SURVEY OF LITERATURE

At the present time most of the attention of those interested in the development of the European Communities seems to be directed to the various procedures before and case-law of the Court of Justice and to the rules of competition. This attitude is quite understandable since it is in these fields that the most direct impact on the national laws of the member States takes place. Apart from these two sections the present survey will contain some reviews of articles of a more general nature and finally contributions in the social field are discussed.

Court of Justice of the European Communities

The *Aussenwirtschaftsdienst* of the *Betriebsberater* for March 1963 (pp. 72-73) contains a short commentary by *Dr. Wolfgang Wenner* on three judgments of the Court and on the second preliminary ruling. All three judgments (cases 16-17/62; 19-22/62; 31 and 33/62) concerned the E.E.C.-agricultural regulations and were given on December 14, 1962. They are summarised on pp. 210-211 in this issue. Their main importance lies in the clear statement that appeals for annulment by private parties ex Article 173 (2) E.E.C. can only be instituted against decisions. Regulations can only be indirectly attacked by them on the footing of Article 184, as soon as they are implemented by a decision affecting the private party concerned. Wenner also makes some observations on the second preliminary ruling (First Tariff Commission case, No. 26/62; 1 C.M.L. Rev. 1963-4, p. 82 with annotation Sk.) in which he analyses more particularly the contention by the German government, which was rejected by the Court, to the effect that Article 12 can only bind the member States and does not apply directly to their citizens. In spite of this rejection by the Court he makes the somewhat startling statement that the possibility "must not be excluded that a German Court will follow the contention of the German government". One would have thought that national judges—and German judges as well—are bound by an interpretation of Community law by the Court in Luxembourg. Case 26/62 has been annotated as well by *F-C. Jeantet* in *Juris Classeur Périodique* of May 8, 1963 (No. 13177). His conclusion which is perhaps more correct is rather the opposite from Wenner's: in his opinion the prime importance of this judgment for internal French law is the fact that a national judge can no longer invoke his own internal law—not even the constitution—in order to refuse to apply a rule of Community law as interpreted by the Court. In this respect the E.E.C. Treaty is "original" if compared with other "ordinary" international agreements. Thus, both from the national and from the international viewpoint the procedure of the preliminary ruling of Article 177 has provided the law of the Communities with a "valeur spécifique", which introduces into French law (and, one may add, into the law of other member States as well) a "supraconstitutional" judicial control. One cannot object against this pre-eminence of Community law. Article 177 has after all been incorporated into the national legal system in accordance with the national constitutional procedure. Be that as it may, the law of the Communities has not been *integrated* into internal law, but rather *substitutes* for it and prevails where there is any incompatibility. This ruling is also annotated by *L. P. Suetens* (in Dutch) in the Belgian *Rechtskundig Weekblad* of May 19, 1963 (pp. 1939-1943). Although in complete agreement with the "political" argument advanced by the Court, he criticizes some of the legal considerations.

The same issue of the *Rechtskundig Weekblad* contains also a general study of the preliminary rulings of Article 177 E.E.C. by *L. P. Suetens*. Suetens discusses various points which deserve attention. In the first place the question in which cases a

ruling may or should be requested. Secondly, which national judges fall within the scope of Article 177. Thirdly, the circumstances in which a court is not required to ask for an interpretation. He mentions three grounds: where there exists no doubt as to the meaning of a Treaty article, where it is not necessary to ask an interpretation for the solution of the dispute and—since the latest preliminary ruling of March 27, 1963 (the Second Tariff Commission case)—where the Court of Justice has previously given an interpretation on the same question. As to the effect of a preliminary ruling, Suetens is of the opinion that it constitutes an "arrêt de règlement", *i.e.*, it does not only bind the court which asked for the interpretation but its effect is *de facto erga omnes*.

