tolerated until the merger of the three Communities which it was intended should take place at a later date.

But if we look at the range of Community legal instruments in terms of the person to whom they are addressed and their practical effects in the Member States, we can break them down as follows:

ECSC (Article 14)		EEC (Article 189)		Euratom (Article 161)
decisions (general)	=	regulations	=	regulations
recommendations	=	directives	=	directives
decisions (individual)	=	decisions	=	decisions
—	=	recommendations	=	recommendations
opinions	=	opinions	=	opinions

(d) Community legislation

The legal acts which enable the Community institutions to encroach furthest on the domestic legal systems are regulations in the EEC and Euratom Treaties, and general decisions in the ECSC Treaty. This makes them by far the most important legal acts in the Community. Two features very unusual in international law mark them out: their Community character, which means that they lay down the same law throughout the Community, regardless of State borders, and apply in full in all Member States; and their direct applicability, which means that they do not have to be transformed into domestic law, but confer rights or impose duties directly on the citizens of the Community in the same way as domestic law; the Member States and their governing institutions and courts are bound directly by Community law and have to comply with it as they have to comply with domestic law. But in spite of all their similarities with the statute law passed in individual Member States they cannot strictly speaking be described as the equivalent at European level, as they are not passed by the European Parliament and thus from a formal point of view at least they lack the essential characteristics of legislation of this kind.

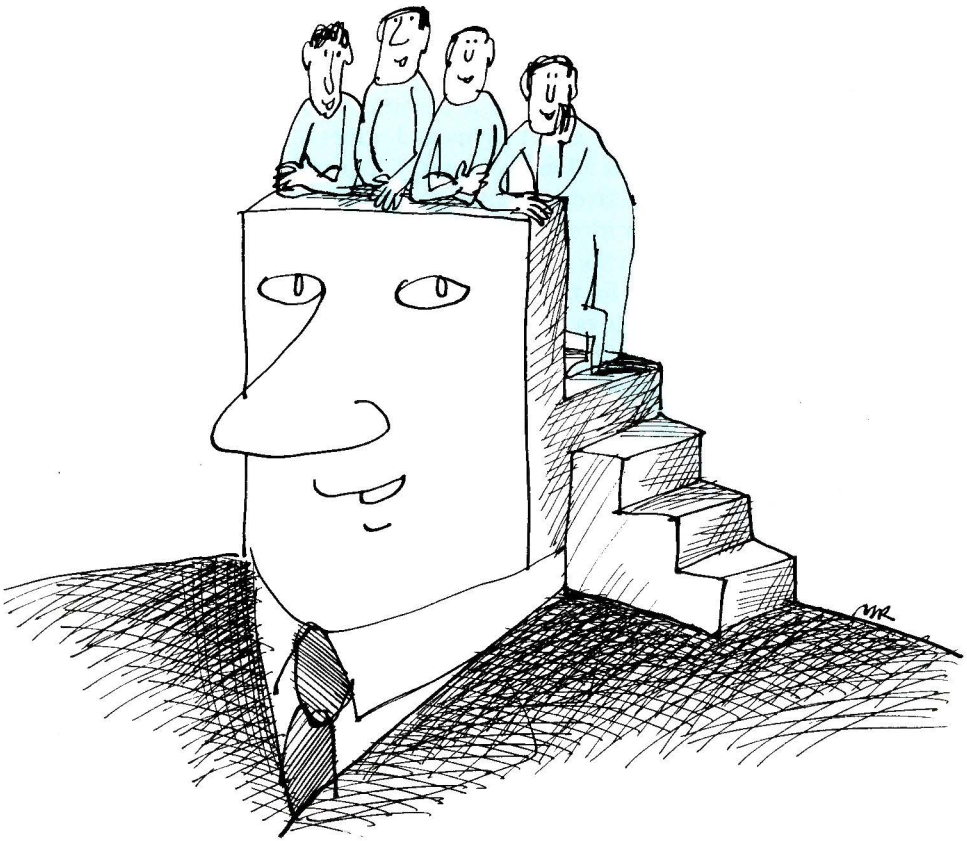
The purpose and effects of a regulation, or a general ECSC decision, can be illustrated by means of two examples. For the regulation we can take the field which has from the beginning been dealt with mainly by means of regulations, namely agriculture. The common market extends to agriculture and trade in agriculture products (Article 38 (1) EEC), as we have already seen. In the Community agricultural market, goods have to be traded not just inside one country in which the same rules apply, but between buyers and sellers in different countries, so that the market can operate smoothly only if common rules are in force throughout the territory of the Community. This requires joint management centrally for the Community as a whole, and the measures needed for the operation of the market have to have direct force in all Member States. Only a regulation has these effects. The purpose and effect of the general ECSC decision is clearly illustrated in the way in which the Commission intervenes in the Community steel market. The crisis which had been smouldering in the European iron and steel industry since 1975 grew in 1980 into the worst crisis since the war. There was a collapse in demand for steel on the Community market, and the world market, which led to a substantial fall in prices in the Community, even though production costs were rising. European steel producers' financial position worsened so far that it was feared there would be lasting damage to the steel industry. This would have been a major blow to the attainment of the objectives of the ECSC Treaty, set out in Article 3, particularly the improvement of workers' living and working conditions and the achievement of an orderly Community market.

This dangerous situation required direct adjustment of steel output, binding on all steel firms, in order to restore the balance between supply and demand on the steel market. The only suitable instrument is the general ECSC decision, as it is the only

instrument which ensures that the necessary measures are binding and actually applied in all Member States and by all steel firms alike.

(e) Directives and ECSC recommendations

The second form of binding Community legislation is the directive, which appears in the ECSC Treaty as the recommendation. Directives are addressed to Member States, sometimes to all Member States and sometimes only to specified ones; ECSC recommendations may also be addressed to firms in the Community. Unlike the regulation or general ECSC decision, this form does not create new uniform Community law binding throughout the whole Community; it requires the addressees to take such measures as may be necessary in order to achieve an aim desired by the Community. The directive or ECSC recommendation states an objective which the addressee must realize within a stated period. How this is to be done is a matter for the addressee. The reasoning behind this form of legislation is that it allows intervention in



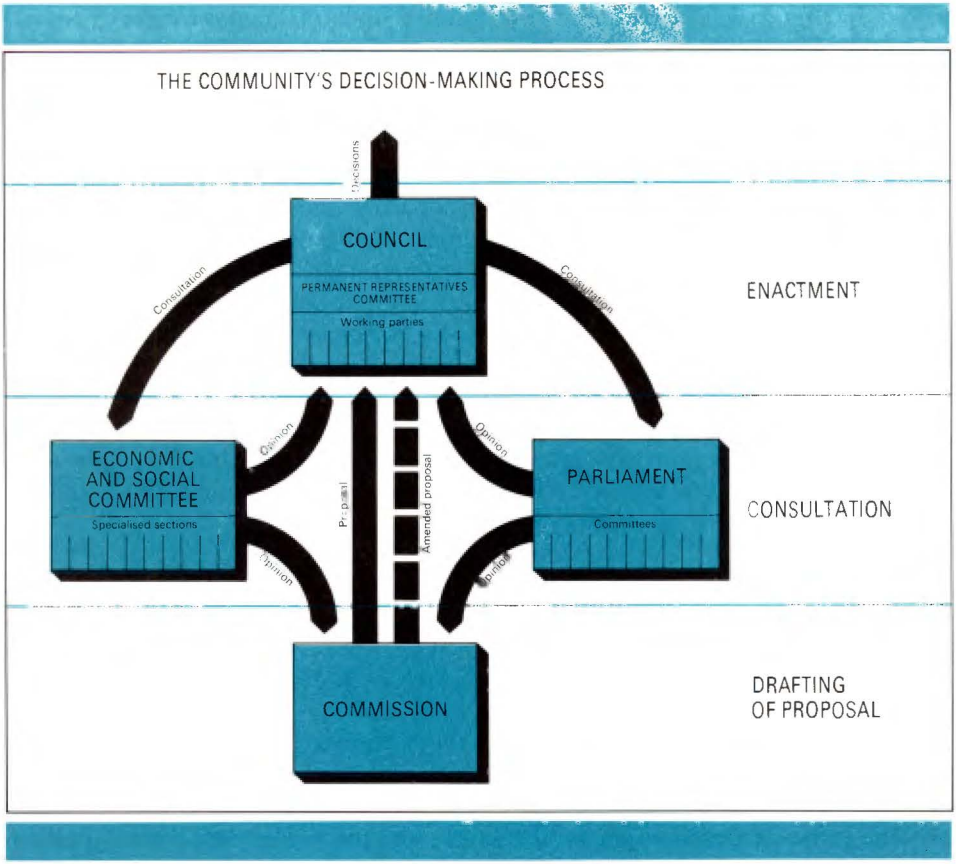
domestic legal and economic structures to take a milder form, and in particular enables Member States implementing the Community rules to take account of special domestic circumstances. The draftsmen of the Treaty here proceeded on the assumption, surely correct, that the far-reaching changes in national arrangements needed to implement the treaties often made it advisable to leave it to each State, which is naturally in the best position to know its own circumstances, to judge how its own requirements could best be reconciled with the needs of the Community.

A second guiding principle is also reflected here, namely the desire to achieve the necessary measure of unity while preserving the multiplicity of national characteristics.

