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AN INTRODUCTION TO THE EUROPEAN COMMUNITY AND TO EUROPEAN COMMUNITY LAW

TORE TØTDAL*

I. INTRODUCTION

The purpose of this article is to give the reader an overview of the history behind the establishment of the European Community (EC), and to provide an inventory of the different institutions contained in the EC. An awareness of the framework that makes up the EC is important for any attorney who wants to look more closely at the laws governing the relationship between the different Member States.¹ Additionally, the relationship between the European Community and the European Union will be explored. The two terms are often used interchangeably without the speaker, or the listener, fully understanding that they have inherent differences. Many important aspects of EC Law will also be briefly outlined, including the free movement of goods, services, persons and capital.

II. THE HISTORY OF THE EUROPEAN COMMUNITY

Several attempts to unite the people of Europe have been made throughout history, but what we today regard as the modern history of European integration starts with the aftermath of the Second World War.² After years of war and destruction, security and economic progress for all citizens of Europe were the primary objective goals. With the signing of the so called Treaty of Paris³ in 1951 came the first serious attempt to

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1. The Member States are, in alphabetical order, Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, The Netherlands, Portugal, Spain, Sweden, and the United Kingdom.

2. STEPHEN WEATHERILL & PAUL BEAUMONT, *EC LAW—THE ESSENTIAL GUIDE TO THE LEGAL WORKINGS OF THE EUROPEAN COMMUNITY 1* (2d ed. 1995) (noting that unification has been attempted by several historic figures, among them Genghis Khan, Napoleon, and Hitler, but that “[t]he modern history of European integration begins immediately after the Second World War. The states of Europe shared a common interest in restructuring the Continent. Europe lay devastated by a conflict that claimed millions of lives. That horrific struggle was itself the culmination of a hundred years and more of turmoil within the changing patchwork of European states”).

3. It is most often referred to as the Treaty of Paris, since it was signed in Paris, but the official

try and achieve this goal. The Treaty of Paris was signed by France, the Federal Republic of Germany, Italy, the Netherlands, Belgium, and Luxembourg.⁴ It established the European Coal and Steel Community (ECSC), designed to place the coal and steel industries under common control, thereby eliminating or reducing the risk that any one of the signatory states would be able to arm itself and prepare for war.⁵ Preventing Germany from re-arming was of course central in this regard.⁶

The United Kingdom opted not to participate in this first step towards European integration in the areas of economy and politics. One reason was its belief that international cooperation should be pursued by independent states, and not by regional organizations like the ECSC.⁷ Another important reason for the United Kingdom's initial refusal to participate in the ECSC was its interest in continuing its close relationship with the U.S., as well as its desire to ensure the success of the General Agreement on Tariffs and Trade (GATT), designed to liberalize world trade.⁸

In 1957, two new treaties were signed, creating the European Economic Community (EEC) and the European Atomic Energy Community (Euratom).⁹ "Whereas the Coal and Steel Treaty and the Euratom Treaty were limited in the scope of the activities to which they applied, the treaty establishing the EEC was of significantly broader

name is the ECSC Treaty.

4. See WEATHERILL & BEAUMONT, *supra* note 2, at 2-3.

5. *Id.* at 3. Other important European and international treaties were also signed following the Second World War, most notably the treaty establishing the North Atlantic Treaty Organization (NATO). However, this discussion will focus on treaties directly related to the European Community.

6. Note that French was chosen as the "official language" for the newly established Community. The reasons for this are clear. Due to the political situation in Europe after World War II, it would not have been possible to choose German, or Italian. Furthermore, since England (at this time) had decided not to join the ECSC, English was not chosen. That left French, not only because France clearly was the politically most significant ECSC member, but also because two other members, Belgium and Luxembourg, were French speaking countries.

7. See *id.* at 2 (noting that "... the United Kingdom held aloof from the ambitious plans for European integration that were being prepared elsewhere, and clung to the idea that international cooperation, though desirable, should be pursued by fully independent states").

