EDITORIAL

When the plans for this Review where being laid the negotiations for the entry of Great Britain into the European Economic Community were still in full swing. The breakdown of the negotiations naturally made the editors and publishers ask themselves whether this political event would make any difference to their plans. They did not have to ponder the matter for long, for after January 1963, when the break took place, they soon felt that the need for this Review is as great as before, and perhaps even greater. One reason is that the legal developments which have been taking place since the commencement of the Treaty of Rome are more and more occupying the attention of jurists both inside and outside the member states.

The Treaty furthers a political objective—the shaping of Europe—by means of economic measures which aim at the establishment of a common market. In order to achieve this methods are employed which are unique in the relations between sovereign states. Joint institutions are created: a Council of Ministers, an Executive Commission, a European Parliament and a Court of Justice. These institutions are invested with powers which hitherto were the prerogative of the member states. These powers enable the institutions to address themselves with binding effect not only to the member states, but also directly to their citizens, whether as private persons or enterprises.

All this was new and strange, in particular to lawyers, for although a few experts were familiar with these measures, many were not. For most of the judges, advocates and company lawyers within the Community, the Rome Treaty remained a closed book even after it had come into force. Such a state of affairs has only been changing gradually as the effect and application of the Treaty came to be more widely felt.

On January 1,1959, the first internal tariff reductions came into force. In 1959 and 1960 the first regulations came into existence, which have since been followed by others intended to promote the free movement of labour, a common agricultural policy, and the enforcement of the rules of competition in the trade between member states. Steps have also been taken to eliminate inequalities in the right of establishment for enterprises from the various member states and similar measures are in preparation with regard to the movement of services. On 12th May 1960 the Council of Ministers decided to shorten the stages envisaged in the internal tariff reductions and in the establishment of a common outer tariff. Since then this development has progressed rapidly. A large number of regulations have already been published in the Official Gazette of the European Communities.

The abolition of restrictions at the frontiers brought to light other differences in the various national legislations which so far had not been seen as restrictions on trade: differences in tax systems, differences in legislation regarding patents and trade marks, differences in legislation on the safeguarding of product quality in the interests of public health, differences in the requirements for the recognition of firms and companies, and differences in the validity in law of legal documents and judgments. These differences are inspiring new European measures. The reader will find two drafts of such measures discussed in this issue: the draft patent convention and a project for the harmonisation of turnover taxes.

While these Community measures are being considered both inside and outside the Community wherever trade and industry directly feel the effect of these new developments, the national judges and lawyers in the member states have to deal more and more with the interpretation and application of the Community law. There are some striking instances of this. The *Italian* Council of State in a decision published in November 1962 declared a Government measure introducing new quantitative restrictions in goods traffic between the member states, contrary to Article 31 of the E.E.C. Treaty which prohibits the introduction of new restrictions or the increase of existing ones. In the *Netherlands* an importer submitted to the competent administrative court that as a consequence of the introduction of the new Benelux tariff of 1960 a higher import duty had been imposed on an article imported by him than the one applied on 1st January 1958, the date of the coming into operation of the E.E.C. Treaty. It was submitted that this new measure was contrary to Article 12 of the E.E.C. Treaty. Pursuant to Article 177 of the Treaty the Tariff Commission referred the case to the Court of Justice of the European Communities. The reader will find the Court's ruling of February 5th 1963 which is of great importance, in this issue. The Court decided that the prohibition contained in Article 12 regarding the introduction of new, or the increase in existing, charges in goods traffic between the member states can also be invoked by private parties before the competent national court. The special character of the Community means that private parties as well as the national legal authorities have a role to play in enforcing the Community law. Some weeks later on the 27th March 1963 there followed a second ruling of the Court in a practically identical case. This second judgment was already foreshadowed in the comments given on the first ruling. The Court at Luxembourg ruled that the national court's duty to request the Court for an interpretative ruling should a question of interpretation of the Treaty be raised before this national court, might be subject to exceptions in certain cases. For instance, this obtains if the Court has already given a ruling in a similar case on a similar point.

The national court is then not required to refer the matter to the Court at Luxembourg. However, the court's right to request a new interpretative ruling, if it considers there are grounds to do so, remains unimpaired.[1]

In *France*, too, the courts came into contact with Community law. On the 26th January 1963 the *Cour d'Appel* of Paris annuled a judgement of a *Tribunal de Commerce* on the grounds that the provisions of an E.E.C. regulation—Article 9 (3) of Regulation No. 17—had been infringed thereby. In *Germany* in order to enforce another regulation (No. 15 concerning free movement of labour), a court had to annul a Government order expelling an Italian labourer. Recently the Constitutional Court in *Italy* vetoed a measure for the subsidising of a regional development project because the Government had not first submitted this measure to the European Commission as required pursuant to Article 93 of the Treaty. As these decisions involve new law they give rise to problems both inside and outside the Community. It is the aim of this Review to spread information and to comment on these matters as widely as possible.

With this end in view contributions are invited from experts on all topics of importance whether in respect of existing legal problems, or developments taking place in the future. In this way the full implications of the new laws which are being made will be given greater circulation.

Secondly, the proceedings and decisions of the Court of Justice, which fill such an important place in the Communities, will be allotted adequate space for a proper summary together with comment. Attention will also be given to the decisions of national courts.

Thirdly, we are concerned with legislation affecting Community law, by which is meant the regulations and directives of the Community and any relevant national legislation. In this issue an attempt is made to present as complete a picture as possible of the general measures implementing the Treaty which have come into force so far. In future it will be possible to give more attention to current projects. It is hoped to give as much information as possible on national legislation implementing the Treaty and the regulations although it may be necessary to be selective in this matter.

Finally, there is literature dealing with the new law. A special section reviewing published works is essential in view of the stream of books and articles which are appearing, but summaries of the contents, rather than detailed criticism of the views expressed, are contemplated.

We wish to acknowledge the fact that two of the contributions in this issue, the article by Professor K. V. Antal, and the comment on

1. This case has been mentioned by President Donner in his contribution to this issue (p.14-15).

the ruling of the Court of Justice of February 5,1963, have already appeared in Dutch in the Netherlands periodical "*Sociaal-Economische Wetgeving*" (Social Economic Legislation).

The production of this Review is in itself an essay in international co-operation, and the choice of English as a working language is important. It brings, it is to be hoped, a great deal more material to the attention of the English reader than would otherwise be available. It means however that many lawyers will be expressing themselves in a language not their own or in translation. If thereby there should be any lack of clarity or style we must ask for your indulgence. Such contributions will not however be wanting in authority.

In conclusion the editors wish to say that they are grateful for the help they have received on all sides in setting up this Review. Our thanks are due particularly to Lord Denning and M. Gaudet who have been kind enough to introduce this Review, to President Donner for his stimulating introduction to the study of the case law of the Court at Luxemburg. and to the members of the Editorial Board on whose knowledge, insight and experience we hope to be freely allowed to draw in the future.