When they implement a directive or an ECSC recommendation the Member States have to introduce new domestic law, or recast or repeal their existing domestic legal and administrative rules so as to bring them into line with the objectives set in the directive or recommendation. This form of Community legislation therefore provides the chief method used for the 'harmonization' process ('approximation of laws': see Article 100 EEC), in which inconsistencies between the various national legal or administrative rules are removed or differences gradually ironed out, and for aligning the economic policy of the Member States. Apart from cases in which an ECSC recommendation is addressed directly to a Community firm, directives and ECSC recommendations do not confer direct rights and duties on Community citizens, as they are addressed solely to the Member States. Citizens acquire the relevant rights and duties only when the directive or recommendation is incorporated into domestic law by the responsible authorities in the Member State. This point is of no importance to the citizens as long as the Member States comply with their obligations. But there would be disadvantages for the citizen where a Member State does not take the necessary implementing measures to achieve an objective set in a directive or ECSC recommendation which would benefit him, or where the measures taken are inadequate. The Court of Justice has refused to accept these disadvantages, and has ruled that in such cases Community citizens can invoke the directive or recommendation directly. This is true only after the time the directive allows for incorporation into national law has expired, and provided the relevant provision is worded clearly enough to leave the Member States no discretion to determine the effect of the measures to be taken. These tests would be satisfied for example where a directive required a Member State to abolish a particular tax, and the Member State failed to comply with its obligation within the time allowed. A citizen who would benefit from the abolition of the tax could invoke the directive and refuse to pay, once the time allowed for implementation had expired.

(f) The legislative process in the Community

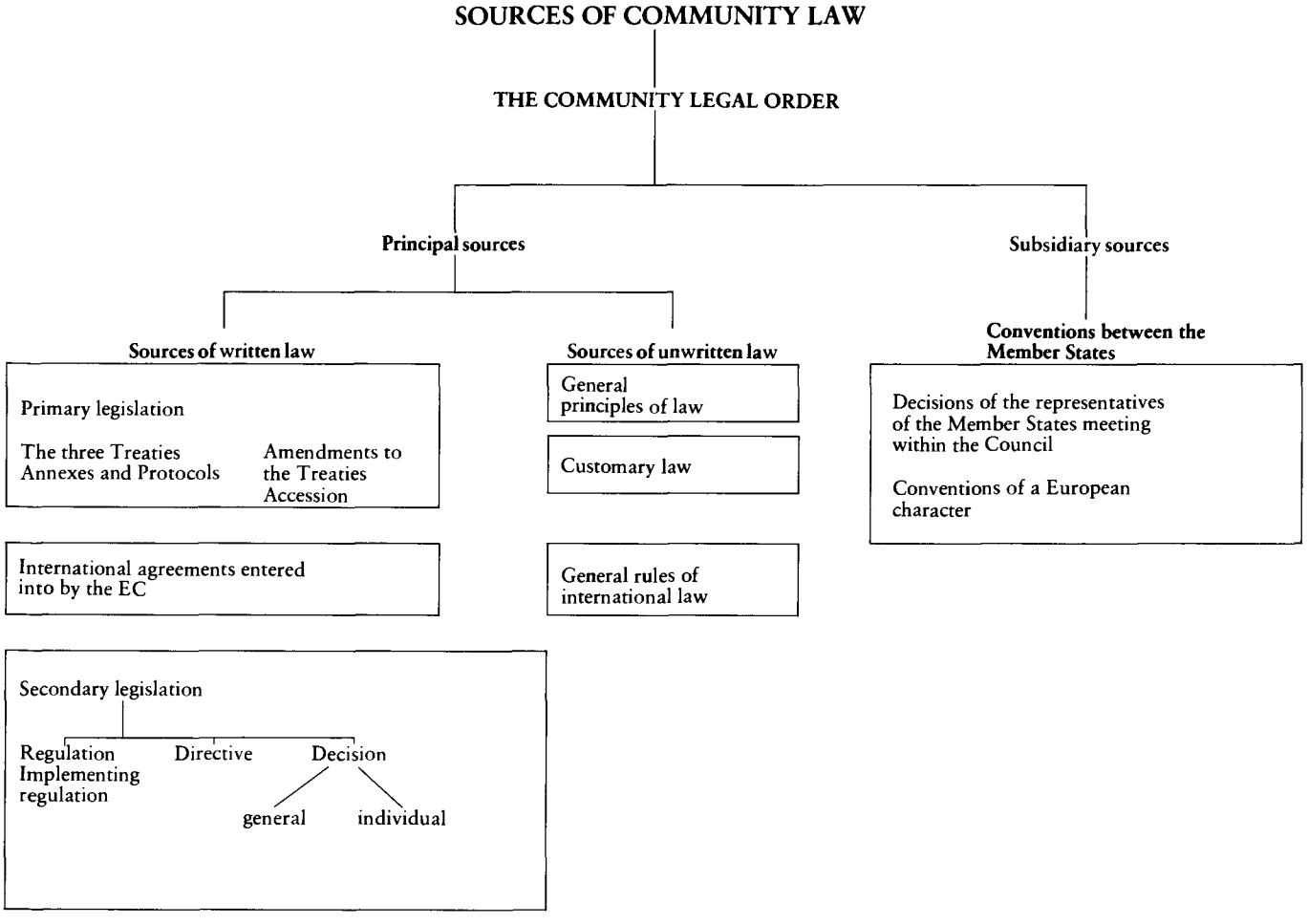
As a rule both regulations and directives are issued at the end of a legislative process which begins with a proposal. This process rests on a division of labour between the



Commission and the Council. Put very briefly, the Commission proposes and the Council disposes. But before the Council actually reaches a decision there are various stages to be completed in which, depending on the subject of the measure, it may also come before the European Parliament and the Economic and Social Committee. The machinery is set in motion by the Commission, which must take the initiative by drawing up a proposal for the Community measure in question (we therefore speak of the Commission's right of initiative). A proposal is prepared on the responsibility of a Member of the Commission by the Commission department dealing with the particular field; frequently the department will also consult national experts at this stage. The draft drawn up here, which is a complete text, setting out the content and form of the measure to the last detail, goes before the Commission as a whole when a simple majority is enough to have it adopted. It is now a 'Commission proposal', and is sent to the Council with a detailed explanation of the grounds for it. The Council first checks whether it must consult other Community bodies before decid-

ing on the proposal. The treaties give the European Parliament the right to be consulted on all politically important measures ('compulsory consultation'). Parliament here speaks on behalf of all the citizens of the Community; its function is to look after their interest in the development of the Community. Failure to consult Parliament in such cases is a serious irregularity and an infringement of the treaties. Apart from compulsory consultation of this kind, Parliament is in practice also consulted on all other draft legislation ('optional consultation'). Parliament's part in the process ends with the adoption of a formal written opinion, which the President of Parliament forwards to the Council and the Commission, and which may recommend amendments to the proposal. But the Council is not legally obliged to take account of the opinions or amendments put forward by Parliament. The cooperation procedure between Parliament and Council decided upon at the Luxembourg summit in December 1985 promises some slight progress on this matter, but does not alter the fact that the final binding decision is reserved to the Council. With the greater political weight direct elections have given it Parliament intends to build its right to be consulted into a genuine role in the legislative process, of the kind which should be played by a parliament in a democratic system.

As well as the European Parliament the treaties in some cases also oblige the Council to consult the Economic and Social Committee. Consultation of the Committee is explicitly required, for example, for Council measures relating to the freedom of establishment (see Article 54 (2) EEC). But the Council is free to consult the Committee in other cases too. This is done very frequently, although it is not the general rule as it is with Parliament. As in the case of Parliament, the Economic and Social Committee's opinion on the proposal is sent to the Council and the Commission, and this ends its part in the process. After Parliament and the Committee have been consulted, the Commission proposal is once more put before the Council, perhaps amended by the Commission in the light of the opinions of Parliament and the Economic and Social Committee (see Article 149 (2) EEC). It will first be discussed by specialized working parties and then by the Permanent Representatives Committee, (known as 'Coreper', from its French title *Comité des Représentants Permanents).* The importance of this Committee in the workings of the Community can hardly be exaggerated. It is in permanent session, and coordinates the preparatory work for Council meetings, so that it is enabled to determine the priorities and urgency of the items on the Ministers' agenda when they meet in the Council. It can also reach agreement on technical points, with the Ministers merely rubber-stamping measures adopted unanimously by the Permanent Representatives. Adoption of the proposal by the Council is the final stage in the legislative process. The final text, in all nine official languages of the Community (Danish, Dutch, English, French, German, Greek, Italian, Portuguese and Spanish) is adopted by the Council, signed by the President of the Council, and published in the *Official Journal of the European Communities* or notified to the person to whom it is addressed.


SOURCES OF COMMUNITY LAW
THE COMMUNITY LEGAL ORDER
Principal sources
Subsidiary sources
Sources of written law
Sources of unwritten law
Conventions between the Member States
Primary legislation
The three Treaties
Annexes and Protocols
Amendments to the Treaties
Accession
General principles of law
Customary law
Decisions of the representatives of the Member States meeting within the Council
Conventions of a European character
International agreements entered into by the EC
General rules of international law
Secondary legislation
Regulation
Implementing regulation
Directive
Decision
general
individual

The procedure is different in the case of the binding legal instruments of the ECSC, the general decision and the ECSC recommendation. The main difference from the scheme laid down in the Rome Treaties lies in the role of the Commission and the Council. The ECSC Treaty gives the power to adopt these instruments not to the Council but to the Commission. In certain specified cases they require the Council's assent, and of course this does then enable the Council to block Commission measures. Before the Commission finally adopts a text it must, in certain cases laid down by the ECSC Treaty, consult Parliament and the 'Consultative Committee' which that Treaty establishes.

(g) The Community's 'administrative measures'

A third category of Community legal acts consists of EEC or Euratom decisions and individual ECSC decisions. In some cases the Community institutions may themselves be responsible for implementing the treaties, or regulations and general ECSC decisions, and this will be possible only if they are in a position to take measures binding on particular individuals, firms or Member States. The situation in the Member States' own systems is the same. An Act of Parliament, for example, will be applied by the authorities in an individual case by means of an administrative measure. In the Community legal order this function is served by the individual decision. The individual decision is the means normally available to the Community institutions to order something to be done in an individual case. The Community institutions can thus require a Member State or an individual to perform or to refrain from some action, or can confer rights or impose duties on them.

