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LEGAL ASPECTS OF THE EUROPEAN ECONOMY  
SINCE WORLD WAR II

*Leslie L. Nemes\**  
*and Andre Aversa\*\**

## A Historical Introduction

In April of 1917, the famous "sealed car" arrived in Russia, and Nicolai Lenin stepped out. At that moment an ancient political and economic concept, known for centuries as EUROPE, ceased to exist.

The Communist Revolution of 1917 divided Europe into two parts, Western Europe and Eastern Europe, which is to say the Soviet Union. Therefore, "Europe" really means Western Europe. Twenty-eight years later, after World War II, several Western European countries fell under Communist rule; and at that time a new border line, the Iron Curtain, appeared in the life of Europe. The Iron Curtain is a concept not defined by any treaty, nor is it a geographic idiom. Countries like Greece and Turkey, in the South, and the Scandinavian countries in the North, are part of Western Europe. On the other hand, Yugoslavia cannot be framed either in Western or in Eastern Europe.

The unification of Europe has been attempted for more than 1,000 years. For more than a century, numerous attempts to form customs unions among European countries have failed. In 1937, Belgium, Britain, Germany, Holland, and Poland signed an agreement with the purpose of regulating the distribution of coke, but this agreement ended with the outbreak of World War II. After World War II, the European Coal Organization, composed of Britain, Czechoslovakia, Finland, Poland, and Turkey also was a fiasco; it was replaced by the International Authority for the Ruhr in April 1949, with representatives of the United States, Britain, France, Germany, Holland, and Luxembourg. The International Authority in turn dissolved with the creation of the European Coal and Steel Community.

Prior to World War II, European nations were predominant in trade; their imports were over three times those of the United States and their exports

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some 30 per cent higher than the exports of the United States. They owned nearly two-thirds of the world's shipping tonnage, and their income from foreign investments was sufficient to purchase nearly one-quarter of their imports from the rest of the world.

World War II disrupted European economic life to such an extent that Belgium, France, and the Netherlands' industrial production was reduced to 30 per cent, and Italy's to 20 per cent, of prewar production. Though not equally suffered by the European countries, losses were heavy in human resources as well as in harbors, merchant marine, road transportation, and, most important, colonial possessions.<sup>1</sup> The Yalta and Potsdam Conferences, rejecting General DeGaulle's plans for the internationalization of the rich Ruhr area, embarked on the questionable policy of disuniting Germany and dismantling its heavy industry in favor of agricultural development. The defeated nations could not satisfy the claims of the victors for reparation; thus Russia was degrading Germany and Austria, among others, to make up for its losses.

Soon, however, the burden of economically sustaining a divided Germany convinced the British and the Americans to unite their two zones. The economic situation of Europe looked hopeless. The recovery programs among the nations of Europe and the contributions from the United States were uncoordinated. Czechoslovakia was lost to the Communist camp in 1948; it became more necessary to reinforce Western political unity through economic resurrection.

### *European Revival*

No European country escaped the effects of World War II; even the conquerors could not claim more than a Pyrrhic victory: common misery impelled common solutions. By the early summer of 1947, agricultural recovery was halted by frost damage and industry was being maintained by depletion of financial reserves, causing a larger dollar deficiency. General George C. Marshall, then the United States Secretary of State, in a speech delivered at Harvard University on June 5, 1947, asserted the need for integrated recovery efforts against "hunger, poverty, desperation and chaos." Mr. Marshall added that the initiative "must come from Europe," and explained that he had in mind the entire continent west of Asia, including both the United Kingdom and the Soviet Union.

### *The Organization for European Economic Cooperation (OEEC)*

The foreign ministers of Britain and France vainly sought the association of Mr. Molotov in drafting a reply to Mr. Marshall. As a result, Messrs. Bevin and Bidault extended an invitation to all European countries (except Spain, which joined the OEEC later) to attend a conference in Paris; the conference opened with representatives of Austria, Belgium, Denmark, France, Greece, Iceland, Ireland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Sweden, Switzerland, Turkey, and the United Kingdom. A Committee of

<sup>1</sup> The loss of colonies has not ended. In 1960, 17 newly independent countries were added to the roster of nations, with substantial impact on the European economy.

Economic Cooperation and technical committees were set up to prepare a report on the European needs for the four years 1948-1951.<sup>2</sup>

Congress, in April, 1948, appropriated \$5.4 billion to establish the Economic Cooperation Administration, while European nations set up the Organization for European Economic Administration. Under a system of counterpart funds, each participating government set aside in its own currency amounts matching the aid it received.

Immediately after the war, Europe maintained a strict control over imports because of lack of gold and dollars when raw materials, machinery, and goods of all kinds were in heavy demand. The essence of the problem was to trade with overseas countries, and particularly with the United States. European nations cried aloud for an organization which could liberalize trade. One of the legal difficulties in establishing such an organization was the fact that Germany was not only divided, but was under Allied military occupation. Furthermore, Finland deemed it wise not to join associations of which the Soviet Union disapproved. The USSR did not delay in stating it would disapprove of Finland becoming associated with the planned new international organization. Germany joined the OEEC in 1952, but Finland has been unable to join it as yet. The United States and Canada became associate members of the organization.

The gist of this successful organization was not unity or aid, but cooperation purely to solve economic problems. The OEEC was established in 1948 to develop production through utilization of reserves and equipment for the exchange of commodities, the assurance of employment, the maintaining of financial stability and the reduction of barriers to trade and travel. The organization provides for no sanctions; each nation has to carry out its own program. The decisions taken by the Organization in the field of liberalization of trade were compiled and codified in the *Code of Liberalization* which details the rules governing the relations of each member country. One of the interesting features of the code is that it permits a country in difficult balance of payments to temporarily withdraw its liberalization of trade.<sup>3</sup> The OEEC is a central bureau with a technical assistance staff and a study group.

OEEC launched its program of trade liberalization and a majority of the member countries pledged themselves to abolish quantitative restrictions on a certain percentage of imports from each other; this liberalization percentage was, in fact, progressively raised. Trade, instead of a bilateral bartering, could expand and become multilateral on a regional basis.

Fifty per cent of the restrictions existing in 1949 on food, cattle products, and raw materials were reduced by agreement among the member countries in 1950. The foreign exchange crisis, however, continued to hamper the progress sought. The United Kingdom had to suspend the convertibility of sterling into United States dollars; France suspended all its dollar imports except cereals and similar essential supplies; Italy suspended purchases of coal, oil, and other basic products. For the first time in history an important currency, the "dollar,"

2 "The Marshall Plan ended officially in 1952 — after having poured \$15 billion into Europe alone." OEEC, *AT WORK FOR EUROPE* 23 (1954).

3 OEEC, *AT WORK FOR EUROPE* 30, 32 (1954).

was scarce all over the world, and for a considerable period. Europe needed dollars to buy materials not only from the United States, but also from other countries (for example, South America, where payment was required in U. S. dollars).

Five years after the end of World War II, raw material demands increased everywhere in Europe with the result that, in contrast to the depression years, there were shortages rather than surpluses, and consequently higher prices for raw materials. As a result of technical development, new types of raw materials, especially minerals, became highly important and raw materials production was vigorously expanded. Countries closely associated with the United States in trade relations claimed that they could not purchase raw materials because of "dollar shortage." In order to overcome their financial straits, the countries of the OEEC formed the European Payments Union (EPU) in July, 1950. The purpose of EPU was to extend a limited credit to those nations in need of it and to act as a clearinghouse for currency transactions. Thus it arranged payments for all intra-European transfers, regardless of origin or destination, to be settled not by individual countries with each other, but by each country with EPU itself by monthly net settlements. Moreover, the system expanded the means of international payment by calculating this net settlement in terms of an EPU unit composed of gold and of credit in a proportion determined by each country's own cumulative position within the large swing credits established between it and EPU. Belgium and Germany increased their credits position, while Britain and France became debtors and had to temporarily discontinue their liberalization of trade in an effort to face the economic impact of the Korean war.