8. PAUL CRAIG AND GRAINNE DE BURCA, *EC LAW—TEXT, CASES & MATERIALS* 3 (1997). Former British Prime Minister Sir Winston Churchill was a strong supporter of European integration, but was opposed to the United Kingdom taking part in such integration since he hoped to continue to strengthen the ties with the U.S. See NORMAN ROSE, *CHURCHILL—THE UNRULY GIANT* 407-08 (1995). British opposition to the European Community and the European Union has always been strong, although the United Kingdom, later became a member. As an example of this opposition, it is interesting to see how former British Prime Minister Lady Margaret Thatcher viewed what later became the European Union. See MARGARET THATCHER, *THE PATH TO POWER* 471 (1995) (noting that "[t]he EU came near to sabotaging the GATT; it has sparked a series of trade disputes across the Atlantic; it has prolonged the instability of Central and Eastern Europe by maintaining absurdly high trade barriers on their infant export industries; and it threatens to divide NATO with premature and militarily incomprehensible plans to establish a "European pillar" or "European Defense identity"). "And most of these obstructive initiatives make no sense in their own terms; they are launched solely in order to bring nearer the day when "Europe" will be a fully-fledged state with its own flag, anthem, army, parliament, government, currency and, eventually one supposes, people." *Id.*

9. See WEATHERILL & BEAUMONT, *supra* note 2, at 4.

scope.”¹⁰ It sought to eliminate trade restrictions, as well as obstacles to the free movement of persons, services and capital, thus creating a common market.¹¹ This trade phenomenon might not seem significant to a reader in the United States who is used to the free flow of goods, persons, services and capital between the different states. However, since the members of the three European communities were composed of independent, sovereign countries, the stated goal to abolish restrictions represented a notable step forward in the European integration process, as well as creating a rather unique situation in International Law. For example, the EEC Treaty required the Member States to ensure that their domestic laws were amended so that the functioning of the common market would not be distorted.¹²

Several important events took place during the 1960s and the early 1970s. The UK changed its attitude with regards to membership, and in 1961 the conservative government decided to seek entry.¹³ The UK’s participation in the European Free Trade Association (EFTA), which was an organization focused on intergovernmental cooperation on economic issues, had proven inadequate.¹⁴ However, it was not until 1973 that the United Kingdom, together with Denmark and Ireland, joined as a member.¹⁵

In 1967, a “Merger Treaty” was signed, which was designed to rationalize the administration of the three communities; that is, the ECSC, Euratom, and the EEC.¹⁶ After the Merger Treaty went into effect, the three communities were administered as one single Community.¹⁷ As we later will see, the three communities still exist, although the EEC today is known as the EC.

The Community continued to grow after Denmark, UK, and Ireland joined. Greece joined in 1981, Spain and Portugal in 1986, and finally in 1995 Austria, Finland, and Sweden joined, bringing the total number of member states to fifteen.¹⁸ The new members of the Community had earlier been members of EFTA.¹⁹ However, as with the UK, most EFTA

10. *Id.*

11. *Id.*

12. *Id.*

13. T. C. HARTLEY, *THE FOUNDATIONS OF EUROPEAN COMMUNITY LAW* 4-5 (3d ed. 1994).

14. WEATHERILL & BEAUMONT, *supra* note 2, at 6.

15. *Id.* at 7. Norway had applied for membership as well, but a negative referendum in 1972 led to the subsequent withdrawal of Norway’s application.

16. *Id.* at 4.

17. The author will use the phrase “the Community” throughout the article when referring to the three communities.

18. Norwegian voters rejected the country’s application for membership in 1994, repeating the negative 1972 referendum. Swiss voters had voted against membership in 1992.

19. See CRAIG & DE BURCA, *supra* note 8, at 14. EFTA was set up in 1961 by the United Kingdom, Norway, Sweden, Austria, Switzerland, Denmark, and Portugal. *Id.*

members found EFTA membership inadequate, even after EFTA and EEC negotiated and agreed to establish the European Economic Area (EEA).²⁰ The idea behind the EEA was to integrate EFTA countries economically into the EEC, without giving them influence in the political and lawmaking processes of the EEC.²¹ This arrangement proved to be particularly unsuccessful. "In particular, [the EEA agreement] means that the EFTA countries will have to apply rules of law in the making of which they will had virtually no say."²²

The "Single European Act" (SEA), which revised the ECSC, EURATOM, and EEC treaties, was signed in 1987.²³ It introduced several changes, at the political and economical level, as well as in the sphere of legislation procedures, and set out to create an even closer relationship between the Community members.²⁴ The signing of the SEA was an important step in the process of European integration, but a more significant change to the Community structure would soon follow. The most notable and controversial treaty between the members of the Community was negotiated at Maastricht in the Netherlands in 1991, and signed in 1992.²⁵

The treaty that was signed was the Treaty on European Union (TEU). Among other things, the TEU changed the name of the EEC Treaty to the EC Treaty, and in turn, the European Economic Community became the European Community.²⁶ As such, the European Community still exists. It has not been replaced by the European Union, which is the impression one might have, as the term European Union is the "preferred term" used by the media.