(h) Non-binding measures of the Community institutions

Lastly there are opinions and EEC and Euratom recommendations. This category of legal measures is the last one explicitly provided for in the treaties; it enables the Community institutions to express a view to Member States, and in some cases to individual citizens, which is not binding and does not place any legal obligations on the addressees. In the EEC and Euratom Treaties these non-binding legal measures are called recommendations or opinions, but under the ECSC Treaty only the term opinions is used. Unhappily, in the coal and steel system a 'recommendation' is a binding legal act, corresponding to the directives provided for in the EEC and Euratom Treaties. In any event, while EEC and Euratom recommendations urge the addressees to adopt a particular form of behaviour, opinions are used where the Community institutions are called upon to state a view on a current situation or particular event in the Community or the Member State.

The real significance of these recommendations and opinions is political and moral. In providing for legal acts of this kind the draftsmen of the Treaty proceeded on the expectation that, given the prestige of the Community institutions, and their broader view and wide knowledge of conditions beyond the narrower national frame-

work, those concerned would voluntarily comply with recommendations made to them and would draw the appropriate consequences from the Community institutions' assessment of a particular situation.

These non-binding legal acts are not adopted by the legislative procedure described above, but are simply issued by a single Community institution.

(i) The Community's international agreements

A third source of Community law has to do with its role at international level. As one of the focal points of the world Europe cannot confine itself to managing its own internal affairs: it has to concern itself with its economic, social and political relations with the world outside. The Community therefore concludes agreements in international law, with non-member countries and with other international organizations; these range from treaties providing for extensive cooperation in trade or in the industrial, technical and socio-political fields to agreements on trade in particular products. With the Community's economic significance growing, and its activities in the field of trade expanding, the number of agreements it has concluded with non-member countries has increased substantially in the last few years.

(j) General principles of law

The sources of Community law described so far share a common feature in that they all produce written law. Like all systems of law, however, the Community legal order cannot consist entirely of written rules, because there will always be gaps which have to be filled by unwritten law. The sources of unwritten Community law are provided by the general principles of law. These are rules reflecting the elementary concepts of law and justice which must be respected by any system of law. Written Community law for the most part deals only with economic and social matters, and is only to a limited extent capable of laying down rules of this kind, so that the general principles of law are one of the most important sources of law in the Community. They allow gaps to be filled and questions of the interpretation of existing law to be settled in the fairest way. These principles are given effect when the law is applied, particularly in the judgments of the Court of Justice: under Article 164 EEC, Article 136 Euratom and Article 31 ECSC 'the Court of Justice shall ensure that in the interpretation and application of this Treaty the law is observed.' The main points of reference for determining the general principles of law are the principles common to the legal orders of the Member States. They provide the background against which the rule needed to resolve a problem at Community level can be developed. So far the following principles have been formulated by the Court in this way, and thus recognized as unwritten sources of law in the Community legal order:

(i) aspects of the Community's liability for damage sustained as a result of action by its institutions or staff;

(ii) the principle of legality in administration;

(iii) the principle of proportionality (that action must be in proportion to the end it pursues);

(iv) the principle of legal certainty;

(v) the principle that legitimate expectations must be protected;

(vi) the principle of non-discrimination and the principle of equality of treatment;

(vii) the principle of entitlement to a legal hearing;

(viii) the fundamental human rights.

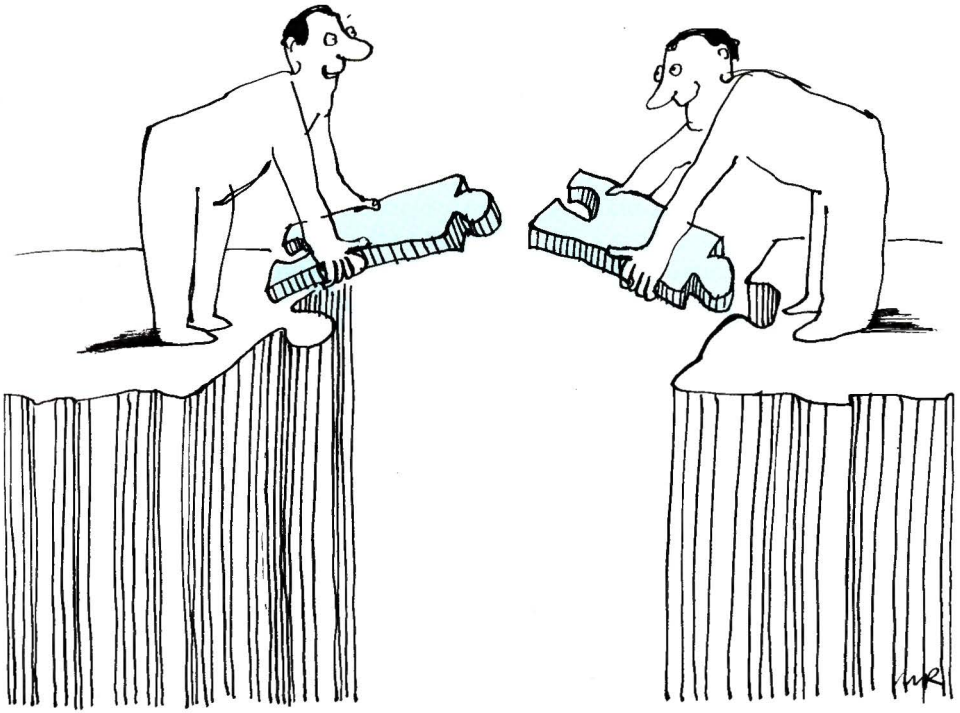
(k) Agreements between the Member States

The final source of Community law is provided by agreements between the Member States. Agreements of this kind may be concluded when questions have to be settled which are closely linked to the Community's activities, but no powers have been transferred to the Community institutions; there are also full-scale international agreements (treaties and conventions) between the Member States aimed especially at overcoming the drawbacks of territorially limited arrangements and creating laws which apply uniformly throughout the Community (see Article 220 EEC). This is important primarily in the field of private international law; thus agreements have been concluded on the reciprocal recognition and enforcement of judgments in civil and commercial matters (1968) and on the mutual recognition of companies and legal persons (1968).

3. *The Community is a legal order*

Finally, the Community is a legal order, since it is not merely a creation of law but also pursues its objectives purely by means of law. To put it briefly, it is a Community based on law. The common economic and social life of the peoples of the Member States is governed not by the threat of force but by the law of the Community. We have already in previous chapters made the acquaintance of this Community law, which in all its ramifications shapes the legal order.

It is the basis of the institutional system. Community law lays down the procedure for decision making by the Community institutions and regulates their relationship to each other. It provides the institutions with possibilities of action, in the shape of



regulations, general ECSC decisions, directives, ECSC recommendations and individual decisions, for enacting legal instruments binding on the Member States and their citizens.

Thus the individual himself becomes a king-pin of the Community. Its legal order directly affects his daily life to an ever-increasing extent. It accords him rights and imposes on him duties, so that as both a citizen of his State and a subject of the Community he is governed by a hierarchy of legal orders — a phenomenon familiar from federal constitutions. Community law also defines the relationship between the Community and the Member States. The Member States must take all appropriate measures to ensure fulfilment of the obligations arising out of the treaties or resulting from action taken by the institutions of the Community. They must facilitate the achievement of the Community's tasks and abstain from any measure which could jeopardize the attainment of the objectives of the treaties (see the similar wording on these points of Article 5 EEC Treaty, Article 192 Euratom Treaty and Article 86 ECSC Treaty).

Apart from this, two fundamental principles govern the Community legal order: the legality of the acts of the Community organs and the legal protection of those subject to Community rules.

(a) Legality of the acts of the Community organs

The Community treaties attach great importance to the principle that the acts of the institutions must be in accordance with the provisions of the Community Treaties. This principle is expressed in numerous provisions of the treaties: for example the three treaties, in connection with the tasks of the Community and its institutions, use the expressions 'in accordance with the provisions of this Treaty', 'on the conditions provided for in this Treaty' and 'pursuant to this Treaty'. Just as the Community institutions are bound by the law laid down in the treaties when exercising their legislative and executive authority, so they must observe Community secondary law when enacting implementing provisions and dealing with particular cases by means of individual decisions. The comprehensive rules of Community law, sometimes quite specific even on points of detail, would have little point if the Community institutions were not bound to observe them scrupulously.

(b) Community system of legal protecion

Like every true legal order, the Community legal order provides a self-contained system of legal protection to deal with disputes concerning Community law and to ensure its implementation. The focal point of this system is the Court of Justice of the European Communities. It is the supreme and at the same time the only judicial authority empowered to determine all questions of Community law. Its general task is described in the founding treaties as being to 'ensure that in the interpretation and application of this Treaty the law is observed'. (See Article 164 EEC Treaty, Article 136 Euratom Treaty, Article 31 ECSC Treaty.) The Court's duties are extremely wide-ranging. First, it acts in an advisory capacity: it can deliver opinions on conventions which the Community intends to conclude with States or international organizations. These opinions are legally binding. Of increasingly greater importance, however, are its functions as a judicial body. They embrace the following types of proceedings:

(i) Actions against States which fail to fulfil their obligations under the treaties or under Community law. Such actions may be initiated either by the Commission or by a Member State; in practice it is usually the Commission that takes the initiative. The Court examines the case and decides whether there is an infringement of the treaty. If it finds that an infringement to the treaty has occurred the State is bound to take immediate steps to comply with the Court's judgment.