EPU served the entire monetary areas of the OEEC members, including the sterling area. Most OEEC member countries have now reverted to the free convertibility of their currencies, thus obviating the necessity of the EPU which has been replaced on December 29, 1958, by the European Monetary Agreement (EMA). "Under this Agreement, payments between European countries will be settled 100 per cent in gold or dollars, in contrast with the EPU procedure, under which 25 per cent of each balance was settled automatically by credits. New arrangements for European credit facilities are being made but the granting of credits will now be entirely on a discretionary rather than an automatic basis and will be separated from the clearing function."<sup>4</sup>

As a result of the activity of EPU, the gold reserves of the OEEC countries nearly doubled between 1952 and 1958, while the total percentage of reductions soon reached a general 60 per cent for each category of goods and in some instances as high as 85 per cent, providing, however, that a member nation in financial difficulty could revoke that part of higher liberalization then required by OEEC. At present there is a new goal of 90 per cent of general liberalization. In this effort to reduce tariffs, the OEEC approaches the goal set in the General Agreement on Trade and Tariffs (GATT).

The list of goods liberalized under the OEEC agreements includes the more common types. Focusing on this factor, some nations felt the necessity for

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<sup>4</sup> CED, *THE EUROPEAN COMMON MARKET AND ITS MEANING TO THE UNITED STATES* 29, note 1 (1959).

the creation of special agreements on more important products, such as steel and coal. A proposal along these lines split the member countries of the OEEC into two groups, one favoring a customs union through a common market, the other supporting a free trade area under the OEEC. The inability to reconcile the two views eventually led to the formation of two treaties, the European Coal and Steel Community (ECSC) and the European Economic Community (EEC), discussed below.

Though OEEC is still in operation, its 1948 mission has been accomplished. In January, 1960, the United States proposed to reorganize OEEC under a new name — Organization for Economic Cooperation and Development (OECD).<sup>5</sup> On December 14, 1960, the 18 representatives of OEEC, Canada, and the United States signed a treaty to constitute the new organization. The treaty will be effective as soon as 15 nations ratify it — the proposed date being September 1961. The purposes of OECD are economic growth, flow of capital to underdeveloped areas, and extension of world trade. The United States and Canada will sit together with the 18 OEEC countries as members. Each member will have veto power and decisions will be binding only within the framework of the national laws of each member country.

### *The Green Pool*

One of the difficult areas for agreement among the OEEC members was the agricultural problem. To enhance progress in this area a special Commission for Agriculture was created by the Council of Europe. This council submitted three plans as suggested by Britain, France, and Holland in an attempt to reach agricultural unity. All of the OEEC members participated in it (1953). Its purpose was to concentrate upon cereals, meat, beet sugar, and milk production. The problem faced by this "pool" is the large price differential in the various commodities between the member states. While there probably would be no difficulty for exchanges between, say Greece and Sweden, there actually exists competition among states like Italy and France, which produce similar goods. Therefore, the emphasis of the commission is not on union, but on cooperation. The role of the OEEC in this connection is twofold: economic and technical. The cooperation sought is to adopt common aims of agricultural policy and mutually supporting activities. Progress was amazing; it was estimated that in the 1947-1954 period the output of cereals was 16 per cent above prewar production and in 1952 and 1953 livestock production was 18 per cent above prewar.<sup>6</sup>

### *The Council of Europe*

On May 5, 1949, 15 European countries (OEEC countries, except Portugal, Spain, and Switzerland) signed a treaty in order "to achieve greater unity . . . for the purpose of safeguarding . . . their common heritage, and facilitating their economic . . . progress," excluding defense matters.

The council has two organs, the Committee of Ministers and the Con-

5 UNITED STATES DEP'T OF STATE, ECONOMIC ASSISTANCE OR A COOPERATIVE EFFORT OF THE FREE WORLD 18 (Aug. 1, 1960).

6 OEEC, AT WORK FOR EUROPE 62 (1954).

sultative Assembly. The former represents the member governments and agrees on actions to be taken, the latter is formed of national parliamentarians and discusses means of achieving European unity. The council's emphasis, however, has been in the realm of concepts and information of opinions on European unity reflecting the split trends of European federalism and inter-governmental co-operation. The decisions of the council are not binding upon the governments.

#### *Western European Union (WEU)*

After World War II, the Soviet Union's military threat and subversive actions created the feeling for a Western union to provide for European safety. Following a proposal of Mr. Bevin, then British Foreign Minister, the United Kingdom, Belgium, France, Luxembourg, and the Netherlands signed the Treaty of Economic, Social and Cultural Collaboration, and Collective Self-Defense on March 17, 1948.<sup>7</sup>

Although the treaty mentions economic collaboration, it mainly promotes cultural exchanges (Art. III) and provides for "all the military and other aid" in the signatories' power to any of them attacked by arms. Legal disputes arising under the treaty are to be submitted to the International Court of Justice (Art. VIII).

This treaty proved very effective and beneficial in the field of social and cultural studies; it was later extended to Italy and Germany in May, 1955, when the Brussels Treaty was revised under the name of Western European Union and provided for accession of Germany and Italy.

The treaties establishing the Council of Europe, WEU, and NATO create an overlap of social and cultural committees. Since 1959, duplication is avoided by having the Council of Europe concentrate on these activities.

WEU works within the framework of NATO; it has a council composed of foreign ministers and an assembly composed of the same representatives who sit in the Council of Europe Assembly.<sup>8</sup>

By virtue of Art. VII of the treaty, the council immediately convenes when a member calls for it "with regard to any situation constituting a danger to economic stability." Under Art. X, no denunciation of the treaty is possible before the expiration of 50 years from the date of ratification.<sup>9</sup>

#### *North Atlantic Treaty Organization (NATO)*

On April 4, 1949, the United Kingdom, France, the Benelux states, Norway, Denmark, Iceland, Italy, Portugal, Canada, and the United States became the first dozen members of an organization to be known as the North Atlantic Treaty Organization (NATO). In February, 1952, Greece and Turkey, and, in May, 1955, West Germany joined the treaty organization to complete a pool of 15 member nations in a unique partnership. NATO was primarily a military organization, but the member countries under the terms of Article 2 of the treaty have also undertaken, among other obligations, to eliminate con-

<sup>7</sup> Known as the Brussels Treaty. 18 DEPARTMENT STATE BULL. 600 (1948).

<sup>8</sup> BRITISH INFORMATION SERVICES, WESTERN CO-OPERATION IN BRIEF 7, 9, 12, 14 (1959).

<sup>9</sup> 42 AM. J. INT'L L. 875 (1948).

licts in their international economic policies and to encourage economic cooperation between any or all of them. In the spirit of Article 2 of the NATO treaty, the council shall from time to time review economic trends and assess economic progress, and may make suggestions for improvements either through existing organizations, or by the efforts of individual countries, or in special cases by new programs. NATO's activities in the economic field, which are confined to narrow limits by the necessity of avoiding encroachment on the more specifically economic provinces of the specialized international agencies, remained somewhat sporadic. Although NATO's role in economic policy has been rather limited, NATO keeps a close watch on economic developments in the member countries with a view to forestalling immediate or impending threats to their welfare.

### *Benelux*

Three smaller European countries were the advance guards of effective customs unions: Belgium, Netherlands and Luxembourg (Benelux). The governments of these three nations had signed a customs convention in London on September 5, 1944, which went into effect January 1, 1948. Unlike the OEEC, the Benelux customs union emphasizes economic union through the *abolition* of tariffs among the three countries and not through trade cooperation. Benelux is not a political union, but an economic one. The Benelux agreement aims at having (a) the same tariffs for the three nations vis-à-vis the world, (b) common legislation on duties, sales, and excise taxes, (c) an economic union concerning production, investment, and distribution, (d) accords on transportation and tariff rates; "(c)" has not yet been fully accomplished. The beneficial results of the Benelux Customs Union were a portent of what could be accomplished on a vastly larger scale through an economic union of the major Western powers. In a very real sense, Benelux was the experiment which convinced many skeptics of the feasibility of such an undertaking.

### *European Coal and Steel Community (ECSC)*

By the end of 1950, Europe had gradually become more prosperous. But the recovery from the ravages of war was not limited to material elements; it also had very important psychological consequences. The Franco-German antipathy was largely dissipated. At the same time, the eruption of the Korean War caused a general tight market and the realization that Western Europe was dangerously exposed to the striking power of Russian armies. M. René Schuman conceived a plan to coordinate the basic industries of Western Europe (coal, electricity, steel, and transportation), and Germany was willing to accept the plan because of her desire to please the Allies.