The Union is wider than the European Community, although it is stated to be founded upon it. The Treaty on European

20. See HARTLEY, *supra* note 13, at 5. The European Economic Area came into effect January 1, 1994. However, by 1995 only Norway, Liechtenstein, and Iceland remained as members of EFTA and EEA, since the others, except from Switzerland, had joined the Community. See *id.* at 6. Switzerland remained in EFTA, but not the EEA. See THOMAS C. FISHER, THE EUROPEANIZATION OF AMERICA—WHAT EVERY AMERICAN SHOULD KNOW ABOUT THE EUROPEAN UNION 249 (1995).

21. HARTLEY, *supra* note 13, at 5.

22. *Id.* at 6. Note that the EEA agreement created the world's largest trading area, with a greater Gross Domestic Product (GDP) than the area covered by the North American Free Trade Agreement (NAFTA). See *id.* The EEA (EFTA + EC) population is over 370 million, and in 1994, the EEA had a GDP of \$6.6 trillion, accounting for 45% of global trade. See FISHER, *supra* note 20, at 249.

23. See CRAIG AND DE BURCA, *supra* note 8, at 20.

24. See *id.* at 20-21. The Single European Act added new guidelines in the area of economic policy, adopting new articles to the EEC Treaty. *Id.* at 21. For example, new Article 7a stated that "[t]he Community shall adopt measures with the aim of progressively establishing the internal market over a period expiring on 31 December 1992 . . . The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of this Treaty." *Id.*

25. See WEATHERILL & BEAUMONT, *supra* note 2, at 10.

26. *Id.*

Union contains two fields of activity that will be pursued by the Union although they are not pursued by the European Community. These are called, first, Common Foreign and security Policy, which is the successor to European political cooperation; and, second, Justice and Home Affairs.²⁷

The TEU introduced several changes to the EC, and possibly the most troublesome for the different Member States was the stated goal to create a common monetary system with one currency (the euro) and one common European Central Bank.²⁸ However, the TEU also introduced numerous concrete provisions, as well as provisions of mere political intent, in non-economic areas, all designed to create an ever closer community.²⁹ In Article 3 EC Treaty (as amended by the TEU), all

27. *Id.* at 11.

28. See JOSEPHINE STEINER & LORNA WOODS, TEXTBOOK ON EC LAW 5-6 (5th ed. 1996) (stating that “[p]erhaps one of the most politically sensitive issues was the introduction of provisions designed to lead to full economic and monetary union by 1999”). The controversy surrounding the issue is shown by the fact that three of the fifteen Member States opted not to participate in the “single currency,” despite the world wide economical and political influence this new currency is likely to have. See *Ins and Outs*, THE ECONOMIST, Jan. 2, 1999, at 21. Four of the 15 Member States are not participating in the monetary union, but while the United Kingdom, Denmark and Sweden have chosen to not participate, Greece is not involved because the country has been unable to satisfy the strict criteria set forth at Maastricht. *Id.*

29. Consider for example the following two articles to the EC Treaty (as amended by the TEU):

Article 2:

The Community shall have as its task, by establishing a common market and an economic and monetary union and by implementing the common policies or activities referred to in Articles 3 and 3a, to promote throughout the Community a harmonious and balanced development of economic activities, sustainable and non-inflationary growth respecting the environment, a high degree of convergence of economic performance, a high level of employment and of social protection, the raising of the standard of living and quality of life, and economic and social cohesion and solidarity among Member States.

Article 3:

For the purposes set out in Article 2, the activities of the Community shall include, as provided in this Treaty and in accordance with the timetable set out therein:

the elimination, as between Member States, of customs duties and quantitative restrictions on the import and export of goods, and of all other measures having equivalent effect;

- (a) a common commercial policy;
- (b) an internal market characterized by the abolition, as between Member States, of obstacles to the free movement of goods, persons, services and capital;
- (c) measures concerning the entry and movement of persons in the internal market as provided for in Article 100c;
- (d) a common policy in the sphere of agriculture and fisheries;
- (e) a common policy in the sphere of transport;
- (f) a system ensuring that competition in the internal market is not distorted;
- (g) the approximation of the laws of Member States to the extent required for the functioning of the common market;
- (h) a policy in the social sphere comprising a European Social Fund;
- (i) a strengthening of economic and social cohesion;
- (j) a policy in the sphere of the environment;
- (k) the strengthening of the competitiveness of Community industry;
- (l) the promotion of research and technological development;
- (m) encouragement for the establishment and development of trans-European networks;
- (n) a contribution to the attainment of a high level of health protection;

provisions, with the exception of provisions (a) and (h), were either introduced or amended by the TEU. As a result, several of the provisions are notably vague and without much substance.