(ii) In the context of the Court's jurisdiction to examine the validity of the acts of the Community institutions, an action may be brought on the ground of failure to act or for the annulment of action taken by those institutions. Actions on the ground of failure to act may be brought against the Council and the Commission if those institutions have failed to take decisions which are mandatory under the treaty or under a legal instrument based on the treaty.

(iii) Actions concerning disputes involving the non-contractual liability of the Community.

(iv) Proceedings seeking a review of the fines which the Commission is permitted to impose in the case of certain infringements of Community law. In these cases the Court acts as a Court of Appeal which has the right either to annul the fines or to increase or reduce them.

(v) Actions concerning disputes between the Community and its officials or their successors in title.

(vi) Finally, the Court acts in some cases as a Court of Arbitration when this jurisdiction is expressly conferred on it by the particular contract concerned.

The Court has, however, a further very important field of jurisdicition. Since its duty is to ensure the uniform interpretation of Community law, national courts, in cases where any question of Community law arises, can request the Court to clarify any such points by means of a preliminary ruling. By these preliminary rulings the supreme European Court exercises a form of advisory function which is legally binding. The following are examples of matters on which preliminary rulings may be given:

(i) clarification of the meaning and scope of the provisions of the treaties or the regulations of the Council and the Commission;

(ii) identification of the national law referred to in any particular provision of Community law;

(iii) determination of the period of validity of a Community rule;

(iv) decisions on the legal acts or legal measures falling respectively under Community law or under national law;

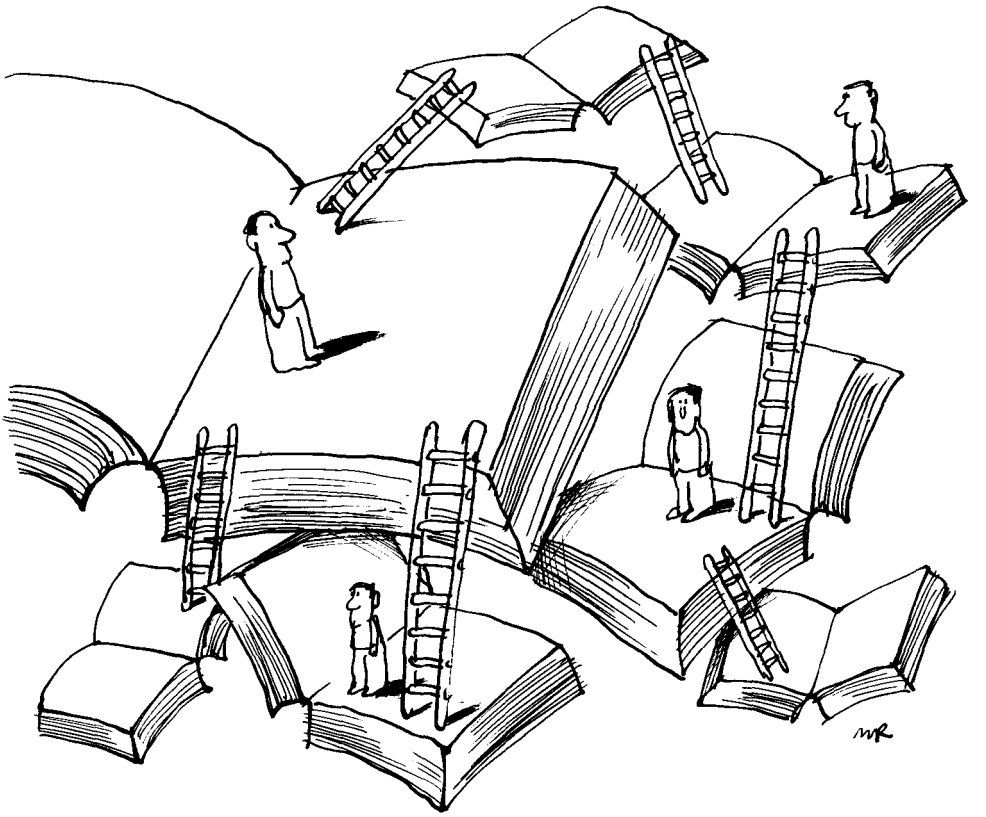
(v) determination of the question whether Community rules are self-sufficient or require to be clarified or supplemented by provisions of national law;

(vi) examination of the validity of Community legal acts.

The range of duties imposed on the Court shows that it performs functions which in the legal orders of the Member States are divided among different types of court — constitutional courts, administrative courts, civil courts and labour courts. The Court may be regarded as a constitutional court in cases where is has to decide on actions brought by the Council or the Commission, or by one Member State against another Member State (on account of breaches of obligations under the Community treaties), or when it decides on the interpretation of the Community treaties, particularly in the case of questions on interpretation of Community law referred by national courts. The Court exercises the functions of an administrative court when it examines the validity of decisions taken in individual cases by the Community institutions. Finally, in actions for damages and actions by officials arising from their service relationship the Court exhibits features of a civil court or a labour

court. The Court cannot, however, exercise any of the functions of a criminal court in the traditional sense, although it has the power to review the fines imposed by the Commission and to reduce them where it thinks fit.

IV. The position of Community law in relation to the legal order as a whole



After all that we have learnt about the structure of the Community and its legal order, it is not easy to assign Community law its rightful place in the legal order as a whole and to define the boundaries between it and other legal orders. Two possible approaches to classifying it must be rejected from the outset. Community law must not be conceived of as a mere collection of international agreements, nor can it be viewed as a part or an appendage of national legal systems. On the contrary, through the establishment of the Community, the Member States have limited their legislative sovereignty and in so doing have created a self-sufficient body of law which is binding on them and on their subjects.

How then, should the relationship between Community law and national law be described?

Even if Community law constitutes a legal order which is self-sufficient in relation to the legal orders of the Member States, this situation must not be regarded as one in which the Community legal order and the legal orders of the Member States are superimposed on one another like layers of bedrock. The fact that they are applicable to the same people, who thus become citizens of a national State and citizens of the Community in one person, negates such a rigid demarcation of these legal orders. Secondly, such an approach disregards the fact that Community law can become operational only if it becomes part of the legal orders of the Member States. The truth is that the Community legal order and the national legal orders are interlocked and mutually dependent on one another.

1. Cooperation between Community law and national law

In the first place, the relationship between these legal orders is characterized by the fact that Community law and national law work in concert with one another, assist one another and supplement each other. On its own, the Community legal order is not able to fully achieve the objectives pursued by the establishment of the European Communities. For this, it requires the assistance and the sub-structure of national law. Thus, the Community treaties and the legal provisions adopted by the Community institutions for their implementation must not only be observed by the Member States' institutions — the legislature, the government (including government departments) and the judiciary, but must also be put into effect and rendered operational. The Community legal order must not confront them as if it were something 'external' or 'foreign'; the Member States and the Community institutions are, on the contrary, called upon jointly to make their contribution to achieving the common objectives. The close link and the supplementing interrelationship between the Community legal order and the national legal orders show up most clearly in the way in which directives operate, for in order to attain the objective laid down in a directive the latter is dependent upon national law. The interdependence of the Community legal order and the national legal orders is also illustrated by the fact that in order to remedy its own deficiencies, Community law frequently has recourse to the national legal orders. A final example is the enforcement of pecuniary claims of the European Communities against Community citizens or firms. Although, here, the procedure is governed by the law of the Member State in whose territory enforcement is effected, the basis for the claim and the scope for contesting it are governed solely by Community law.

2. *Conflict between Community law and national law*

However, the relationship between Community law and national law is also characterized by an occasional 'hostility' between the Community legal order and the national legal orders. Here one speaks of a conflict between Community law and national law. Such a situation always arises when a provision of Community law confers rights and imposes obligations directly upon Community citizens while its content conflicts with a rule of national law. Concealed behind this apparently simple problem area are two fundamental questions underlying the construction of the Community, the answers to which were destined to become the acid test for the existence of the Community legal order, namely:

(i) the direct applicability of Community law, and

(ii) the primacy of Community law over conflicting national law.

3. *Direct applicability of Community law*

Firstly, the direct applicability of Community law simply means that the latter confers rights and imposes obligations directly not only on the Community institutions and the Member States but also on the Community's citizens. That bald statement does not, however, get us very far since the question remains of which provisions of Community law have that effect. The Community treaties enlighten us in this regard only by reference to what is referred to as secondary legislation (enacted by the institutions). For example, Article 189 (2) of the EEC Treaty states that a Regulation is 'directly applicable in all Member States'.

One of the outstanding achievements of the Court of Justice of the European Communities is that is has enforced the direct applicability of the provisions of Community law despite the initial resistance of certain Member States and has thus guaranteed the existence of the Community legal order. Its case-law on this point started with a perfectly run-of-the-mill case which, however, was destined to go down in the annals of the Court's case-law. In this case, a Dutch transport undertaking, *Van Gend & Loos,* brought an action in a Dutch court against the Dutch customs authorities who had charged increased customs duties on a chemical product imported from the Federal Republic of Germany. The firm regarded this practice as an infringement of Article 12 of the EEC Treaty, which prohibited the Member States from introducing new customs duties or increasing those which they already applied in the common market. In the final analysis, the outcome of these proceedings depended on the question whether individuals, also, can rely on Article 12 of the EEC Treaty against customs duties levied in breach of the Treaty. As the answer to this question necessita-

ted an interpretation of the EEC Treaty, the Dutch court suspended the proceedings and referred the matter to the Court of Justice of the European Communities. Despite the advice of numerous governments and its Advocate-General, the Court decided that all the rules of the founding treaties which are worded unconditionally, are self-sufficient and legally complete so that their implementation or validity do not require any further intervention by the Member States or the Commission, can apply directly to individuals. This was stated to be the case with Article 12 of the EEC Treaty so that the Van Gend & Loos company could also derive rights from that provision which the Dutch court had to protect. The logical consequence was that the customs duties levied in breach of the Treaty were declared void. In the grounds for its judgment, the Court stated that 'the Community constitutes a new legal order . . . the subjects of which comprise not only the Member States but also their nationals. Independently of the legislation of Member States, Community law not only imposes obligations on individuals but is also intended to confer upon them rights. These rights arise not only where they are expressly granted by the Treaty, but also by reason of obligations which the Treaty imposes in a clearly defined way upon individuals as well as upon the Member States and upon the institutions of the Community'.