The Coal and Steel Treaty was the signal that the recurrent wars between France and Germany had become a bad dream of the past. The Benelux countries were interested in participating in the plan because the rich Saar would be involved in the negotiations. Britain, bound by its ties to the Commonwealth, declined to participate. Six European countries, France, Germany, Italy, and the three Benelux states, with an inclusive population of 165 million people, altogether more than one-third of the total population of Europe, signed the



Rome Treaty on April 18, 1951, originating the European Coal and Steel Community (ECSC).

ECSC differs radically from previous organizations; it has an executive, a legislative, and a judicial body.<sup>10</sup> The High Authority is "responsible for assuring the achievement of the purposes stated" in the treaty. It is composed of nine members for six years, who must be nationals of the member states, but not more than two of the same nationality; competence is their qualification. It is interesting to note that this is a supra-national body and the member states pledge not to seek to influence its members. A consultative committee of 30-51 members representing producers, workers, consumers, and middlemen assists the High Authority upon the latter's demand. The High Authority acts by a majority vote and its decisions are binding in every respect.

The council is composed of ministers chosen by member states; its main purpose is to harmonize the action of the High Authority and that of the governments which are responsible for the general economic policy of their countries. The council and the High Authority may consult each other at the request of either body. The High Authority may impose directly its decisions on the coal and steel enterprises of the various members without seeking enforcement through the member nations. It, however, needs the advance approval of the council when its actions bear directly on the government of any of the Six; this approval requires a two-thirds vote.

The Assembly of the Community is composed of 78 delegates with 18 each from Germany, France, and Italy. It meets at Strasbourg. The final result is determined by the four presidents of the High Authority, Council of Ministers, the Assembly, and the Court. The only power of the Assembly is to overthrow the High Authority by a vote of censure when the yearly report of the High Authority is presented.

The ECSC Court of Justice assures proper interpretation of the treaty. It is composed of seven judges named by the six governments for a term of six years. Deliberations are secret and the court pronounces its decisions as a body without dissenting opinions; it not only can entertain matters involving the member nations, but also can settle grievances involving individuals. The court surveys the legality of the decisions of the High Authority and may annul them for incompetence, violation of procedure and substantive rules, or misuse of power. The court supervises the penalties imposed by the High Authority as to nonconforming enterprises within the Community; it may award damages to the penalized enterprise if the action of the High Authority was not lawful.

The ECSC Treaty provides that coal, iron, ore, scrap, and steel should be freely traded within the above six countries. The goal is to attain equality of distribution at a fair price within the six countries. Discriminating prices, monopolies, and cartels must be coordinated and are only allowed under certain conditions.

The High Authority has the power to allocate supplies in a period of shortage or to limit production in a period of surplus. Some restrictive regulatory

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<sup>10</sup> HAUSER, A GUIDE TO DOING BUSINESS IN THE EUROPEAN COMMON MARKET 45-55 (1959).

measures taken by the High Authority have at times been resented by some members. The treaty flatly forbids subsidies of all kinds and discriminatory prices. For Belgium and Italian coal the treaty provides for special subsidies. Many Belgian mines need expensive equipment because they are thin and used out; the subsidy to Italy is for the mines of Sardinia, where production is extremely limited. Unfair competitive practices are banned and price changes must be preceded by at least five days' notice. Sellers must sell to all buyers. While producers have the freedom to establish prices, the High Authority has power to set a minimum or maximum in time of crisis. The governments of the Community may not directly set prices. Collective agreement to set a price list is not forbidden unless for the purpose of raising the price level.

Discriminatory prices of transportation are forbidden and a harmonized rate-making policy is encouraged. However, the High Authority has no power to regulate transportation rates probably due to unwillingness on the part of the six members to give it power to encroach upon domestic policies. The railroad systems are nationalized and the right to eliminate great divergencies in rates was thus more difficult due to the special rates which each country had.

Coordination in the field of investment has proceeded slowly. The purpose of the High Authority in this field is to help find the necessary capital and to furnish it in aid of enterprises; however, there is no common pool in which manufacturers pour their capital and invest it under the guidance of the High Authority since the role of the High Authority is one of orientation only.

Another serious problem to be solved was the great difference of labor and wage levels among the "Six."

In May, 1954, the Community established a work card exempting workers from national laws governing the entrance and employment of foreigners as well as all visa formalities save those relating to health and public order. Although the worker may move freely, equalization of wages and social payments has not yet been achieved. Concentrations and cartels are prohibited unless they satisfy the High Authority that their purpose is not to discriminate or infringe on free competition.

### *The Nordic Council*

When the Marshall Plan was announced in 1947, recognizing the interdependence between national economy and international trade, several smaller European countries were induced to join their neighbors in a common effort to enhance European welfare. The four Scandinavian countries, namely Denmark, Iceland, Norway, and Sweden, after a meeting of their foreign ministers in Copenhagen in August, 1947, announced that they were taking steps immediately to examine the possibility of creating customs frontiers among the four countries.

In 1952, the Nordic Council was formed by four countries — Denmark, Iceland, Norway, and Sweden. Their agreement was made not in the form of a treaty, but by adopting in each of their parliaments four identical laws. No international obligations of a legal character were assumed by the participating states. The laws were *national* laws; thus Finland, who could not join pro-

Western international economic agreements, could pass in 1955, the identical law to have effect on the *national* scene. In major respects, the Nordic Council is a full-fledged custom union.

### *The Balkan Pact*

In the southern part of Europe, three countries, Greece, Turkey, and Yugoslavia have sought a solution in the economic field since September 1947, when Greece and Turkey offered full collaboration to the study of a regional customs union between those two "friendly" and neighboring countries.

Yugoslavia is a communist country; her government is a totalitarian one. However, she is not a member of the Soviet bloc. In economic relations, Yugoslavia is not engaged in any Western European institution. She is not a member of the OEEC, but she is represented by an observer in that organization. The only so-called Western international obligation assumed by her is the Balkan Pact of 1955, which regulates the trade among Greece, Turkey, and Yugoslavia.

Besides these regional organizations, the success of which encouraged other nations to reach a general solution in the interest of world trade liberalization, mention should be made of two institutions which are only partly European establishments: The British Commonwealth and the General Agreement on Tariffs and Trade.

### *The British Commonwealth*

The British Commonwealth grew out of the British Empire, but it is quite different and separate from the Empire and the idea of Empire still survives. The Commonwealth is a peculiarly British concept, and to try to analyze it is beyond our task. The central position of the United Kingdom among the member countries of the Commonwealth brings the economic questions of the Commonwealth within the frame of European economy, notwithstanding the fact that the eleven members of the Commonwealth, except the United Kingdom, are not European countries. The obligations in trade relations between the United Kingdom and the non-European members of the Commonwealth have such an importance that we would be unable to consider the economic status of the United Kingdom without considering her as a member of the Commonwealth. The Commonwealth should be considered as an entity in the fields of finance and trade (including shipping), and is primarily to be identified with that great subsystem of the global trade network, the Sterling Area, which is tied to the British pound. The financial and trading relations of the Commonwealth countries, except Canada, which is a "dollar country," are within the Sterling Area. The Sterling Area is a mixed group of national economies strongly linked to the economy of the United Kingdom. The United Kingdom is the link which ties the economies of the Commonwealth member nations and this is another factor in England's position as unquestionably first among equals. However, it may be noted that economic factors alone do not determine Commonwealth relations. We return below to discuss the difficulties arising from the dual situation of the United Kingdom — a member of the British Commonwealth on one hand and a European country on the other.

*The General Agreement on Tariffs and Trade (GATT)*

One of the effects of World War II was the need for a union of trade among the countries of the whole world. It is the belief of some writers that the European movement for economic union is an intermediate stage toward greater freedom of world trade. Whatever the theory may be — global or regional trade union — for European economic union, as a result of a United Nations resolution, 23 countries entered into negotiations for, and reached, a “General Agreement on Tariffs and Trade,” on October 30, 1947. By the end of 1947, GATT was undersigned by 37 countries,<sup>11</sup> among them the OEEC member countries (except Iceland, Ireland, Portugal, Spain, and Switzerland), the members of the British Commonwealth, several South American countries, Japan, Czechoslovakia, and Finland. The preamble of the treaty speaks for itself: The contracting parties recognize and agree

that their relations in the field of trade and economic endeavor should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, developing the full use of the resources of the world and expanding the production and exchange of goods.<sup>12</sup>

The signatories undertake to observe the agreement only to an extent not inconsistent with the existing legislation in their respective territories. This implies that in case of conflict between existing legislation and the agreement, the first prevails. No signatory is bound to effect modifications in existing legislation to bring it into conformity with the agreement. On the other hand, any new legislation should be in conformity with the agreement.