The TEU also introduced into the EC Treaty the notion of "citizenship of the Union,"³⁰ as noted by *Weatherill & Beaumont*. It is somewhat surprising that citizenship of the *Union* has been incorporated into the EC Treaty, instead of leaving such reference in the TEU alone.³¹ That might suggest the level of importance of the issue. Citizens of the different Member States of the Community are now entitled "to vote and to stand as a candidate at municipal elections in the Member State in which he resides," notwithstanding which member state the citizen is a national of.³² Again, this might not seem significant for a U.S. reader, since similar laws govern the relationship between different states. However, as between countries which are sovereign and independent, the right to freely vote and stand as a candidate at elections presents a unique situation.

A new treaty, called the Treaty of Amsterdam, was signed on October 2, 1997, but has yet to be put into effect. The Treaty will further strengthen the notion of a "citizenship of the Union" by adopting provisions regarding a common asylum policy, and it will also seek to adopt a common policy in the area of foreign affairs, security, and justice.

As we have seen, the "European integration process" has gone through a significant evolution during the time that has passed since the signing of the European Coal and Steel Treaty. From a careful start, with only six Member States cooperating in a limited area, the Community has grown to become the world's largest trading block,³³ with fifteen participating members working closely together in a wide variety of fields. The administration of such an international organization is crucial to its success. Since the Community creates laws superseding the

(o) a contribution to education and training of quality and to the flowering of the cultures of the Member States;

(p) a policy in the sphere of development cooperation;

(q) the association of the overseas countries and territories in order to increase trade and promote jointly economic and social development;

(r) a contribution to the strengthening of consumer protection;

(s) measures in the spheres of energy, civil protection and tourism.

30. Articles 8-8e EC Treaty (as amended by the TEU). Article 8 reads:

1. Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union.

2. Citizens of the Union shall enjoy the rights conferred by this Treaty and shall be subject to the duties imposed thereby.

31. WEATHERILL & BEAUMONT, *supra* note 2, at 15.

32. Article 8b EC Treaty (as amended by the TEU).

33. Including all members of the EEA.

domestic laws of the Member States, it is also critically important that the law making process receives support from the individual Member States.

III. THE POLITICAL AND LEGAL INSTITUTIONS OF THE EC

In addition to the newly established European Central Bank (ECB), there are five principal institutions within the Community. They are the Commission, the Council, the European Parliament, the Court of Auditors, and the Court of Justice.³⁴

A. THE COMMISSION

The Commission consists of twenty members.³⁵ One of its most important and significant powers is its right of legislative initiative.³⁶ The Commission is led by a President³⁷ who plays an important role within the Community.³⁸ The President of the Commission is chosen after a nomination process where the governments of the individual Member States, after having consulted the European Parliament, nominate their Presidential candidate.³⁹ "These governments, together with the nominee for President, then nominate those who are intended to serve as Commissioners."⁴⁰ Germany, France, the United Kingdom, Italy, and Spain each have two Commissioners, while the other countries have one.⁴¹ This hardly seems fair when one considers the population in each Member State. Thus, while Luxembourg, for example, with its 0.4

34. Article 4 EC Treaty (as amended by the TEU).

35. Article 157(1) EC Treaty (as amended by the TEU) states: The Commission shall consist of 20 members, who shall be chosen on the grounds of their competence and whose independence is beyond doubt. The number of members of the Commission may be altered by the Council, acting unanimously.

36. See CRAIG AND DE BURCA, *supra* note 8, at 44 (noting that "[o]ne of the most important [powers] is that the Commission possesses the right of legislative initiative. The common format in the Treaties is for the Council to act on a proposal from the Commission when making legislation which fills out the Treaty Articles themselves. In this sense the Commission's right of initiative places it in the forefront of the development of policy. Although these legislative proposals have to be approved by the Council and, depending on the circumstances, by the European Parliament, the Commission's right of initiative has enabled it to act as a 'motor of integration' for the Community as a whole").

37. On March 16, 1999, after a report criticized the Commission of tolerating fraud and mismanagement, the Commission and its President, Jacques Santer of Luxembourg, resigned. See *THANK YOU, Jacques Santer*, THE ECONOMIST, March 27, 1999, at 54. On March 24, 1999 the Community's 15 national leaders unanimously voted to invite a former Italian prime minister, Mr. Romano Prodi, to head a "new" Commission. *Id.* Awaiting the appointment of the new Commission, the commissioners who resigned will serve in a caretaker capacity. See *Europe Has to Scratch Its Head*, THE ECONOMIST, March 20, 1999, at 21.