Subsequently, the Court continued to apply this case-law in regard to provisions of the EEC Treaty which are of far greater importance to citizens of the Community than Article 12. Three judgments are noteworthy here covering the direct application of Article 48 (freedom of movement), Article 52 (freedom of establishment) and Article 59 (freedom to provide services).

(a) Freedom of movement (Article 48 of the EEC Treaty)

Freedom of movement means the right of all workers in the Member States of the Community to take up employment in any other Member State under the same conditions as national workers (Article 48 (2) of the EEC Treaty). Express mention is made of the right to accept offers of employment and to stay and move freely in the host country (Article 48 (3) of the EEC Treaty). The details of these rights were elaborated in Regulation (EEC) No 1612/68 of 15 October 1968 on freedom of movement for workers within the Community, which hence confers on Community citizens rights on which they may rely before national courts. With regard to the guarantees afforded by Article 48 of the EEC Treaty, the Court of Justice delivered a judgment to this effect in the *van Duyn* case. The facts of this case were as follows: a Miss van Duyn, a Dutch national, was in May 1973 refused leave to enter the United Kingdom in order to take up employment as a secretary with the 'Church of Scientology', an organization considered by the Home Office to be 'socially harmful'. Relying on the Community rules on freedom of movement for workers, in particular Article 48 of the EEC Treaty, Miss van Duyn brought an action before the High Court. She sought a declaration from the High Court that she was entitled to stay in the United Kingdom for the purpose of employment and to be given leave to

enter the United Kingdom. In answer to a question referred by the High Court, the Court of Justice held that Article 48 of the EEC Treaty has direct effect and hence confers on individuals rights which are enforceable before the courts of a Member State.

(b) Freedom of establishment (Article 52 of the EEC Treaty)

Freedom of establishment comprises the right to take up and pursue activities as self-employed persons in another Member State and to set up and manage undertakings, in particular companies or firms (second paragraph of Article 52 of the EEC Treaty). All existing restrictions on freedom of establishment based on nationality were to be lifted during the transitional period, which expired on 31 December 1969 (cf. Article 8 (7) of the EEC Treaty) and foreigners were to be granted the right of establishment under the same conditions as nationals.

The Court of Justice was asked by the Belgian Conseil d'Etat to give a ruling on the direct effect of Article 52 of the EEC Treaty. The Conseil d'Etat had to decide an action brought by a Dutch lawyer, *J. Reyners,* who wished to assert his rights arising out of Article 52 of the EEC Treaty. Mr Reyners felt obliged to bring the action after he had been denied admission to the profession of lawyer in Belgium because of his foreign nationality, despite the fact that he had passed the necessary Belgian examinations. In its judgment of 21 July 1974, the Court held that unequal treatment of nationals and foreigners as regards establishment could no longer be maintained, as Article 52 of the EEC Treaty was directly applicable since the end of the transitional period and hence entitled Community citizens to take up and pursue gainful employment in another Member State in the same way as a national. As a result of this judgment Mr Reyners had to be admitted to the legal profession in Belgium.

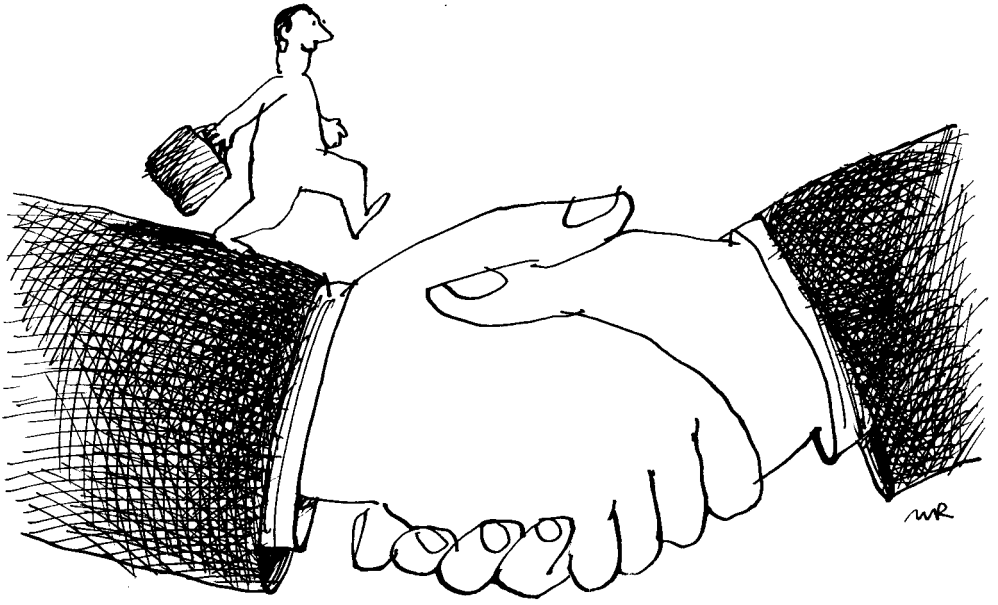
Despite this case-law of the Court of Justice which favours the Community citizen, a Community citizen who wishes to establish himself still frequently encounters obstacles which he has difficulty in surmounting. This is because a foreigner is still allowed to establish himself in another Member State only if he fulfils the same conditions as are required of nationals of the host country. For example, he must have received the required domestic professional training or have passed the necessary examinations and obtained certificates or diplomas issued by the host country, which as a rule is not the case. With a view to removing these obstacles, the EEC Treaty provides for the adoption of measures to coordinate Member States' rules on the taking up and pursuit of activities as self-employed persons (Article 57 (2) of the EEC Treaty) and on the mutual recognition of diplomas, certificates and other evidence of formal qualifications (Article 57 (1) of the EEC Treaty).

(c) Freedom to provide services (Article 59 of the EEC Treaty)

Freedom to provide services encompasses the self-employed activities for which only a temporary stay in another Member State is necessary. The right of establishment is therefore not involved. Examples are the activities of doctors, lawyers, architects and engineers, as well as those of banks and insurance companies or of brokers, intermediaries and advertising agencies and technical, craft and artistic activities. As in the case of freedom of establishment, all restrictions on freedom to provide services should have been abolished by the end of the transitional period, i. e. 31 December 1969, and foreigners should have been granted the right to provide services under the same conditions as nationals.

The Court of Justice was given an opportunity in the *van Binsbergen* case to establish expressly the direct effect of Article 59 of the EEC Treaty. These proceedings involved *inter alia* the question whether a Dutch legal provision to the effect that only persons habitually resident in the Netherlands could act as legal representatives before an appeal court is compatible with the Community rules on freedom to provide services. The Court answered this question in the negative on the ground that all restrictions to which Community citizens might be subject by reason of their nationality or place of residence infringe Article 59 of the EEC Treaty and are therefore void.

Of the many other Treaty provisions whose direct effect within a Member State the Court has confirmed, the following may be singled out: Article 30 of the EEC Trea-



ty, which guarantees freedom of movement for goods, and Article 119 of the EEC Treaty, which guarantees equal pay for men and women.

Since 1970 the Court has extended its principles concerning direct effect to provisions in directives and in decisions addressed to States. This seems logical if even treaty law can apply directly to Community citizens despite the fact that it is addressed to the Member States.

The practical importance of the direct effect of Community law in the form in which it has been developed and brought to fruition by the Court of Justice can scarcely be overemphasized. It improves the position of the individual by turning the freedoms of the common market into rights which may be enforced in a court of law. The direct effect of Community law is therefore one of the pillars, as it were, of the Community legal order.

4. Primacy of Community law

The direct effect of a provision of Community law leads to a second, equally fundamental question: what happens if a provision of Community law gives rise to direct rights and obligations for the Community citizen and conflicts in substance with a rule of national law?

Such a conflict between Community law and national law can be settled only if one gives way to the other. Community legislation contains no express provision on the question. None of the Community treaties contains a provision stating, for example, that Community law overrides national law or that it is inferior to national law. Nevertheless, the only way of settling conflicts between Community law and national law is to grant Community law primacy over national law and allow it to supersede all national provisions which diverge from a Community rule and take their place in the national legal orders. After all, what would remain of the Community legal order if Community law were to be subordinated to national law? Hardly anything! Community rules could be abolished by any national law. There would no longer be any question of a uniform and equal application of Community law in all Member States. Nor would the Community be able to perform the tasks entrusted to it by the Member States. The ability of the Community to function would be jeopardized, and the construction of a united Europe on which so many hopes rest would never be achieved.