By virtue of Article XIV of the agreement, there is permitted, under specified conditions, the formation of customs unions and free trade areas.

Under Article XXIV, tariffs could be reduced on a regional basis, provided they are reduced to zero over a reasonable period of time. A basic principle of GATT is that tariffs are not to be lowered on a discriminatory basis. “No preferential area should be established”; but this rule is coordinated with the regulation that the GATT recognizes the pre-existing agreements, of which the Ottawa Agreement of 1932 is the most important, for it settles the preferential areas among the member states of the British Commonwealth with the United Kingdom granting duty-free entrance to most of the Commonwealth goods. That politically independent countries with comparatively small populations and few resources should combine to compete with the trade of bigger countries is the reason, for example, why GATT has provisions in derogation of its main goal (e.g., world customs-union); why Benelux, the European Coal and Steel Community, and the OEEC organizations may still continue although committed to the goals of GATT; why the European Economic Community was possible; why the OEEC concentrates on quantitative restriction in its effort to liberalize intra-European trade. The economic effect of quantitative restrictions differs from that of customs tariffs. Whereas the latter permits the entry

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11 UNITED STATES DEP'T OF STATE, TREATIES IN FORCE 218 (1960).

12 61 Stat. All (1947).

of foreign goods as long as the price is low enough, quantitative restrictions limit the amount of entry of foreign goods regardless of price or quality. Thus the OEEC system may eventually close the gap between national and foreign productivity, and abolish the discrimination which was possible under the quantitative restrictions system.

GATT, like OEEC, by an escape clause permits suspension of liberalization by a signatory country when domestic industry has been injured. It is hoped that substantial proof of injury be offered and required before this "escape" is used to defeat the purposes of GATT.

Finally, mention should be made of the effect of GATT in overriding previous bilateral trade treaties. For example, the reciprocal trade agreement between the United States and the Belgo-Luxembourg Economic Union, signed February 27, 1935, "shall be inoperative for such time as the United States of America and Belgium are both contracting parties to the General Agreement on Tariffs and Trade as defined in Article XXXII thereof."<sup>13</sup>

#### *Euratom and the European Economic Community*

A decade had almost elapsed since the movement for a strong Europe through the Organization of the European Economic Community appeared in the economic and political life of Europe. OEEC and other regional unions, although successful organizations, did not meet fully the expectations of those six countries which continuously favored more drastic resolutions in order to achieve their goal in shorter time. The European Coal and Steel Community member nations came to the conclusion that the interest of the European people could best be served in a spirit of solidarity by a closer economic and political unity.

France, Germany, Italy, and the three Benelux states, known as the "Six," signed two treaties establishing the European Atomic Energy Community (Euratom)<sup>14</sup> and the European Economic Community (EEC or also known as the Common Market). The treaties were signed in Rome on March 25, 1957, and are both known as the Treaty of Rome; they became effective January 1, 1959.

Under the Euratom agreement, the six nations will foster their research on, and the technological developments of, the atom for peaceful use. The member countries finance a Joint Nuclear Research Center. Without delay, the United States studied the possibility of entering, and did in fact enter, into an agreement with the European Atomic Energy Community.<sup>15</sup> The contracting powers resolved to build in Europe, by 1963, approximately six nuclear-power reactors with a capacity of one million kilowatts of electricity at a cost not to exceed \$350 million.<sup>16</sup> Germany had an early start in the nuclear field with four research reactors in operation at Munich, Frankfurt, Berlin, and Geesthacht in

<sup>13</sup> Reciprocal Trade Agreement with Belgium Supplementary to the General Agreement on Tariffs and Trade, Oct. 30, 1947, T.I.A.S. No. 1701.

<sup>14</sup> The six foreign ministers of ECSC had advanced proposals to include atomic energy in May, 1955, in Messina, Sicily.

<sup>15</sup> Euratom Cooperation Act, 72 Stat. 1084 (1958), 42 U.S.C. §§ 2291-96 (1958).

<sup>16</sup> UNITED STATES DEP'T OF STATE, HIGHLIGHTS OF FOREIGN POLICY DEVELOPMENTS 10 (1958).

1958. The development of atomic ship propulsion systems will undoubtedly follow.<sup>17</sup>

The EEC treaty is the most important factor in the present economy of Europe, and its significance has aroused the interest of many nations, including the United States. The ends of the Treaty are a broad policy of liberalization of trade, to reconcile and coordinate economic and social policies of the member states, the consistent broadening of the markets, suppressing obstacles to trade among its members, to raise the economic prospects of all the member states, and bring a new contribution to economic expansion in the world without surrendering their national aspirations or characteristics.

The "Six" continued to cooperate with the rest of Western Europe, in their individual national capacity, as members of OEEC.

The Common Market countries decided to form a customs union in which all the members would gradually have to adapt their national tariffs to a common outside tariff, aiming: (a) to abolish all restrictions on industrial trade between the members; (b) to organize the market for agricultural products; (c) to set up a common tariff around the area and evolve a common trading policy toward third countries; (d) to secure a certain measure of harmonization of internal fiscal and economic policy within the new community; (e) to take steps toward a closer political integration; (f) to create a united Europe. The creation of a larger market, the gradual removal of tariffs and other trade barriers during a transitional period of 12 years, the regulation of competition, the removal of impediments to the free flow of money inside the Common Market and the establishment of firms in member countries were only means to attain their farsighted objectives.

The market was to remain open to anyone interested in joining it. To reach their aims, the "Six" built up a supra-national institution. The Common Market has organs which are working as legislative, executive and juridical bodies of a legal entity. The legislative body seeks to devise common policies in advance; the executive body makes and enforces common decisions.

The organs of EEC are: (1) the Assembly, (2) the Commission, (3) the Council of Ministers, and (4) the Court of Justice. It is a permanent cohesive union of countries with a combined population of 165 million. There is no predominant nation. It is probably an embryonic European federation, with potential political integration. It is a strong, sound, and natural organization, primarily political in purpose. The "Six" countries and their territories make a comprehensive whole. It could ultimately become the United States of Europe.

EEC is a real customs union, which has common tariffs against outside countries and the nature of a legal entity. The voting rights of its members are proportional to the population of each member country. In the commission, France, Germany, and Italy have twice as many members. In the Council of Ministers, which is a conventional intergovernmental body, France, Germany and Italy have four votes, Belgium and the Netherlands have two votes, and Luxembourg has one vote.

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17 WTIS, ECONOMIC DEVELOPMENTS IN THE FEDERAL REPUBLIC OF GERMANY AND WEST BERLIN, 1958, Pt. 1, No. 59-38, at 5.

Quantitative restrictions and import duties between member nations are to be removed in stages. The "Six" extended their tariff reductions to all member-countries of GATT. The two first stages of the removal of the import quotas in trade between the members of the EEC are already accomplished and the benefits of bigger import quotas have also been extended to third countries.

The other countries of Europe favor the harmonization policies of European economic cooperation and the elimination of trade barriers between themselves, but they do not wish to commit themselves beyond the economic cooperation. The Treaty of Rome directs its member countries to conduct a common commercial policy. Their institution has a supra-national character. EEC, being a customs union, involves the mutual obligation to tariffs within the area and to the creation of a common tariff around it. Furthermore, EEC seeks to use free trade as an instrument of broader economic and eventual political integration; this, however, seems less accentuated by the retention of control by the "Six" over their agriculture, which escapes the direct mandate of the treaty. Each government of the "Six" may continue to subsidize agriculture and follow national directives.