The importance of the procedure of Article 177 of the E.E.C. Treaty for the development of the Community law has been discussed as well by *Dr. Dietrich Ehle* in the *Neue Juristische Wochenschrift* 1963, pp. 933-937. In his interesting contribution he analyses the different ways in which a national court can proceed when a question concerning the interpretation of the Treaty or the validity and interpretation of the Treaty or the validity and interpretation of Community acts is raised before it. Apart from the possibilities which are contained in Article 177 itself and which are also discussed in the article by Suetens, he indicates that, if a Community act involves a violation of the German constitution, the lower court might invoke a preliminary ruling of the *Bundesverfassungsgericht* (the German Constitutional Court). He rightly states that the procedure of Article 177 contains an extension of the limited right of private persons under the Treaty to attack directly a Community act. The author apparently concluded his manuscript before the Court in Luxembourg rendered its opinion in the consolidated cases 28-30/62. His conclusion that a preliminary ruling of the Court has only binding effect with respect to the case decided does not seem justified in the light of this second Tariff Commission case.

The judgment in the consolidated cases 2 and 3/62 (see p. 211 in this issue) has been annotated by *R. M. Chevallier* in *Recueil Dalloz*, 1963, pp. 297-302. This is the third case in which the Court of Justice has reminded a member State of its obligations. The two previous cases (Nos. 7/61 and 10/61, reported in [1961] Recueil, vol. VII, 635 and [1962] Recueil, vol. VIII, 3 respectively) both concerned Italy. In the first case Italy had violated its obligations under Article 31, which forbids the introduction of any new quantitative restrictions between the member States after the entry into force of the Treaty. In the second instance Italy had contravened Articles 12 and 14 of the Treaty by applying a customs duty on the importation of certain radiolamps and parts thereof higher than was permissible under the Treaty. The present case concerned the violation by Belgium and Luxembourg of their obligations under Article 12 which they had violated by increasing a "special import duty" on the importation of gingerbread after the coming into effect of the E.E.C. Treaty. The defence by the Belgian government that a distinction should be made between authentic customs duties and charges having an equivalent effect has been rejected by the Court. The technique of levying is not important, but rather its effect on imports from other states. Chevallier explains in his annotation the procedure of Article 169 whereby the Commission can institute proceedings against a member State before the Court, after having issued a reasoned opinion indicating which Treaty obligations have been violated by it. He compares and discusses this procedure with the somewhat similar one of Article 88 E.C.S.C. Short comments on this case have been written in *Aussenwirtschaftsdienst* 1963, pp. 91-93, where the relationship between Articles 9 and 12 on the one hand and Article 95 E.E.C. on the other are carefully discussed and in *Revue trimestrielle de droit commercial* 1963, pp. 176-183, by *Yvon Loussouarn*. The latter annotation discusses equally cases Nos. 16-17/62 and 19-22/62.

The Cour d'Appel decision of January 26, 1963 has been discussed before (cf. 1 C.M.L. Rev. 1963-4, p. 108) and the main contents of this case will

be found on p. 218 in this issue together with an annotation by Jean Robert. *Mezger* and *Schlieder* give their views on this case in *Aussenwirtschaftsdienst* 1963, pp. 84-87. Whereas both French commentators do not have any doubt as to the obligation of the Cour d'Appel to suspend its proceedings while awaiting the decision of the E.E.C. Commission, *Schlieder* does not accept the view that the limitation contained in Article 9 (3) of Regulation No. 17 is equally directed to ordinary civil courts. *Menges*, another German annotator of this case in *Neue Juristische Wochenschrift*, 1963, pp. 943-945 expresses similar ideas to Schlieder.