38. CRAIG AND DE BURCA, *supra* note 8, at 40 (noting that "[t]he Presidency of the Commission is a position of real significance. The President will play an important role in shaping overall Commission policy, in negotiating with the Council and the Parliament, and in determining the future direction of the Community.").

39. *Id.*

40. *Id.*

41. *Id.*

million population has one Commissioner on the Commission, Germany, with a population of 82.3 million, only has two Commissioners, leaving Germany highly underrepresented.⁴²

B. THE COUNCIL

“The Council shall consist of a representative of each Member State, at ministerial level, authorized to commit the government of that Member State.”⁴³ The votes of each representative are weighted in accordance with the population in the individual Member States when the Council is required to act by a qualified majority.⁴⁴ Nevertheless, larger member states (by population) are still underrepresented. Again, using Luxembourg and Germany as examples, we see that while Luxembourg’s representative has two votes in the Council, Germany has ten votes.⁴⁵ The Council holds an important position within the Community, especially in the areas of legislation and policy-making.⁴⁶ “The principal manifestation of this resides in the fact that the Council will have to vote its approval of legislative initiatives which emanate from the Commission before they become law.”⁴⁷

C. THE EUROPEAN PARLIAMENT

“The European Parliament is intended to represent the peoples of the Community.”⁴⁸ Presently, there are 626 members of the European Parliament.⁴⁹ Again, Member States with larger population are substantially underrepresented, which has raised serious criticism.⁵⁰ The number of seats range from 6 in Luxembourg to ninety-nine in Germany.⁵¹ Pursuant to Article 138b EC Treaty (as amended by the TEU), the Parliament can “request the Commission to submit a proposal on any matter on which the Parliament thinks a Community act is necessary.”⁵²

42. *A Little Goes a Long Way*, THE ECONOMIST, January 30, 1999, at 46 [hereinafter *Long Way*].

43. Article 146 EC Treaty (as amended by the TEU).

44. Article 148 EC Treaty (as amended by the TEU).

45. *Long Way*, *supra* note 42, at 46.

46. CRAIG AND DE BURCA, *supra* note 8, at 51.

47. *Id.* (indicating that “[t]his aspect of the Council’s power is derived from the fact that the Articles of the Treaty which give the Commission the right to propose legislation, impose the condition of Council approval”). The authors further state that since Article 152 EC Treaty (as amended by the TEU) gives the Council the right to “request the Commission to undertake any studies which the Council considers desirable for the attainment of the common objectives, and to submit to it any appropriate proposals,” the Council has the power to “frame very specific proposals which it wishes the Commission to shape into concrete legislation.” *Id.*

48. HARTLEY, *supra* note 13, at 27.

49. *Parliament Versus Commission*, THE ECONOMIST, Jan. 16, 1999, at 45.

50. CRAIG AND DE BURCA, *supra* note 8, at 58.

51. *Id.*

52. *Id.* at 62. As noted by the authors, the Commission is free to consider the Parliament’s request, which is normally given serious consideration, if the Parliament has duly followed the requisite

Since the members of the Parliament are elected directly by the people in the individual Member States, this power to order the Commission to submit a proposal can be an important tool to safeguard the democracy of the Community.

D. THE COURT OF JUSTICE

The European Court of Justice (ECJ) "shall ensure that in the interpretation and application of [the EC Treaty] the law is observed."⁵³ The ECJ's tasks are too numerous to list in detail.⁵⁴ Among other things, the ECJ overlooks the integration of EC Law into the individual member states' domestic law. This is important in order to ensure the effectiveness of EC legislation.

There are fifteen judges on the ECJ, one from each Member State.⁵⁵ The judges are appointed for terms of six years, with the possibility of reappointment.⁵⁶ A President of the Court is elected among and by the fifteen judges, and sits for a renewable term of three years.⁵⁷ The judges usually meet in chambers consisting of three or five judges.⁵⁸ This gives the Court great flexibility, and enhances its effectiveness. Nevertheless, the number of cases coming in front of the Court has always been significant, and in order to lessen the Court's workload, a Court of First Instance was established in 1989.⁵⁹

procedures. *Id.*

53. Article 164 EC Treaty (as amended by the TEU).

54. See CRAIG AND DE BURCA, *supra* note 8, at 70. "Consider the many different issues on which the Court may be called upon to adjudicate. These include matters of constitutional significance such as the proper division of powers between the states and the Community, and widely varying matters of substantive law from competition policy to social policy, to agriculture, or transport. The Court decides cases between Community institutions and Member States, between individuals and their employers, and on a wide range of legal issues between parties which have been referred from a national court. It gives opinions on the compatibility with the Treaties of international agreements, and other kinds of jurisdiction may be conferred upon it by agreement." *Id.*

55. Article 165 EC Treaty (as amended by the TEU) states:

The Court of Justice shall consist of 15 Judges.