Greece<sup>18</sup> and Turkey are the only countries which have entered into negotiations with EEC for the purpose of joining the "Six." There are, however, several reasons why other Western European nations have not expressed their willingness to become members of the Common Market. For example, three very important, although smaller, countries possess the highest criterion of neutrality: Sweden, Switzerland, and Austria. The neutrality of Switzerland is recognized by the other countries in the Vienna Treaty of 1815, and the neutrality of Austria in the "State Treaty" of 1955. Another difficulty is the situation of England and her spiritual difference: The English pragmatic approval, that even precludes a written constitution, contrasting the French desire for clear formulation. Let us remember that economically the United Kingdom is not only a European country, but the heart and the center of a great Commonwealth; and the British government treats imports from the Commonwealth at least as favorably as those from Europe. The United Kingdom does not want to give up the particular arrangements which are a help to a large number of less developed countries that can export duty free to the United Kingdom. The counterpart of this is the preferential treatment of United Kingdom goods in other Commonwealth countries. Therefore, it would not make sense to England to weaken or eventually destroy the Commonwealth in order to strengthen the Common Market.<sup>19</sup>

18 On Oct. 31, 1960, the Council of EEC met in Paris to consider the admission of Greece and to discuss the application of the latter for a loan of \$180 million from EEC. Two problems remain to be settled regarding the admission of Greece: (1) the "Six" desire a clause permitting them "to ban imports from Greece of any agricultural product if there were a glut of that product in any of the member countries of the Community," and (2) Greece's wish to retain certain tariff-free quotas of imports which would not be affected by the common external tariffs of member countries. Athens News Agency release (III) 5, Nov. 5, 1960.

19 It is the contention of Agostino Soldati that Britain's opposition to EEC has been unduly stressed since "only 14 per cent of its total exports are to the Common Market countries." *Economic Disintegration in Europe*, 38 FOREIGN AFFAIRS 75 (1959).

On Nov. 30, 1960, parliamentarians of the seven Western European Union nations approved "a resolution calling for British membership in the six-nation European Common

Where a common external tariff is involved, the mutual preferences granted on trade between the United Kingdom and Commonwealth countries seem incompatible with British participation in customs union with the continent; either Britain would have to cease giving preferences to Commonwealth markets, or the preferential system would have to be extended to the whole of customs union — a solution which, quite apart from its doubtful compatibility with GATT, was not necessarily acceptable to either continental Europe or the overseas countries of the Commonwealth.

Although no political aims are mentioned in the Rome Treaty, its clauses referring to supra-national authorities, to the “harmonization” of business legislation, to a common tariff barrier, to free movement of capital and to rights of establishment for foreigners have generally been interpreted as being steps on the road to political union. This road did not look attractive to the other members of OEEC. Considerations associated with neutrality and national sovereignty were thus the decisive factors in the choice of partners. These circumstances resulted in a split, for although the European countries, including England, agree that their basic aim is the liberalization of trade, an agreement as to the methods for harmonizing their particular problems with the common fundamental objective was not possible.

*The legal system of EEC.* In February of 1960, the Federal Bar Association held a conference on “Legal Aspects of the European Community.” The Institute felt the Community could be compared to the creation of the 1789 Charter. The pivot of the Community is a treaty, however, not a constitution; and like any other treaty, its effectiveness rests on *national* enforcement. The “common rules” are statements governing competition, forbidding dumping practices, regulating aids granted by states, prescribing non-discriminatory fiscal provisions and setting a procedure for approximation of municipal law to the Common Market policies when national rules distort the functioning of the Community. The framers of the treaty well knew it was impossible to set a detailed formula for all probable events arising under the treaty; the “Six” found it expedient to empower the institutions of the Community to promulgate rules for the accomplishment of the treaty’s provisions. This broad power is still subject to the political scrutiny of the “Six” through their governmental representatives constituting the Council. But notwithstanding this national scrutiny, EEC is an international entity, somewhat comparable to the United Nations — it has power, for example, to issue passports to its representatives to travel outside EEC.

The effect of the common rules has not only influenced public laws of each member state, such as elimination of tariffs, transportation and freedom of movement for persons, but has also caused changes in private laws and even in the constitutions of Belgium and Luxembourg.<sup>20</sup>

The enforcement of the common rules affecting the states is obtained

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Market,” by a vote of 58 to 1. The Washington Post, Dec. 1, 1960, p. A4, col. 6.

[T]he British policy is today much more fully convinced of the need for far reaching arrangements with the Six. . . .” Miriam Camps, *Britain, The Six and American Policy*, 39 FOREIGN AFFAIRS 112 (Oct. 1960).

<sup>20</sup> Gaudet, *The Legal Systems of The European Community*, 1960 INSTITUTE ON LEGAL ASPECTS OF THE EUROPEAN COMMUNITY 215 (Fed. Bar Ass’n, Feb. 1960).



through the direct action of each state; to the extent that the Community law directly affects persons and enterprises, enforcement is possible in each member state as if the rules and the Court of Justice decisions were national *civil* law. Pecuniary sanctions substitute for the lack of a penal statute.

Individuals or corporations may appeal against decisions directly concerning them although the decisions or regulations are addressed to third parties. Member states may refer to the court a breach of the treaty by another member, but it may do so only after it has referred the matter to the commission of the Community, and the commission has either failed to render an opinion within three months or rendered an allegedly wrong decision. Appeals by individuals and enterprises must be lodged within a period of two months from the date the appellant was either notified of or had knowledge of the decision. Failure to notify a party of a decision concerning him is a ground for complaint before the court against any of the institutions of the Community.

Obligations and decisions of the European Investment Bank also are within the jurisdiction of the court. If the validity of the treaty or acts of the institutions of the Community are involved in a dispute tried in a national court, that court may request the Court of Justice to give a ruling thereon; this procedure avoids the existence of several interpretations of the Community law. No self-judging reservation clause exists under the treaty; a nation cannot be the judge of its own obligations. Under the various articles concerning the Court of Justice (Articles 164-192), the member nations have agreed to settle disputes arising under the EEC Treaty by the procedure established in it and abide by the final dispositions of the Community's court, thus avoiding recourse to the International Court of Justice at The Hague.

The Court of Justice is a *single* court exercising its jurisdiction over *three* treaties — the ECSC, Euratom, and EEC. Unlike its counterpart in the United Nations, the Court of Justice is occupied; it has heard more than 150 cases, out of which four concerned EEC, as of January, 1960. The court has upheld the High Authority in 40 cases out of 48.

### *The European Free Trade Association*

The split of the two main trends — liberalization of trade through cooperation and liberalization of trade through union — became a reality in 1959, when representatives of seven European countries convened in Stockholm.

There they decided to organize a free trade area. Their agreement was drafted in July, 1959, and signed the following November in Stockholm by Austria, Denmark, Great Britain, Norway, Portugal, Sweden, and Switzerland. Since that time the seven countries have been known as the "Seven" and their organization as "European Free Trade Association" (EFTA). The population involved is about 90 million, of which Britain alone contains well over half. EFTA headquarters is in Geneva.

These seven countries could not consider surrendering any element of their sovereignty to a high commission or other body; thus they preferred the less rigid form of a free trade area to a customs union, with the absence of a common external tariff. One half of the British exports to the Commonwealth is covered by preference. Therefore, the Commonwealth is more important to

Britain than Continental unions. However, the United Kingdom has shown a willingness to move closer to the European continent. Switzerland has departed from its traditionally universalist, rather than regional, economic policy. Switzerland is a high tariff country, but upon joining EFTA, it agreed to an adjustment to free trade in a gradual and moderate way.

EFTA is neither a political association nor a customs union. Its aim is to enjoy the benefits of a free trade area, without incurring any political obligations. The members of EFTA agreed to tariff cuts of 20 per cent each year, among themselves. The association has no supra-national executive body. It deals with problems as they arise. It has no plans to integrate agriculture or transportation, to free movement of capital and labor, or to harmonize labor costs.

The power of the association resides in its Council of Ministers, representing the member governments. The legislative power remains with each individual member nation. Members have the right to resign from the organization at any time. Each member has one vote. If at war, any member may reduce its obligations if necessary. Each country of the "Seven" remains master of its own policy; it can conclude trade agreements or extend tariff rates. While creating an area of free trade among the seven countries, it leaves to each country commercial and tariff autonomy. There is no reference to the British Commonwealth in the agreement, nor is there provision for political integration.

### *Conclusion*

To sum up, of the 18 members of OEEC, 13 are now organized in two trading blocs. Of the remaining countries, Greece and Turkey have indicated a desire to be associated with the "Six" — probably with one eye to trade, mainly with Germany,<sup>21</sup> and one to aid; Ireland and Iceland are uncommitted. On the other hand, Finland is not yet a member of EFTA, but because of her membership in the Nordic Council she will undoubtedly join EFTA, if politically possible.