The *Recueil Dalloz*, May 29, 1963, pp. 367-370 contains an annotation by *Jean Robert* of two judgments by the Cour de Cassation of March 12, 1963 and the Tribunal de Commerce de la Seine of March 5, 1963 on the validity of sole agency contracts and their effect with respect to third parties. In these cases tape recorders and whiskey respectively had been imported by French companies in violation of existing sole agency contracts. According to French law unfair competition exists where an importer imports a product although he has knowledge of an exclusive dealership having been granted by the manufacturer to another distributor. The Cour de Cassation annulled a decision by the Cour d'Appel, which had appointed a court administrator to keep the tape recorders found with the outside importer in his custody until the latter had proved his ignorance of the sole agency contract, on the grounds that by so acting the Cour d'Appel had prejudiced the right of the outside importer to oppose the sole agency contract. In the second case it was not disputed that the outside importer had knowledge of the existence of the sole agency contract, which had been notified to the E.E.C. Commission. The Tribunal de Commerce decision contains a précis of the Cour d'Appel judgment of January 26, 1963 which was discussed in the previous Survey of Literature (1 C.M.L. Rev. 1963-4, p. 108) and which is annotated in this issue. The Tribunal reconciled two opposing principles, on the one hand the principle that a national court has to suspend its proceedings as soon as the Commission has initiated any action pursuant to Articles 2, 3 or 6 of Regulation No. 17 (cf. decision of January 26, 1963 above), on the other the principle which follows from the Bosch case, namely that an agreement which has been regularly notified is valid until the Commission has decided otherwise. The Tribunal suspended its proceedings in the sense that it did not pronounce itself on the question of unfair competition nor did it grant compensatory damages, but at the same time it prohibited any further imports outside the regular channels by granting the request for an injunction on the part of the regular importers.

L. Goffin has recently written two articles on the responsibility of the Communities pursuant to Articles 34 and 40 E.C.S.C. In the Belgian *Journal des Tribunaux*, 1963, pp. 113-116, he discusses the liability of the E.C.S.C. for wrongful acts other than the "faute de service". The way this liability is regulated in the Treaty is rather unsatisfactory. The Court of Justice has only jurisdiction with respect to some of the disputes, namely only in so far as the claim for damages is based on a wrongful act of a servant of the Community. In all other cases the national courts are competent in accordance with Article 40 (3). The result is that divergencies exist with respect to the applicable law. Apart from that, jurisdictional conflicts may arise between national judges and between them and the Community judge. The Court of Justice has sole jurisdiction in cases pursuant to Article 34 E.C.S.C. which applies where a decision or a recommendation by the High Authority has been quashed by the Court (ex Articles 33 or 35) and such measure had caused a direct and special injury to an undertaking or a group of undertakings. If the Court has recognized the measure to be "a fault of such a nature as to render the Community liable", the High Authority is obliged to take "suitable measures to ensure equitable redress for the injury". Goffin considers Article 34 to be a special application of Article 40 from which it derogates. He has written a more detailed study of the relationship between Articles 34 and 40 E.C.S.C. and their mutual relationship

in Dutch in the *Rechtskundig Weekblad* of June 9 and 16, 1963 (Nos. 40 and 41). He analyses many questions: which persons may institute an action; which conditions must be fulfilled before Article 34 can be resorted to; the contents of a wrongful act by the Community, and of a servant in the performance of his duties etc. The author also discusses the similar Articles 176, 178 and 215 (2) E.E.C.

The *American Journal of Comparative Law* Vol. 11, No. 3 for Summer 1962 at pp. 325-347 carries a skilful analysis by *Thomas Burgenthal* of "The Private Appeal against Illegal State Activities in the European Coal and Steel Community". He explains that the acts of a member State may be indirectly tested by a demand to the High Authority for a decision on the validity of such acts by any interested enterprise. The High Authority must rule on this, and its response can be tested by an action for annulment against the High Authority in the Court of Justice. This provides a very satisfactory check on the activities of the member States, but such procedure is unfortunately not available under the E.E.C. Treaty against the Common Market Commission.