Once again it fell to the Court of Justice of the Community, in view of these consequences, to establish — despite opposition from several Member States — the prin-

ciple of the primacy of Community law which is essential to the existence of the Community legal order. In so doing, it erected the second pillar of the Community legal order after direct effect, which was to turn that legal order at last into a sound edifice. Barely two years after the abovementioned Van Gend & Loos judgment, questions on the interpretation of the EEC Treaty were referred to the Court of Justice by a Milan justice of the peace which enabled it to clarify the principles underlying the conflict of laws question. In 1962 Italy nationalized the production and supply of electricity and transferred its administration to the ENEL. A shareholder of Edison Volta felt that his interests were adversely affected by this nationalization and refused to pay an electricity bill of a few hundred lire. He justified his conduct before the Milan justice of the peace *inter alia* by claiming that the law nationalizing the electricity industry infringed the EEC Treaty. Since the outcome of this action depended on the interpretation of several articles of the EEC Treaty, the justice of the peace turned to the Court of Justice. In its judgment, the Court made two important observations regarding the relationship between Community law and national law:

Firstly: the Member States have definitively transferred sovereign rights to a Community created by them. They cannot reverse this process by means of subsequent unilateral measures inconsistent with the Community concept.

Secondly: it is a principle of the Treaty that no Member State may call into question the status of Community law as a system uniformly and generally applicable throughout the Community.

It follows from this that Community law, which was enacted in accordance with the powers laid down in the Treaties, has priority over any conflicting law of the Member States. Not only is it stronger than earlier national law, but it also has a limiting effect on laws adopted subsequently.

Ultimately, the Court did not in its judgment call into question the nationalization of the Italian electricity industry, but it quite emphatically established the primacy of Community law over national law.

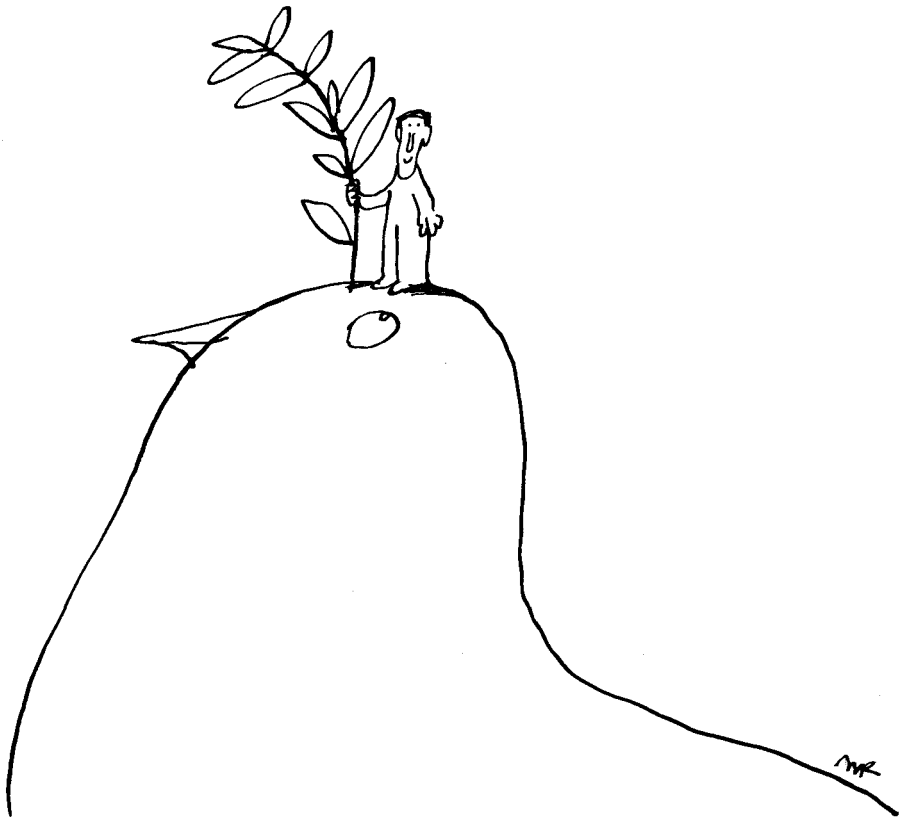
The Court has since adhered to this finding in case after case. It has, in fact, developed it further in one respect. Whereas in the judgment just mentioned it was concerned only with the question of the primacy of Community law over ordinary national laws, it confirmed the principle of primacy with regard also to the relationship between Community law and national constitutional law. After initial hesitation, national courts in principle accepted the interpretation of the Court of Justice. In the Netherlands no difficulties could arise in any case as the primacy of treaty law over national statute law is expressly laid down in the Netherlands constitution (Articles 65 to 67). In the other Member States the principle of the primacy of Community law over national law has likewise been recognized by national courts. The constitutional courts of the Federal Republic of Germany and the Italian Republic depart from this rule, however, where Community law conflicts with the fundamental

rights guaranteed by their constitutions. In such cases, which have so far remained theoretical, a conflict should, in the view of those courts, be settled in favour of the national fundamental rights.

V. Conclusions

What overall picture emerges of the construction of the European Community and its legal order?

The European Communities have a relatively uniform system of rules — their constitution. Crucial factors in its creation were the comparable state of economic development of the original Member States and their broad consensus on the means and objectives of the unification of Europe. The similarity of Member States' values and the existence of a model were decisive when it came to choosing a constitutional system.



The legal order is the true foundation of the Community and confers on it the nature of a community based on law. Only by creating new law and upholding it can the objectives pursued by setting up the Community be achieved. The Community legal order has already accomplished a great deal in this respect. It is thanks not least to this new legal order that the, by and large, open frontiers, the substantial exchange of goods and services, the migration of workers and the large number of transnational links between companies have already made the common market part of everyday life for approximately 260 million people. Another feature of the Community legal order which has already attained historic importance is its peace-making role. With its objective of maintaining peace and liberty, it replaces force as a means of settling conflicts by rules of law which bind both individuals and the Member States into a single Community. As a result the Community legal order is an important instrument for the preservation and creation of peace.

The Community legal order and the Community which is based on it can survive only if observance and protection of the legal order are guaranteed. This is ensured by the two cornerstones of the Community legal order: the direct effect of Community law and the primacy of Community law over national law. These two principles, the existence and maintenance of which are defended with great determination by the Court of Justice, guarantee the uniform and prior application of Community law in all Member States.

For all its imperfections, the contribution which the Community legal order makes towards solving the political, economic and social problems of the Member States of the Community is of inestimable value.

Table of cases

1. *Nature and primacy of Community law*

— Case 26/62 Van Gend & Loos [1963] ECR 1 (Nature of Community law; rights and obligations of individuals)

— Case 6/64 Costa v ENEL [1964] ECR 585 (Nature of Community law; direct applicability; primacy of Community law)

— Case 14/68 Walt Wilhelm and Others [1969] ECR 1 (Nature of Community law; primacy of Community law)

— Case 106/77 Simmenthal [1978] ECR 629 (Community law; direct applicability; primacy)

— Case 83/78 Pigs Marketing Board [1978] ECR 2347 (Primacy of Community law)

— Case 826/79 MIRECO [1980] ECR 2559 (Primacy of Community law)

2. *Powers of the Community*

— Case 8/55 Fédéchar [1954 to 1956] ECR 245 (Implied powers; official fixing of prices)

— Case 22/70 ERTA [1971] ECR 263 (Legal personality and treaty-making powers of the Community)

— Case 6/76 Kramer [1976] ECR 1279 (External relations; international commitments; authority of the Community)

— Opinion 1/76 [1977] ECR 760 (External relations; international commitments; authority of the Community)

— Ruling 1/78 [1978] ECR 2151 (Division of powers between the Community and the Member States)

3. *Effects of legal acts*

— Case 43/71 Politi [1971] ECR 1039 (Regulations; direct effects)

— Case 34/73 Variola [1973] ECR 981 (Regulations; direct effects)

— Case 65/75 Tasca [1976] ECR 291 (Regulations; direct effects)

— Case 31/78 Bussone [1978] ECR 2429 (Regulations; direct effects)

— Case 177/78 Pigs and bacon [1979] ECR 2161 (Regulations; direct effects)

— Case 2/74 Reyners [1974] ECR 631 (Direct applicability; freedom of establishment)

— Case 11/77 Hugh Patrick [1977] ECR 1199 (Direct applicability; right of establishment)

— Case 33/74 van Binsbergen [1974] ECR 1299 (Direct applicability; freedom to provide services)

— Case 167/73 Commission v France [1974] ECR 359 (Direct applicability; freedom of movement)

— Case 41/74 Van Duyn [1974] ECR 1337 (Direct applicability; freedom of movement)

— Case 9/70 Grad [1970] ECR 825 (Decisions; direct applicability)

— Case 20/70 Transports Lesage & Cie [1970] ECR 861 (Decisions; direct applicability)

— Case 33/70 SACE [1970] ECR 1213 (Directives; direct applicability)

— Case 51/76 Verbond van Nederlandse Ondernemingen [1977] ECR 113 (Directives; direct applicability)

— Case 38/77 Enka BV [1977] ECR 2203 (Directives; direct applicability)

— Case 21/78 Delkvist [1978] ECR 2327 (Directives; direct applicability)

— Case 148/78 Ratti [1979] ECR 1629 (Directives; direct applicability)

4. Fundamental rights

— Case 29/69 Stauder [1969] ECR 419 (Fundamental rights; general principles of law)

— Case 11/70 Internationale Handelsgesellschaft [1970] ECR 1125 (Fundamental rights; general principles of law)

— Cases 166/73, 146/73 Rheinmühlen I, II [1974] ECR 33 and 139 (Extent to which national courts are bound by rulings of superior courts).