It should be noted that the territory of the EEC countries enjoys geographic unity, while EFTA members have some disadvantage because they lack geographic compactness. The total population of EEC countries is double the total population of EFTA countries. Also, EFTA is economically weaker.

Although the "Six" agreed unilaterally to reduce their tariffs vis-à-vis other member states of GATT, EEC is to establish a common tariff wall against the rest of the world and is to have a unified commercial policy. EFTA plans the extension of its own tariff cuts to the "Six" on a reciprocal basis. The aims of EEC countries also involve political integration, which is not deemed compatible with the traditional foreign policy of some EFTA members.

An all-European association, similar to OEEC, is more necessary now than ever. The "Seven" plan to keep in step with the Common Market's own timetable of tariff reductions and quota enlargements over the next few years to obtain some compensatory trading preferences for themselves in order to offset the Common Market's discrimination against their exports, to prove to EEC

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<sup>21</sup> Germany now ranks third among world trading countries — after the United States and the United Kingdom.

that a free trade area without a customs union, as originally proposed by Britain, could be made to work smoothly.

Through the past 12 years, OEEC has succeeded in liberalizing trade in Western Europe. However, its failure to resolve the differences between the two main groups — EEC and EFTA — appears to have undermined its efficacy. The OEEC decisions need unanimity, but the veto power of its Council of Ministers has obstructed moves towards economic integration. Generalized tariff cuts and quota increases should materially lessen the split between the "Six" and the "Seven."

OEEC should unite EEC and EFTA in a common European trade system consistent with GATT in order to prevent a disastrous formation of two competitive industrial and economic camps, the effects of which would not enhance the welfare of Europe and its under-developed areas. To reunite the "Six" and the "Seven" is an essential step to a program of world-wide trade liberalization.

Since the Bretton Woods Conference in June, 1944, which gave birth to twin institutions, the International Monetary Fund and the International Bank for Reconstruction and Development, the United States has encouraged a unified Europe. Further, the United States, being an associate member of OEEC, implicitly agreed to be a mediator between the two European groups.

The United States economy would not suffer from a union of the two groups because her exports to the combined EEC and EFTA markets would still remain second only to Canada. The desirability of closer economic cooperation between Europe, the United States, and Canada, and the willingness of these North American countries to become full members of a new organization, the OECD, necessitates the reciprocal acceleration of lowering customs barriers among themselves.

### Commercial Aspects of European National Laws

The legal puzzles that may develop from the various treaties governing the economy of Europe, and the many conflicts that may arise from the internal laws of each European country as affecting both the treaties and American business, justify an examination of some legal facets of interest to Americans. In 1954, a report on factors limiting U.S. investment abroad asserted that the "complex framework of foreign laws and regulations was mentioned [by American companies] specifically as establishing the limits within which the American investor has to operate abroad." The framework is more complex now that the EEC member nations have agreed to submit to "common rules" which in no way compare to the split created by the United States Constitution between state and federal powers.

For the most part, the Napoleonic Code is still in effect in the countries forming EEC and EFTA, notwithstanding many modifications and recent new codes in Italy, Germany, and Denmark. A businessman finds his rights and duties described generally in the Commercial Code, supplemented by the Civil

Code<sup>22</sup> and by hundreds of administrative regulations.

The contents of the French Commercial Code is an example of what a European Code regulating commerce may include:

- Book I — Commerce in General
  - Title I *Commercants*
  - II Commercial Books
  - III Corporations and Partnerships
  - IV The Commercial Register
  - V Securities Exchanges, Stockbrokers, Brokers
  - VI Pledges and Commission Agents
  - VII Purchase and Sale (one article)
  - VIII Bills of Exchange, Promissory Notes
  - IX Statute of Limitations
- Book II — Maritime Commerce
- Book III — Bankruptcy
- Book IV — Commercial Jurisdiction
  - Title I Organization of Commercial Courts
  - II Jurisdiction of Commercial Courts
  - III Procedure Before the Commercial Courts
  - IV Procedure Before the Appellate Courts

It may be observed that a business transaction may fall under the civil or commercial code or under both. In France and in Belgium,

a particular transaction may be civil as to some, commercial as to others. Under such circumstances, there occurs what is termed a mixed act. In the typical consumer purchase and sale, a professional or *commercant* enters into a juridical relationship pertaining to his business with his customer who holds no such professional status and is purchasing for purposes of consumption. The sale is an act of commerce as to the merchant, a civil act as to the purchaser.<sup>23</sup>

The traditional commercial courts are steadily disappearing, although they are still active in France, Belgium and Sweden where they remain as special tribunals.

It is important to distinguish between what constitutes a civil act and a commercial act because the commercial courts have jurisdiction only over acts of commerce and exclusive jurisdiction over bankruptcy proceedings.

Where a particular matter is commercial as to one party, civil as to the other, the jurisdiction of the commercial courts turns on the status of the defendant. The commercial party may be pursued in either the commercial or civil courts. The civil party must, however, be pursued in the civil courts unless he consents to commercial jurisdiction. Where one of several defendants is a civil party, the commercial court is deprived of jurisdiction over all of them unless the civil party waives his right to be sued in a civil court.<sup>24</sup>

Civil courts have general jurisdiction over acts of commerce. True, there is an overlap of jurisdiction; still a difference remains, for the judges of the commercial court are not elected on the basis of juridical training, but on the basis of their professional business experience.

The legal framework of the German Federal Republic, since it became a

<sup>22</sup> Italy abolished the Commercial Code in 1941, but incorporated its substance into the Civil Code.

<sup>23</sup> Hauser, *op. cit. supra* note 10, at 91-92.

<sup>24</sup> *Id.* at 96.

fully sovereign state on May 5, 1955, consists of codified federal legislation such as the German Civil Code (*Bürgerliches Gesetzbuch*), the Commercial Code (*Handelsgesetzbuch*), the Criminal Code, and the Codes of Civil and Criminal Procedure. These codes have been supplemented by special federal legislation such as the Corporation Act, the Insurance Act, and the Act Concerning Limited Liability Companies. State (*i.e.*, *Land*) legislation controls, for example, the fields of mining, fishing, and cultural affairs. The same legal system is in effect in West Berlin. With regard to laws enacted by the Federal Republic, the Constitution for Berlin stipulates that federal laws shall apply only after they have been voted upon by the city council and passed as Berlin laws. In practice, most federal laws have been made applicable to the western sectors of Berlin.<sup>25</sup>

### The Status of Foreigners

#### (a) *Individuals*

In most Western European countries, an alien must obtain a license from the police authorities if he wishes to stay for a period of more than three months, accept employment, carry on a trade, operate a farm, or engage in an itinerant trade or in a trade carried on at fairs.

Trade licenses are required in many instances, foreigners generally being subject to the same regulations as apply to nationals. For example, the German Handicraft Law of September 17, 1953, provides that handicraft can be exercised only after the person practicing the trade has passed the master's roll.

Foreign residents are generally authorized to make investments and to acquire real estate in the German mark (west) area. The liberalization of capital imports does not, however, affect the license requirement for doing business in Germany. There are no longer any restrictions regarding the rate of interest for investments and the currency in which payments may be effected. Since July 6, 1959, the date of economic reintegration into the Federal Republic, the same regulations apply to the Saarland.

American businessmen enjoy better protection in those countries which entered into a Treaty of Friendship, Commerce and Navigation with the United States. Under this treaty, generally, each contracting party agrees to accord to citizens and corporations of the other within its territories treatment no less favorable than it accords to its own citizens and corporations with respect to engaging in commercial, financial, and industrial activities.

In June, 1959, Germany proposed a new foreign trade law based on the principle of freedom in all transactions involving nonresidents or foreign funds. The bill contains restrictions only for certain imports specified in a list attached to the draft law. It authorizes the Federal Government to impose, through ordinances, general restrictions on transactions involving nonresidents or foreign funds if such measures are deemed necessary for the fulfillment of obligations resulting from international agreements (*e.g.*, GATT, European Economic Community). They are designed primarily as possible retaliation against foreign measures. It recommends that German exporters abstain from a price policy

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<sup>25</sup> WTIS, ESTABLISHING A BUSINESS IN THE FEDERAL REPUBLIC OF GERMANY AND WEST BERLIN, Pt. 1, No. 60-11, at 2.

which might have unfavorable effects abroad. This law may be acted on by the German parliament in 1961.