The Court of Justice shall sit in plenary session. It may, however, form chambers, each consisting of three or five judges, either to undertake certain preparatory inquiries or to adjudicate on particular categories of cases in accordance with rules laid down for these purposes.

The Court of Justice shall sit in plenary session when a Member State or a Community institution that is a party to the proceedings so requests.

Should the Court of Justice so request, the Council may, acting unanimously, increase the number of judges and make the necessary adjustments to the second and third paragraphs of this Article and to the second paragraph of Article 167.

56. HARTLEY, *supra* note 13, at 58.

57. *Id.*

58. Article 165 EC treaty (as amended by the TEU).

59. HARTLEY, *supra* note 13, at 63. The author noted that the establishment of the Court of First Instance has had limited success. While the ECJ's workload has been lessened, the build-up of new cases has been such that the Court of First Instance has only been able to prevent the delays due to a heavy caseload from getting even worse. *Id.* In the following I will use the term ECJ for both the Court of Justice and the Court of First Instance.

Some of the features of the workings of the ECJ may be of interest to an attorney. For example, the judgments of the Court always appear to be unanimous, since no dissenting or separately concurring judgments are allowed.⁶⁰ While this may give the impression of a Court in harmony, as well as ensuring that judges cannot dissent in order to favor their home countries, it also slows the decisionmaking process. Furthermore, no dissenting opinions makes the question of whether to appeal a decision of the Court of First Instance more troublesome. Appealing a unanimous decision can be substantially more risky than appealing a decision where the Court of First Instance is sharply divided on the law.

The multilingualism of the ECJ is another unique feature. In a Court proceeding, the language used will depend on the "language of the case," which can be any of the official languages of the Member States.⁶¹ The language of the case will, for example, be the language of a defendant's home state.⁶² During the oral hearing in front of the Court, simultaneous translation has to be used.⁶³ However, when discussing and drafting the case in the deliberation room, the judges use French, notwithstanding the "language of the case."⁶⁴ The final judgment is then translated into the language of the case, and the judges sign this text.⁶⁵ This means that the majority of the judges sign judgments written in a language they do not understand. In addition, the translation of text back and forth often allows for misinterpretation and serious mistakes.⁶⁶

In theory, civil law (as opposed to common law) does not recognize the doctrine of *stare decisis*.⁶⁷ This means that principles of law laid down are not binding on lower courts in subsequent cases, nor are the principles binding on the same court.⁶⁸ Based on civil law, European Community Law does therefore in theory not recognize the *stare decisis* doctrine. However, in practice the ECJ will almost always follow its previous decisions.⁶⁹ When it does not, the Court will disregard and ignore its previous ruling, instead of admitting that it has been overruled.⁷⁰

60. CRAIG AND DE BURCA, *supra* note 8, at 78.

61. HARTLEY, *supra* note 13, at 78.

62. *Id.*

63. *Id.* at 79.

64. *Id.*

65. *Id.* at 80.

66. *Id.* at 81.

67. MARY ANN GLENDON ET AL., *COMPARATIVE LEGAL TRADITIONS* 207 (2d ed. 1994).

68. *Id.*

69. HARTLEY, *supra* note 13, at 83.

70. *Id.* at 84.

E. THE COURT OF AUDITORS

The Court of Auditors is comprised of fifteen judges.⁷¹ "The task of the Court of Auditors is to scrutinize the finances of the Community and to ensure sound financial management, assisting the Parliament and the Council in their exercise of powers of control over the implementation of the budget."⁷² Its role is in other words very different from the ECJ's, but no less important.

IV. MISCELLANEOUS FEATURES OF EUROPEAN COMMUNITY LAW

A. SUPREMACY OF EC LAW OVER NATIONAL LAW

There are no provisions in the EC Treaty asserting that EC Law is supreme to national law, but the ECJ considers the principle of supremacy to be inherent in the structure of the EC Treaty.⁷³ The ECJ stated this premise in the case of *Flaminio Costa v. E.N.E.L.* in 1964.⁷⁴ More specifically, the Court said that "[b]y contrast with ordinary international treaties, the EEC Treaty has created its own legal system which, on the entry into force of the Treaty, became an integral part of the legal systems of the Member States and which their courts are bound to apply."⁷⁵ The Court further stated that "the law stemming from the Treaty, an independent source of law, could not, because of its special and original nature, be overridden by domestic legal provisions, however framed, without being deprived of its character as Community law and without the legal basis of the Community itself being called into question."⁷⁶ In other words, whenever there is a conflict between EC Law and national law, EC Law will prevail.