— Case 4/73 Nold [1974] ECR 491 (Fundamental rights; general principles of law; common constitutional traditions)

— Case 36/75 Rutili [1975] ECR 1219 (Equal treatment; reference to the ECHR)

— Case 175/73 Amalgamated European Public Service Union [1974] ECR 917 (Freedom to form associations)

— Case 130/75 Prais [1976] ECR 1589 (Freedom of religion)

— Case 117/76 Quellmehl [1977] ECR 1753 (Principle of equality)

— Case 48/75 Royer [1976] ECR 497 (Freedom of movement; right of residence; protection of public policy, public security and public health)

— Case 8/77 Sagulo [1977] ECR 1495 (Freedom of movement; right of entry and residence; right flowing directly from Community law)

— Case 149/77 Defrenne [1978] ECR 1381 (Fundamental rights; general principles of law)

— Case 44/79 Hauer [1979] ECR 3727 (Fundamental rights; right to property)

— Case 85/79 Hoffmann-La Roche [1979] ECR 461 (Fundamental rights; principle of the right to be heard)

— Cases 154, 205, 206, 227-228, 263 and 264/78 Valsabbia [1980] ECR 1010 (Fundamental rights; right of property).

— Joined Cases 41/79, 121/79 and 796/79 Testa, Maggio and Vitale [1980] ECR 1979 (Fundamental rights; right flowing directly from Community law; principle of proportionality)

5. General principles of law (selection)

(a) Legal certainty

— Joined Cases 18 and 35/65 Gutmann [1966] ECR 103

— Case 78/74 Deuka [1975] ECR 421

— Case 10/78 Belbouab [1978] ECR 1915

— Case 98/78 Racke [1979] ECR 69

— Case 95/78 Decker [1979] ECR 101

— Case 265/78 Ferwerda [1980] ECR 617

— Case 61/79 Denkavit [1980] ECR 1205

— Joined Cases 66, 127 and 128/79 Salumi [1980] ECR 1237

— Case 826/79 Mireco [1980] ECR 2559

(b) Proportionality

— Case 114/76 Bela-Mühle [1977] ECR 1211

— Case 116/76 Granaria [1977] ECR 1247

— Cases 119 and 120/76 Ölmühle Hamburg [1977] ECR 1269

— Case 8/77 Sagulo [1977] ECR 1495

— Case 122/78 Buitoni [1979) ECR 677

— Case 154/78 Valsabbia [1980] ECR 907

— Cases 26 and 86/79 Forges de Thy-Marcinelle et Monceau [1980] ECR 1083

— Case 808/79 Pardini [1980] ECR 2103

(c) Protection of legitimate expectations

— Case 74/74 CNTA [1975] ECR 533

— Case 97/76 Merkur [1977] ECR 1077

— Case 126/76 Gebrüder Dietz [1977] ECR 2431

— Case 78/77 Lührs [1978] ECR 169

— Case 68/77 IFG [1978] ECR 353

— Case 90/77 Stimming [1978] ECR 995

— Case 146/77 British Beef [1978] ECR 1347

— Case 96/77 Bauche [1978] ECR 383

— Joined Cases 12/77, 18/77 and 21/77 Debayser [1978] ECR 553

— Case 103/77 Scholten-Honig [1978] ECR 2037

— Case 88/78 Kendermann [1978] ECR 2477

— Case 95/78 Dulciora [1979] ECR 1549

— Case 730/79 Philip Morris [1980] ECR 2671

— Case 108/81 Amylum [1982] ECR 3107

Further reading

EEC Publications

Community law. Extract from the 17th General report on the activities of the Communities in 1983 (Offprint). ECSC, ECC, EAEC, Commission. Luxembourg: EC 1967 (1968) — 1982 (1983)

Louis, Jean-Victor — *The Community legal order.* EC, Commission. Luxembourg: EC 1980. 144 p. European perspectives

Other publications

Audretsch, H. A. H. — *Supervision in European Community law. Observance by the Member States of their treaty obligations.* A treatise on international and supra-national supervision. Amsterdam (etc.): North Holland 1978. XIV, 304 p.

Beutler/Bieber/Pipkorn/Steil — *Die Europäische Gemeinschaft — Rechtsordnung und Politik.* 2. Aufl., 1982. 477 S.

Bleckmann, Albert — *Europarecht. Das Recht der Europäischen Wirtschaftsgemeinschaft.* 3. neubearb. und erw. Aufl. Köln (etc.) Heymann 1980. XV, 458 S. Academia juris. Lehrbücher der Rechtswissenschaft

Borsani, Franco E. — *Diritto d'Europa.* Introduzione al diritto delle Comunità europee. Milano: Fag 1981. 215 p.

Bredimas, Anna — *Methods of interpretation and Community law.* Amsterdam (etc.): North Holland 1978. XVIII, 219 p. European Studies in law. 6

Cartou, Louis — *Organisations européennes.* Paris, 5e éd. 1975

Constantinesco, Leontin-Jean — *Das Recht der Europäischen Gemeinschaften.* Baden-Baden: Nomos 1977. Vol. 1. Das institutionelle Recht

Deniau, Jean François — *Le Marché Commun.* Paris, 11e éd. 1974

(Die) Europäische Gemeinschaft. Rechtsordnung und Politik. Bengt Beutler, Roland Bieber, Jörn Pipkorn, Jochen Streil. 2. Aufl. Baden-Baden: Nomos 1982. 537 S.

von der Groeben/von Boeckh/Thiesing/Ehlermann — *Kommentar zum EWG-Vertrag.* 2 Bde., 3. Aufl. 1983

Grabitz Eberhard — *EWG-Kommentar,* Loseblatt, München 1983

Hartley, T. C. — *The foundations of European Community law: an introduction to the constitutional and administrative law of the European Community.* Oxford: Clarendon 1981. XXXIV, 551 p. Bibliogr.

Ipsen, Hans Peter — *Europäisches Gemeinschaftsrecht.* 1972. 1092 S.

Kapteyn, P. J. G.; VerLoren van Themaat, P. — *Handboek voor de Europese Gemeenschappen.* 3de, geheel herz. dr. Vol. 1A: Inleiding tot het recht van de Europese Gemeenschappen. Deventer: Kluwer 1980

Karnovs EF-samling. Med kommentarer under red. af Ole Due, Ole Lando og WE von Eyben. 2. udg. København: Karnov. 1978. XI, 1090 s.

Kapteyn/VerLoren van Themaat — *Inleiding tot het recht van de Europese Gemeenschappen.* 2. A. 1974

Lasok, D.; Bridge, J. W. — *Introduction to the law and institutions of the European Communities.* 3rd ed. London: Butterworth 1982. LVI, 453 p.

Lipstein — *The Law of the European Economic Community.* 1974

Maresceau, Marc — *De directe werking van het Europese gemeenschapsrecht.* Deventer: Kluwer 1978. XIII, 330 blz. Europese monografieën. 24

Mathijsen, P. S. R. F. — *A guide to European Community law.* Pref. by J. D. B. Mitchell. 3rd ed. London: Sweet and Maxwell 1980. XXXIII, 256 p.

Mégret/Louis/Vignes/Waelbroeck — *Le droit de la Communauté Economique Européenne.* 7 vol., Bruxelles, 1970

Monaco, Riccardo — *Lineamenti di diritto pubblico europeo.* 2e éd., Milano 1975

Nicolaysen, Gert — *Europäisches Gemeinschaftsrecht.* 1979. 216 S.

Panebianco, Massimo — *Introduzione al diritto del Mercato comune europeo.* Norme comunitarie, nazionali e regionali. Salerno: Edisud 1980. 216 p.

Parry, Anthony; Hardy, Stephen — *EEC law.* 2nd ed. with James Dinnage. London: Sweet & Maxwell 1981. LVI, 531 p.

Plender, Richard — *A practical introduction to European Community law.* London: Sweet & Maxwell 1980. XXIII, 166 p.

Pocar, Fausto — *Lezioni di diritto delle Comunità europee.* 2a ed. Milano: Giuffrè 1979. XXIV, 282 p.

Quadri/Monaco/Trabucchi — *Trattato istitutivo della Comunità economica europea.* Commentario, Milano 1965

Quadri/Monaco/Trabucchi — *Trattato istitutivo della Comunità europea del carbone e dell'acciaio.* Commentario, Milano 1970

Simmonds (ed.), *Encyclopedia of European Community Law.* 9 vol., London-Edinburgh 1973

Smit/Herzog — *The Law of the European Community.* A Commentary on the EEC-Treaty, Vol. 1-5, Losebl. New York 1976

Thiel, Elke — *Die Europäische Gemeinschaft. Zwischen Krise und Bewährung,* 2. Aufl. Hamburg 1985

Wohlfarth/Everling/Glaesner/Sprung — *Kommentar zum EWG-Vertrag.* 1960

Wyatt, Derrick; Dashwood, Alan — *The substantive law of the EEC.* London: Sweet & Maxwell 1980. XXVI, 386 p.