(b) *Corporations*

Corporations enjoy a juridical personality and are subject to each state's regulations, which vary materially from nation to nation. As a general rule, nationality plays a much more important role than in the United States; in France and Belgium the nationality of a corporation conclusively establishes what law will govern it. Nationality of a corporation is a test which under the same facts would give different results in European countries. As to matters of substance, it is not the place of incorporation that counts, but the *administrative situs* of the corporation, the place from which the directives emanate. Therefore, a corporation chartered in Delaware may be found to be a French corporation if its administrative center happens to be in Paris. "Nationality" is decided by the law of the forum. The nationality concept is so imbedded in the civil law system that a national court may render a valid judgment if it grounds its jurisdiction on the nationality of the plaintiff or defendant. There is no "full faith and credit" clause in the community of the "Six."

Also corporation income tax varies substantially: in Germany a tax rate of 51 per cent applies to undistributed profits and 15 per cent to distributed gains; in Austria 24 per cent for profits up to \$19,000 and 44 per cent for profits in excess of \$19,000. Furthermore taxation in Europe, just as in the United States, does not depend on nationality; however, the United States has entered into tax conventions to avoid double taxation with Austria, Denmark, Finland, West Germany, Greece, Ireland, Italy, France, Belgium, Netherlands, Norway, Sweden, Switzerland, and England. Due to the operation of the treaty, Germany, for example, will exclude income derived from sources within the United States provided such income is taxed in the United States. National income tax systems will continue to be separate under the EEC treaty, but indirect taxes may soon be substantially affected by the EEC and EFTA agreements.<sup>26</sup> Investment and repatriation of capital finds favorable laws in most parts of Western Europe.

Although imports have been largely liberalized, there are still some licensing requirements left for certain described products in numerous countries. Under German regulations, the most liberalized commodities may be imported under a declaratory procedure, a declaration which rather serves statistical purposes, while non-liberalized commodities are still subject to a special licensing procedure (for the most part agricultural products). The time will probably come when a single list will prevail in every country with world-wide application.

Since January 1, 1960, the United States limited its guarantee of investments abroad to underdeveloped areas; however, the general policy of European economy is to encourage foreign investments. Five laws enacted in July, 1959 in Belgium providing, *inter alia*, for partial or total tax exemption of capital gains are an example of European concern to stimulate industrial

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<sup>26</sup> Baker, *Tax Planning for the European Community*, 1960 INSTITUTE ON LEGAL ASPECTS OF THE EUROPEAN COMMUNITY 63 (Fed. Bar Ass'n, Feb. 1960).

investments. Also the United States is presently negotiating another treaty of friendship with Belgium to assure more investment benefits.

### Antitrust Laws in Europe

The European policy of encouraging American investors to enter its market has for years been somewhat hampered by the extraterritoriality of the different laws safeguarding competition in the United States foreign commerce. To the problems and uncertainties of the outer-reach of American antitrust laws, Europe itself has recently added its counterpart laws. Both the American and the recent European antimonopolistic enactments directly affect the success of the American investor in Western Europe.

The overseas activities of American firms are subject to the restraints of United States antitrust laws whenever those activities have an impact on internal United States commerce, even though they are legal under the laws of the country where performed. Thus, agreements to allocate markets or fix prices may be unlawful though executed outside the United States and in a nation where, admittedly, they do not constitute a violation. This, together with trebling the damages to impose a penalty, has been considered by some a deterrent to foreign investments through licensing agreements, concession contracts, or minority stock ownership in foreign companies, because the American company may not be able with impunity to restrict its foreign licensee to selling outside the United States; license a foreign manufacturer to sell only in its country; give to two foreign manufacturer-licensees exclusive sales territories for the same product; or agree with a foreign manufacturer-licensee that the United States licensor will not export to the home country territory of the licensee.<sup>27</sup>

It is suggested that American enterprises may at least be permitted to enter into those restrictive agreements which are sanctioned by the law governing the place of performance.

In Germany restrictive business agreements were a normal facet of the economy until the Allies imposed occupation laws breaking into small entities the Saar monopolies of coal (*Konzens*) and prohibiting excessive concentration of German economic power. American economic policies led Europe to adopt similar regulations, except for a wise escape clause, which suspends their operation when the national interest is not benefited. Thus, Germany elaborated for seven years on the *Law Against Restrictions on Competitive Trade*<sup>28</sup> which became effective January 1, 1958. This law regulates cartels, trusts, monopolies, and other trade restrictions. However, as all its European counterparts, the spirit of the law is essentially regulatory in that it permits the Federal Economics Ministry to authorize cartels when their effect is in the national economic interest, whether as a temporary or a permanent solution. Among the exceptions mentioned are banking and insurance institutions, transportation, federal enterprises, and public utilities. Cartels are permitted in case of continuous de-

<sup>27</sup> UNITED STATES DEP'T OF COMMERCE, STUDY OF FACTORS LIMITING AMERICAN PRIVATE FOREIGN INVESTMENT 28-9 (July 1953); REPORT OF THE COMMITTEE ON WORLD ECONOMIC PRACTICES 4 (Jan. 22, 1959).

<sup>28</sup> BUNDESGESETZBLATT, Pt. 1, at 1081 (1957).

cline in sales and if the agreement is reasonably apt to substantially improve the productivity of the enterprises with regard to satisfying the market demand. Furthermore, the prohibition does not apply to agreements protecting or promoting export.<sup>29</sup>

An administrative agency — the Cartel Authority — presides over breaches of the German antitrust law. Its decisions can be appealed to the Federal Supreme Court. Fines for violation are up to \$23,000, in addition to compensatory damages to the injured persons.

The treaty of the European Economic Community also frowns upon cartels and practices in restriction of competition; however, it adopts the German policy whereby circumstances may justify trade restrictions when it would serve the welfare of the Community or of specific enterprises.

The antitrust laws of the Scandinavian countries also are regulatory and not prohibitory in their nature.<sup>30</sup>

In Sweden, the Law of September 25, 1953, as amended on June 1, 1956, To Counteract Restriction of Competition in the Economy in Certain Cases,<sup>31</sup> has the purpose "to promote competition in the economy, which is desirable from the public point of view . . . ."

The law provides that, without a permit from the Council for Economic Liberty, businessmen may not "conclude agreements with other businessmen about non-reduction of prices for commodities, nor undertake to fix prices or to agree that certain prices may not be reduced" (Art. 2), and may not "conclude agreements that a conference or some other kind of cooperation among many businessmen shall take place before any of them makes an offer to sell the commodities or to carry out services" (Art. 3).

Permits in the cases mentioned above may be granted under Article 4 only if this kind of restriction of economic competition will contribute "to the saving of expenses, or if the restriction will be in favor of consumers or if in general it will be expedient from the public point of view."

Proceedings in the Council for Economic Liberty may also take place in other cases "if restriction of competition . . . might be followed by harmful effects" (Art. 5). The permit granted may be revoked "if the permit is misused or the circumstances have materially changed" (Art. 4). Cases involving restriction of competition are being handled on the basis of applications of businessmen (Art. 15) or on the basis of reports of officials on problems of economic liberty (Art. 16). If the council cannot prevent the harmful effects, the case shall be submitted to the king (administration) (Art. 21).

If the council finds that prices for some commodities or services are too high and the case is of general importance, the king may, according to the proposal of the council, order a fixed price, which may not be exceeded by the businessmen without permission from the council. This order shall be issued for a certain time, but not for more than one year. (Art. 21, par. 2.)

29 WTIS, NEW LAW ON CARTELS IN THE FEDERAL REPUBLIC OF GERMANY, Pt. 1, No. 58-1, at 2 (Jan. 1958).

30 Letter from Lawrence Keitt to Emanuel Celler, Chairman of the House Antitrust Subcommittee, Oct. 2, 1959, and attached materials on Scandinavian antitrust laws prepared by Dr. Johannes Klesment of the European Law Division of the Library of Congress.

31 *Lag om motverkande i vissa fall av konkurrensbegränningar inom näringslivet*, Sveriges Rikes Lag, Stockholm, P.A. Norsted and Söners Förlag, 1959: B 30-32.