To conclude this section the contents of *Common Market Law Reports*, Vol. II Pt 5, are given. They contain reports of the following cases: *Worms* v. *High Authority*; *Societa Industriale Acciaierie San Michele* v. *High Authority*; *Aspa* v. *Superbazars* (judgment of the Commercial Court of Brussels of March 23, 1962); *Société Commerciale Antoine Vloeberghs S. A.* v. *High Authority* (*Belgian Govt.*, third party); *Breedband N.V.* v. *Société des Acièries du Temple* and *High Authority*; *Kon. Hoogovens en Staalfabrieken N.V.* v. *High Authority*; *Reda* v. *Societa Mondini* (judgment of *Corte de Cassazione*, Rome, May 14, 1962).

The Common Market Law Reports, Pt 6 for June 1963 contain reports of the First Tariff Commission case before the Court of Justice, *N.V. Algemene Transport- en Expeditie Onderneming Van Gend en Loos* v. *Nederlandse Tariefcommissie*. The other cases from the European Court are *Milchwerke Heinz Wöhrmann & Sohn KG* v. *E.E.C. Commission*; *Alfons Lütticke G.m.b.H.* v. *E.E.C. Commission*; *Confédération Nationale des Producteurs de Fruits et Légumes* and ors v. *Council of the E.E.C.*; *Fédération Nationale de la Boucherie en Gros et du Commerce en Gros des Viandes* and ors v. *Council of the E.E.C.*: and the Gingerbread case, *E.E.C. Commission* v. *Grand Duchy of Luxembourg and the Kingdom of Belgium.*

Cases reported from national courts are *Societa Biscotti Panettoni Colussi di Milano* v. *Ministero del Commercio con l'Estero* in the Italian Council of State (citizen of a member State may invoke the E.E.C. Treaty provisions *e.g.*, Article 12); *Vereniging van Fabrikanten en Importeurs van Verbruiksartikelen (F.I.V.A.)* v. *Mertens* in the District Court of Amsterdam (national court bound to follow interpretation of E.E.C. Treaty by the Court of Justice); *S. A. La Corbeille* and ors v. *Société Coopérative Marie Thumas* and anor in the Commercial Court of Brussels (meaning of 'European authorities') and two cases from the French courts, *Établissements Consten* v. Société Union Nationale des Economies Familiales (UNEF) s.a.r.l. decided in the Paris Court of Appeal, and the case of *Société Arlab Import-Export* (SARIE) v. *UNEF* in the Tribunal Commercial de la Seine. (This last case decided that proceedings to determine the validity of an agreement under Article 85 (1) may continue notwithstanding notification by one party, provided that the Commission has not initiated any action under Art. 9 (3) of Regulation No. 17.)

Competition

Wirtschaft und Wettbewerb 1963, pp. 203-217 contains an article by *George Malzer* on E.E.C. cartel law and the supply of energy by means of gas, water and electricity. Whereas other sources of power such as coal and atomic energy fall outside the scope of the E.E.C. Treaty pursuant to Article 232, the Treaty, and in particular the rules of competition apply to gas, water and electricity. This is above all clear from Article 2 of the Treaty which embraces in principle all economic activities.

The author discusses the national regulations on the supply of power, with special emphasis on Germany, and the conceivable impact Articles 85 *et seq.* may have on the various agreements which exist in this field. Malzer pays special attention to the concept of "undertaking" in Article 85 (1) of the Treaty. Municipalities and other territorial corporations, which are often charged with the supply of gas etc. should in his opinion potentially be considered as undertakings when they conclude agreements for the supply of energy, at least in Germany, since one should adopt a functional criterion rather than a legal one. He comes nevertheless to the conclusion that only few contracts for the supply of some kind of power should be notified, in view of their special nature which does not make it likely that they are "liable to affect trade between member States". Malzer finally discusses the contents of Article 90 which prohibits the member States of the E.E.C. to introduce or maintain any measure contrary to the Treaty (especially Article 7 and the rules of competition) with respect to public undertakings or undertakings to which special or exclusive rights are granted. On the other hand this is only true with respect to concerns entrusted with the management of services of general economic interest "in so far as the application of such rules does not obstruct the *de jure* or *de facto* fulfilment of the specific tasks entrusted to such concerns" (Article 90, paragraph 2). Malzer poses the question whether this provision contains a general Treaty exemption of activities concerning the supply of energy. The author gives a negative reply to this question, but points out that in individual cases the circumstances of Article 90, paragraph 2 may apply.