B. THE DIRECT EFFECT OF EC LAW

Another interesting aspect of EC Law, which is crucial to its effectiveness, is the Doctrine of "Direct Effect." The Doctrine of Direct Effect gives litigants the right to plead EC Law in national courts, whether or not the law has been implemented into national law.⁷⁷ That EC Law can have this effect was early established by the ECJ.⁷⁸ The

71. CRAIG AND DE BURCA, *supra* note 8, at 88.

72. *Id.*

73. WEATHERILL & BEAUMONT, *supra* note 2, at 39.

74. Case 6/64, *Flaminio Costa v. E.N.E.L.*, 1964 E.C.R. 585.

75. *Id.*

76. *Id.*

77. WEATHERILL & BEAUMONT, *supra* note 2, at 40.

78. Case 26/62, *NV Algemene Transporten Expeditie Onderneming van Gend & Loos v. Neder*

direct effect of EC Law means that Member States cannot avoid the consequences of new Community legislation simply by refusing to implement it into national law.

Not all Community legislation is directly effective.⁷⁹ While provisions in the EC Treaty, as well as regulations and decisions, have direct effect, the situation is different when it comes to directives.⁸⁰ The ECJ has established that directives have only "vertical" direct effect, as opposed to "horizontal" direct effect, meaning that directives only can be invoked by individuals against the state or an emanation of the state, not by individuals against other individuals. This was stated by the ECJ in *Dori*, where it said that "[t]he effect of extending [the direct effect of directives] to the sphere of relations between individuals would be to recognize a power in the Community to enact obligations for individuals with immediate effect, whereas it has competence to do so only where it is empowered to adopt regulations."⁸¹ In addition to being limited to vertical directive effect, a directive is only directly effective if it is unconditional and sufficiently precise. In addition, the time-limit set

landse Administratie der Belastingen, 1963 E.C.R. 1 (discussing whether Article 12 EEC Treaty could have direct effect, and emphasizing that "[t]he objective of the EEC Treaty, which is to establish a common market, the functioning of which is of direct concern to interested parties in the Community, implies that this Treaty is more than an agreement which merely creates mutual obligations between the contracting states. [Furthermore], the Community constitutes a new legal order of international law for the benefit of which the states have limited their sovereign rights, albeit within limited fields, and independently of the legislation of Member States, Community law therefore not only imposes obligations on individuals but is also intended to confer upon them rights which become part of their legal heritage. 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").

79. The different types of Community legislation are stated in Article 189 EC Treaty (as amended by the TEU):

In order to carry out their task and in accordance with the provisions of this Treaty, the European Parliament acting jointly with the Council, the Council and the Commission shall make regulations and issue directives, take decisions, make recommendations or deliver opinions.

A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States.

A directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods.

A decision shall be binding in its entirety upon those to whom it is addressed.

Recommendations and opinions shall have no binding force.

80. See CRAIG AND DE BURCA, *supra* note 8, at 165-84.

81. Case C-91/92, *Faccini Dori v. Recreb Srl.*, 1994 E.C.R. I-3325, as cited by WEATHERILL & BEAUMONT, *supra* note 2, at 348.

forth in the directive for implementing it into domestic law must have elapsed.⁸²

C. THE FREE MOVEMENT OF GOODS, PERSONS, SERVICES, AND CAPITAL

A substantial feature of the EC Treaty is its focus on the free movement of goods, persons, services, and capital.⁸³ Articles related to the free movement of goods are found throughout the EC Treaty. One important provision prohibits the Member States from placing customs duties on all goods being exported or imported between the Member States.⁸⁴ Such prohibition is meant to ensure that Member States refrain from protectionism by enacting customs duties that place domestic producers and sellers at an advantage by making foreign goods more expensive. However, customs duties are not the only means a Member State has in order to place foreign goods at a disadvantage.

A Member State may try to protect its domestic producers by imposing quotas, or measures having an equivalent effect, on imports, thereby reducing the quantum of imported goods. This, however, is expressly prohibited by the EC Treaty.⁸⁵ The ECJ has delivered a significant number of opinions in this area, and has had an important impact on the interpretation of the relevant Treaty articles.⁸⁶ The

82. WEATHERILL & BEAUMONT, *supra* note 2, at 350. Note, however, that this is the starting point. In order to broaden the application of directives, "the Court has held that direct effect does not simply operate to give a legal argument to the affected individual before a national court, but that state organs, even those far removed from responsibility for implementing directives, are actually bound to apply the provisions of directives in practice." See CRAIG AND DE BURCA, *supra* note 8, at 185. Furthermore, the Court has opened up for giving directives "indirect effect," by requiring that national courts interpret national law in conformity with directives. See *id.* at 189-99 (discussing relevant cases by the ECJ, which have developed the notion that directives can have "indirect direct effect" as between individuals, thus expanding the applicability of directives).