EUROPEAN COMMUNITIES - INFORMATION

Commission of the European Communities. Rue de la Loi 200, 1049 Bruxelles

Oficinas de prensa y de información — Informationskontorer — Presse- und Informationsbüros
Γραφεία τύπου και πληροφοριών — Information offices — Bureaux de presse et d'information
Uffici stampa e informazione — Voorlichtingsbureaus — Secretariados de imprensa e de informação

BELGIQUE – BELGIË

Rue Archimède 73 -
Archimedesstraat 73
1040 Bruxelles – 1040 Brussel
Tél.: 235 11 11/235 38 44

DANMARK

Højbrohus
Østergade 61
Postbox 144
1004 København K
Tlf.: 14 41 40

DEUTSCHLAND

Zitelmannstraße 22
5300 Bonn
Tel. 23 80 41

Kurfürstendamm 102
1000 Berlin 31
Tel. 8 92 40 28

Erhardtstraße 27
D 8000 München
Tel. 89/2399-2900
Telex 5218135

FRANCE

61, rue des Belles-Feuilles
75782 Paris Cédex 16
Tél. 45 01 58 85

2, rue Henri Barbusse
F Marseille 13241 Cédex 01
Tél. 91/08 62 00

GRÈCE

2, Vassilissis Sofias
T.K. 1602
Athina 134
Tél: 724 39 82/724 39 83/724 39 84

IRELAND

39, Molesworth Street
Dublin 2
Tel. 71 22 44

ITALIA

Via Poli, 29
00 187 Roma
Tel. 678 97 22

Corso Magenta, 61
20 123 Milano
Tel. 87 51 17/80 59 209/80 52 643

GRAND-DUCHÉ DE LUXEMBOURG

Centre européen
Bâtiment Jean Monnet B/O
2920 Luxembourg
Tél. 430 11

NEDERLAND

Lange Voorhout 29
Den Haag
Tel. 46 93 26

UNITED KINGDOM

8, Storey's Gate
London SW1P 3AT
Tel. 222 81 22

Windsor House
9/15 Bedford Street
Belfast
Tel. 407 08

4 Cathedral Road
Cardiff CF1 9SG
Tel. 37 1631

7 Alva Street
Edinburgh EH2 4PH
Tel. 225 2058

ESPAÑA

Calle de Serrano 41
(5A Planta - Madrid 28001)
Tel. 474 11 87

PORTUGAL

35, rua Sacramento à Lapa
1200 Lisboa
Tel.: 66 75 96

SCHWEIZ - SUISSE - SVIZZERA

Case postale 195
37-39, rue de Vermont
1211 Genève 20
Tél. 34 97 50

TÜRKIYE

15, Kuleli Sokak
Gazi Osman Paça
Ankara
Tel. 27 61 45/27 61 46

AMERICA LATINA

Avda Ricardo Lyon 1177
Santiago de Chile 9
Chile
Adresse postale: Casilla 10093
Tel. 25 05 55

Quinta Bienvenida
Valle Arriba
Calle Colibri
Distrito Sucre
Caracas
Venezuela
Tel. 91 47 07

AUSTRALIA

Capital Centre
Franklin Street
PO Box 609
Manuka ACT 2603
Canberra a.c.t.
Tel. (062) 95 50 00

CANADA

Inn of the Provinces
Office Tower
Suite 1110
Sparks' Street 350
Ottawa, Ont. KIR 7S8
Tel. 238 64 64

INDIA

Press and Information Service
YMCA Building
(4th & 5th floors)
Jai Singh Road
New Delhi 110001
Télex: 61315 EURO IN
Tél.: 34 42 22, 35 04 30

NIPPON

Kowa 25 Building
8-7 Sanbancho
Chiyoda-Ku
Tokyo 102
Tel. 239 04 41

THAILAND

Bangkok
Thai Military Bank Bldg
34, Phya Thai Road
Tel. 282 1452

UNITED STATES

2100 M Street, NW
Suite 707
Washington, DC 20037
Tel. 862 95 00

1 Dag Hammarskjöld Plaza
245 East 47th Street
New York, NY 10017
Tel. 371 38 04

Learn about Europe!
Our Europe!

Now available:

European Community maps

Political and theme maps

Three reasonably priced colour maps of the European Community (printed in up to eight colours) are now available. They are a political map, showing the Community's 12 Member States, their regions and main administrative units, a map of the farming land and principal crops or products of each region, and a map of the woodlands and forests of the European Community.

The maps are all 75 x 105 cm in size (scale 1 cm = 40 km or 1:4 000 000). They may be obtained flat or folded (25 x 13 cm).

They are all available in several language versions: Danish, German, Greek, English, Spanish, (not the farming or woodlands map), French, Italian, Dutch and Portuguese (not the farming or woodlands map).

(*N.B.:* The farming and woodlands maps were produced before the accession of Portugal and Spain to the European Community. They therefore only cover the 10 Member States that made up the Community before 1986. A new edition of these two maps, covering the 12 countries of the recently-enlarged European Community is being prepared for publication before the end of 1986.)

The European Community — Political map

Member States, regions and administrative units

The political map shows the 12 countries that make up the European Community since 1 January, 1986: Belgium, Denmark, France, the Federal Republic of Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain and the United Kingdom. It shows their political sub-division into regions and administrative units (province, county, etc.) with their respective capitals or main towns.

The European Community now covers an area of 2.25 million sq. km, and it has a population of 320 million.

A large inset with 105 diagrams gives key economic and other statistics of the European Community and its Member States, and it compares them with similar figures for the Soviet Union and the United States.

Woodlands of the European Community

This unique map of Europe's woodlands shows all the woodlands and forests of the Community right down to local level. There are 35 million hectares of woodland in the Community, covering one fifth of its total area. At first sight this may seem reassuring, but the situation varies a great deal from one country to another.

There is an inset with a large number of diagrams giving statistics for each Member State and for the Community as a whole, together with comparisons between the Community and other main wood-producing countries of the world.

Printed in 1983, this map covers the 10 countries of the European Community then: Belgium, Denmark, France, the Federal Republic of Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands and the United Kingdom. It does not include information about Portugal and Spain.

The European Community — Farming

Almost two thirds of the European Community is farmed. This map shows together for the first time the farming land of the 10 countries that formed the Community when it was published early in 1985: Belgium, Denmark, the Federal Republic of Germany, Greece, France, Ireland, Italy, Luxembourg, the Netherlands and the United Kingdom.

Different shading points out the less-favoured agricultural regions: mountainous and hilly areas, where farming is possible but costly; land of low productivity, where farming is necessary to prevent even more people leaving the land; and small farms with specific handicaps. Symbols indicate the principal agricultural produce of each region.

An inset contains a large number of diagrams giving agriculture output statistics and details of agricultural imports and exports for each Member State and for the Community as a whole. Figures are also given for the world's two other major agricultural producers: the USA and the Soviet Union.

(See next page for list of where the maps can be bought)

The maps are obtainable from:

United Kingdom

Ordnance Survey
Romsay Road
Maybush
Southampton SO9 4DH

Ireland

Ordnance Survey Office
Phoenix Park
Dublin

Canada

Renouf Publishing Co., Ltd.
61 Sparks St. (Mall)
Ottawa
Ontario K1P 5A6
Tel. Toll Free 1-800-267-4164
Ottawa Region (613) 238-8985-6

Japan

Kinokuniya Company, Ltd.
17-7 Shinjuku 3-Chome
Shinjuku-ku
Tokyo 160-91
Tel. (03) 354 0131

United States of America

European Community Information Service
2100 M Street NW
Suite 707
Washington DC 20037
Tel. (202) 862 9500

Other countries

Office for Official Publications of the European Communities
2, rue Mercier
L-2985 Luxembourg
Tel. 49 92 81
Telex 1322 PUBOF LU

Prices (excluding VAT and postage) in Luxembourg:

Any one of the three maps (political, woodlands or farming), flat or folded:
ECU 5.45 BFR 250 IRL 4 UKL 3.20 USD 5 CAD 7

Set of three maps (one of each), flat or folded:
ECU 10.90 BFR 500 IRL 8 UKL 6.50 USD 10 CAD 14

European Communities — Commission

The ABC of Community law
(second edition)

Luxembourg: Office for Official Publications of the European Communities

1986 — 61 pp. — 16.2 x 22.9 cm

European Documentation series — 2/1986

ES, DA, DE, GR, EN, FR, IT, NL, PT

ISBN 92-825-6148-8

Catalogue number: CB-NC-86-002-EN-C

Booklet intended mainly for non-lawyers. Tries to explain the European legal order in layman's language.

In the same collection (continued)

The economy of the European Community *(second edition)*
The European Community's fishery policy
The European Community's research policy *(second edition)*
The European Community and the Mediterranean
Nuclear safety in the European Community
The European Community's Budget *(fourth edition)*

Brochures for businessmen (in the same collection)*

Grants and loans from the European Community *(third edition)*
Public supply contracts in the European Community
Government procurement in Japan: the way in
EEC competition rules — Guide for small and medium-sized enterprises
The European Commission's powers of investigation in the enforcement of competition law

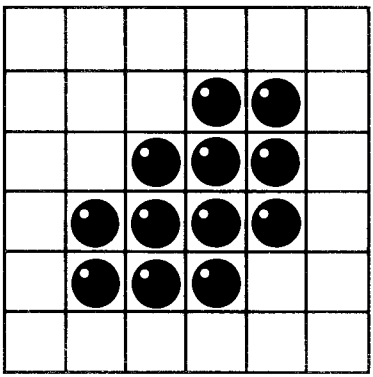
Other publications for the general public

Working together — The institutions of the European Community — By E. Noël, Secretary-General of the Commission of the European Communities
Steps to European unity — Community progress to date: a chronology
European File — Each month two topics of current European events
Bulletin of the European Communities — A monthly survey covering milestones in the building of Europe
Basic statistics — Published annually, an essential statistical guide to the Community
Colour maps — The European Community, Political Map, Member States, regions and administrative units
— The European Community: Farming
— The European Community: Forests
The European Community as a publisher — Extract from our catalogue of publications.

* The brochures for businessmen cannot be obtained on subscription. They are available at the information offices (see list of addresses).

EN

The legal order created by the European Community has become a permanent feature of political reality in the 12 Member States of the European Community.



On the basis of the European Treaties (European Coal and Steel Community, European Economic Community and European Atomic Energy Community (Euratom)), which were signed in Paris in 1951 and Rome in 1957, thousands of decisions are taken each year which have a major impact on the running of the Member States and on the lives of European citizens. The individual ceased long ago to be a citizen merely of his town, locality or State: he is now a Community citizen too.

The purpose of this publication is to explain the European legal order to those citizens. It is addressed primarily to non-lawyers and tries to describe the Treaties in terms intelligible to the layman.

ISBN 92-825-6148-8

OFFICE FOR OFFICIAL PUBLICATIONS
OF THE EUROPEAN COMMUNITIES

L-2985 Luxembourg

9 789282 561485