Since the dates before which existing cartel agreements had to be notified have passed, the attention has gradually shifted from problems concerning the kind of agreements which had to be notified to the legal consequences of such timely notification. *Bernhard Kaul* gives an interesting analysis of Article 7 of Regulation No. 17 in the *Aussenwirtschaftsdienst* of the *Betriebs-berater*, 1963, pp. 99-104. This Article provides for a certain "escape" from the prohibition laid down in Article 85 E.E.C. If certain conditions are fulfilled—which includes above all notification in time—the Commission is empowered to decide that this prohibition does only apply for a period which it shall fix. Since this period may be equal to zero it is clear that the legal consequences of decisions by the Commission pursuant to Article 7 are substantial. Kaul discusses the consequences of such decision under both private—and public law. He is of the opinion that Article 7 does not permit legalisation of previous "bad behaviour", but rather limits the consequences of annulment under Article 85 (2) to acts which at some time were contrary to Article 85 (1) of the Treaty. The effect on third parties is that claims for compensation of damages are excluded, since this would be contrary to the policy of Article 7. Any decision by the Commission imposing penalties must be limited to the period of prohibition.

The contribution by *Giorgio Bernini* in the *Journal des Tribunaux* of May 26, 1963, pp. 345-349 analyses the possibilities of applying Article 85 (3) to certain categories of agreements. He examines two questions in particular. The first question concerns a situation where one enterprise has concluded numerous contracts, which economically speaking all belong to one type. The question may be posed whether the Commission is authorised to declare the prohibition of Article 85 (1) not applicable to the instant cases by means of one single decision. Prof. Bernini answers this question in the affirmative. Whereas the first question deals with a set of existing agreements stipulated by one enterprise, the situation in the second hypothesis is quite different. Here the question is whether the Commission may grant exemptions *in abstracto* to categories of agreements which fulfil certain conditions by means of a single decision pursuant to Article 85 (3). Bernini replies to this question in the negative: he judges that a regulation is required, which should not be issued by the Commission but by the Council. In this respect he follows closely the argument advanced by *Catalano* in his *Manuel de Droit des Communautés Européennes* (1962),

p. 330. *Eeckman* in a similar study on the question of the applicability of Article 85 (3) (*Revue de droit intellectuel—L'ingénieur Conseil*, 1963, pp. 22-38) sees the possibility of limited delegation by the Council to the Commission of the power to grant categorical exemptions by way of regulation. In his opinion such delegation would not exceed the powers given to the Commission under Article 155 of the Treaty. Nevertheless he adds that the Council has not delegated any regulatory power to the Commission to grant exemptions under Article 85 (3). He is in agreement with Bernini as to his statement that the Commission may issue decisions under Article 85 (3) which group a category of existing individual contracts together.

The growing inter-relationship between national and international rules of competition is well illustrated by a comprehensive article by *Jörg Bieberstein* on "The German Cartel Law and its Administration: Role of the Federal Cartel Office in regard to the E.E.C. Antitrust Provisions" in *International and Comparative Law Quarterly* (1963) (pp. 850-885). It contains a description of the substantive law relating to cartels in Germany and a description of how decisions are taken by the Federal Cartel Office and others in respect of cartels, resale price maintenance, licensing agreements, market-dominating enterprises and unlawful boycott. It also explains the policy of the Cartel Office in its co-operation with the E.E.C. under Articles 85 and 86.