The term "businessman" is understood to mean in this law anyone who professionally produces, buys or sells commodities, who conducts an enterprise for the rendition of some services to others, etc. (Art. 26). The term "agreements" is understood to mean all sorts of associations among businessmen and the decisions and regulations adopted by those associations (Art. 27).

Anyone who violates the provisions of Articles 2 and 3 of this law are punished by a fine and, in grave cases, by confinement up to one year, or by both fine and confinement. Where prices for commodities or services are fixed by the king, anyone who asks or takes higher prices than as fixed by the king is punished by a fine. If the violation is grave, the offender is punished by confinement for not more than a year or by a fine (Art. 29).

According to the Law of June 1, 1956, on Obligation to Furnish Information Concerning Prices and Competition (*Lag om uppskiftskyldighet rörande pris och konkurrensförhållanden*),<sup>32</sup> "businessmen are obliged to submit information necessary for promoting public knowledge about prices and competitive circumstances in the economy" (Art. 1).

Businessmen who do not submit the information in time, or those who give wrong information, are punished by a fine or confinement according to the Criminal Code (Arts. 11 and 12).

In Norway,<sup>33</sup> the Law of June 26, 1953, relating to Control and Regulation of Prices, Profits and Competition, covers all types of business (Art. 1), as well as steady or occasional economic activities, conducted for compensation (Art. 60). The purpose of the law is to promote sound development in prices, and to counteract unreasonable prices, charges and business conditions (Art. 1). The definition of "prices," according to this law, includes all kinds of remuneration despite the fact that other terms are used, such as allowance, salary, honorarium, freight or hire (Art. 60, par. 1).

For the implementation of the provisions of this law there have been established the Price Council (*Prisradet*), the Price Office (*Prisdirektoratet*), the district offices of the Price Office (*Prisdirektoratets distriktskontorer*), and local price agencies (*Kommunala prisnamnder*) (Arts. 4-11).

The Price Office issues a public paper under the title, "The Price Newspaper" (*Pristidende*), which publishes this law and any later amendments, any regulations on this matter as issued by the Parliament or by the king, the more important regulations and decisions of the Ministry and the Price Office, and summaries of the development of prices and competition (Art. 12).

Everyone is obliged to give to the king (administration), the ministry and the agencies established for the implementation of this law, as well as to their officials, all information they may request for applying the provisions of this law (Art. 15).

It is prohibited to ask or to agree upon prices which seem to be improper, as well as to unduly set up such business conditions as obviously do not correspond to the public interest (Art. 18).

Pursuant to the ordinances of the king, there shall be reported to the

<sup>32</sup> *Id.*, B 32-3.

<sup>33</sup> *Lom om Kontroll og regulering av priser, utbytte og konkurrensforhold, Norsk Lovtidende*, Nov. 25, 1953.

Price Office any coalitions or other agreements among businessmen the purposes of which are to regulate prices, profits, allowances, business conditions, production and trade, as well as regulation of competition (Art. 33). The reports and other information shall be placed on the register by the Price Office. Any person may acquaint himself with the register and ask for copies thereof (Art. 35).

Article 52 provides:

He who deliberately violates the decision made according to this law or who disregards activities of the Control agencies, shall be punished by confinement up to one year, or by a fine, or both. In grave circumstances the offender shall be punished by confinement up to three years, with or without fine.

Norway is especially active in pressing for nondiscrimination in the shipping field.

The Common Market continues substantially the same policy against cartels which the Community for Coal and Steel condemned. The High Authority has investigated cartels and has disapproved of three while it affirmed as valid about 15 others through 1959. The policy of the EEC concerning cartels and abuse of economic power is based on Articles 85 and 86 of the Treaty of Rome which, after declaring contracts restricting competition null and void, provides that such contracts may be declared valid if, to the satisfaction of EEC organs, they benefit the consumer, the EEC economy, and the contracting parties. The legal conflicts which may arise from the enactment of antitrust laws where none existed before<sup>34</sup> and between national and EEC antitrust laws, open a new field for legal exploration to those lawyers who cherish a quasi-international practice.

### Conclusion

The economic rise of Western Europe has created an apprehensive admiration in the world. The Soviet Union is dismayed by the success of the European Economic Community; the Commonwealth acts cautiously to prevent a shift in the balance of power; and the United States is anxious to stop the flow of dollars and gold reserves. Although the "Six" are open to other countries willing to accept the provisions of their treaty, it would be Utopian to hope that all pro-Western nations will join the Community; therefore the "most constructive way to tie the Common Market into the world economy would be to reduce world barriers to trade substantially."<sup>35</sup>

The United States could be the leader once more in what may result in great advantage to most nations connected to common destinies, and could prevent regional economic isolationism by embarking into a world-wide open market and by enacting laws at home which will stimulate trade.<sup>36</sup>

<sup>34</sup> Italy is an example. *Relazione ministeriale e parere del C.N.E.L. al disegno di legge n. 2076 sulla "Tutela della liberta di concorrenza,"* 5 *REVISTA DELLE SOCIETA* 406 (1960).

<sup>35</sup> CED, *THE EUROPEAN COMMON MARKET AND ITS MEANING TO THE UNITED STATES* 14 (1959).

<sup>36</sup> Among the proposed enactments of law amendments suggested by the Committee on World Economic Practices, in 1959, are tax laws which would permit corporations to defer tax on foreign income until it is brought to the United States.

## APPENDIX

*European Population in Millions\**

	OEEC	EEC	EFTA
Austria	6.9	—	6.9
Belgium	8.9	8.9	—
Denmark	4.4	—	4.4
France	43.8	43.8	—
Germany	50.6	50.6	—
Greece	7.6	—	—
Iceland	0.2	—	—
Ireland	2.9	—	—
Italy	50.0	50.0	—
Luxembourg	0.3	0.3	—
Netherlands	11.1	11.1	—
Norway	3.5	—	3.5
Portugal	8.6	—	8.6
Spain	29.1	—	—
Sweden	7.3	—	7.3
Switzerland	5.1	—	5.1
Turkey	24.1	—	—
United Kingdom	51.0	—	51.0
Totals	315.4	164.7	86.8
Greece		7.6	
Turkey		24.1	
Finland			4.3
Totals		196.4	91.1

\* In 1954, whereas there was an average of 53 persons per square mile in the United States, there were 207 per square mile in Western Europe.

*Membership of Western Organizations*

Organization	British Common- wealth	GATT	Ben- lux	OEEC	WEU	Council of Europe	NATO	ECSC	Nordic Council	Balkan Facts	EEC	EUR- ATOM	EFTA
Created in	1931	1947	1948	1948	1948	1949	1949	1951	1952	1954	1957	1957	1959
Australia	x	x											
Austria		x		x		x							x
Belgium		x	x	x	x	x	x	x			x	x	
Brazil		x											
Burma		x											
Canada	x	x		A			x						
Ceylon	x	x											
Chile		x											
Cuba		x											
Czechoslovakia		x											
Denmark		x		x		x	x		x				x
Dominican Republic		x											
Finland		x		C					x				E
France		x		x	x	x	x	x			x	x	
Germany		x		x	x	x	x	x			x	x	
Ghana	x	x											
Greece		x		x		x	x			x	E		
Haiti	x	x											
Iceland				x		x	x		x				
India	x	x											
Indonesia		x											
Ireland	F			x		x							
Italy		x		x	x	x	x	x			x	x	
Japan		x											
Luxembourg		x	x	x	x	x	x	x			x	x	
Malaya	x	x											
Netherlands		x	x	x	x	x	x	x			x	x	
New Zealand	x	x											
Nicaragua		x											
Norway		x		x		x	x		x				x
Pakistan	x	x											
Peru		x											
Portugal						D	x						x
Rhodesia and Nyasaland		x											
Spain				x									
Sweden		x		x		x			x				x
Switzerland				x		D							x
Turkey		x		x		x	x			x	E		
Union of South Africa	G	x											
United Kingdom	x	x		x	x	x	x						x
United States		x		A			x						
Uruguay		x											
Yugoslavia				B						x			
	11	37	3	18	7	15	15	6	5	3	6	6	7

x—Member.

A—Associate country.

B—Represented by Observer. Full member of Agriculture and Food Committee only.

C—Member of Timber Committee only.

D—Participates in the Consultative Assembly for discussion of OEEC reports and certain economic questions.

E—Intends to join.

F—Has the advantageous tariffs without being a member.

G—Intends to withdraw.