83. Article 7a(2) EC Treaty (as amended by the TEU) reads: "The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of this Treaty."

84. Article 9(1) EC Treaty (as amended by the TEU) reads: "The Community shall be based upon a customs union which shall cover all trade between Member States of customs duties on imports and exports and of all charges having equivalent effect, and the adoption of a common customs tariff in their relations with third countries."

85. Article 30 EC Treaty (as amended by the TEU) reads: "Quantitative restrictions on imports and all measures having equivalent effect shall, without prejudice to the following provisions, be prohibited between Member States."

86. See CRAIG AND DE BURCA, *supra* note 8, at 584.

There are two reasons why the ECJ's construction of these Articles has had such a marked impact. On the one hand, it has given a broad interpretation to the phrase 'measures having equivalent effect' to a quantitative restriction (MEQR). On the other hand, it has held that Article 30 can be breached not only when there has been discrimination in the way in which a state treats its own goods and those coming from outside; it has also made it clear, in the famous *Cassis de Dijon* case, that Article 30 can bite, subject to certain exceptions, when the same rule applies to both domestic goods and imports in circumstances where the relevant rule can inhibit the free flow of goods across borders within the Community. Discrimination is therefore a sufficient, but not

application of the relevant articles is complicated, and is not made easier by the vast number of exceptions that can apply.⁸⁷

A multinational economic system with like customs duties and taxes, and with strict rules prohibiting most kinds of protectionism, should theoretically result in uniform consumer prices in the participating states. Within the community, the reality is somewhat different. This is especially true when it comes to the United Kingdom, where for example car prices are up to fifty percent higher than in other Member States.⁸⁸ It remains to be seen whether this will change with the introduction of the euro, since a single currency will make it easier for consumers to compare prices.

The free movement of *persons, services, and capital* is regulated by Articles 48-73h of the EC Treaty. Similar to the provisions on the free movement of goods, these articles are meant to ensure uniform rules throughout the Community, and to aid in the establishment of the common market.⁸⁹ The importance of the rules on free movement of persons is shown through the Treaty on European Union's introduction of a "European citizenship," and the Community's development of a common policy in the areas of immigration and asylum, a development that will be even more notable when the Treaty of Amsterdam enters into force.⁹⁰ Also, the right for workers to freely take employment where they see fit is important to ensure healthy competition between the workers in the different Member States. The right to free movement of capital is also essential in a common market such as the European Community, and has become even more important with the introduction of the new common currency, the euro.

necessary, condition for the invocation of Article 30.

Id.

87. Article 36 EC Treaty (as amended by the TEU) reads:

The provisions of Article 30 to 34 shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States.

88. *Expensive*, THE ECONOMIST, Feb. 6, 1999, at 57. In addition to having higher consumer prices than most Member States, the United Kingdom's per capita national income is approximately 10% lower than Germany's, and 5% lower than France's. *Id.*

89. See CRAIG AND DE BURCA, *supra* note 8, at 653 (stating that "[b]roadly speaking, the aim of setting up a common market was to increase wealth, to strengthen the economies of the Member States, and to bring them closer together. From this point of view, a flexible, mobile, and well-trained labor force would contribute to the overall economic empowerment and expansion of the EEC's Member States").

90. The TEU has had an important impact in the area of free movement of persons. See STEINER & WOODS, *supra* note 28, at 246 (noting that "[w]ith the advent of the concept of European citizenship and the development of common immigration and asylum policies, as envisaged under the TEU . . . there will be further pressure to extend the rights currently granted to EU workers and their families to all persons legitimately resident in the European Union").

V. CONCLUSION

The workings of the European Community are governed by a vast number of interesting political and legal provisions. Hopefully, I have given the reader a basic understanding of the European Community's history, how it is set up, and of some of the judicial features of the Community. There is, of course, a significant amount of EC Law not covered by this article. Most notably, I have not mentioned the competition (antitrust) laws of the Community, provisions which have triggered numerous law suits, involving European as well as U.S. companies. The recent Boeing/McDonnell Douglas merger is only one of many examples of how the European Community and EC Law can impact businesses in the U.S., and shows how important it is for U.S. attorneys to familiarize themselves with the concept of EC Law.