Towards the end of last year two German commentaries on the European cartel laws were published. Both of them are primarily intended to guide the practitioner and business adviser in the decisions which these had and still have to take with respect to notification of agreements, requests for negative clearances and the like. *Gleiss Hirsch*, "Kommentar zu den Artikeln 85 und 86 EWG-Vertrages", Heidelberg 1962, 190 pages) contains all the relevant texts of the Treaty and the various Regulations (including the communication by the Commission of December 24, 1962 concerning sole agency agreements). The other commentary, by *Gerd Kleemann*, entitled "Die Wettbewerbsregeln der EWG" (Baden-Baden 1962, 92 pages) does not contain any texts which is regrettable. Special attention is deserved for Kleemann's thesis that the rules of competition contained in Article 85 *et seq.* are contrary to the German constitution since they are not precise enough (pages 18 et seq.).

Both the address given by *Loftus E. Becker* and reproduced in the *Antitrust Bulletin*, 1963, pp. 3-83 and the short observations by *Arved Deringer* in the *International and Comparative Law Quarterly* (1963, pp. 582-590) are of topical importance. They concern the effect of the Common Market competition rules on non-member countries. Deringer's comments are of a general nature whereas Becker's article is more particularly geared to the effect on American companies, operating both inside and outside the Common Market. Neither the Treaty itself nor Regulation No. 17 contain any provision limiting the territorial application of these rules. In this they differ from the British, German and American anti-trust legislation. The sole criteria are the restriction or distortion of competition within the Common Market and its liability to affect trade between the member States. Both effects can be achieved by parties situated outside the Common Market area. The question whether the competition rules relate also to subsidiary companies has not been solved either in a special provision as has been done in the Restrictive Trade Practices Act of 1956. The answer depends on the significance of the word "undertaking", which is not further specified. Deringer is of the opinion that an enterprise which does not have an independent economic life cannot act contrary to Article 85 (1) of the Treaty. The latter part of his article is devoted to licensing agreements. The lengthy article by *Gerard J. Weiser* in *Wirtschaft und Wettbewerb*, 1963, pp. 285-307 is closely linked to the problems dealt with by Deringer. It is concerned with the legal problems which joint ventures may encounter in the E.E.C. especially those in the anti-trust field. He comes to the conclusion that joint ventures will not meet any real problems in the national laws of the member States. On the other

hand there exists an uncertainty whether or not the contract underlying such venture would fall within the scope of Article 85 (1) E.E.C. Weiser is of the opinion that this form of commercial activity may well prove to contain many promising aspects. His general impression is that joint ventures are essentially compatible with the aims and principles of the Rome Treaty.

Edgar Salin has written a general criticism on the prohibition of cartels and economic concentrations in *Kyklos*, 1963 (2), pp. 177-203. He comes to the conclusion that the prohibition as an instrument of an economic policy is useless, even if one considers free competition the most important object of this policy. The trend towards concentrations cannot be stopped and a cartel legislation containing a prohibition even promotes this feature. In his opinion only an abuse-legislation can harmonise the desires of development on the one hand and economic freedom on the other. In this connection a statement by *D. L. Macklan* and *D. Swann* in a general survey of the E.E.C. competition policy in *The Economic Journal*, 1963, pp. 54-80 deserves attention, where they state: "The Regulation (No. 17) makes clear that the E.E.C. Law leans toward the prohibition rather than the abuse principle, although it must be confessed that in practice this bias could be reduced substantially if exemptions were to be granted frequently".

"Developments under the Common Market Antitrust Regulations" is the title of a contribution by *Brian D. Forrow* in the American *Business Lawyer*, 1963, pp. 791-806. It contains a comprehensive analysis of Regulations Nos. 17 and 153, and the statements of the Commission of November 9, and December 24, 1962, together with some observations quoted from a speech by Mr. VerLoren van Themaat made in the United States on the conceptions of "enterprise" and "restrictions effecting trade between member States".

The *Aussenwirtschaftsdienst* of the *Betriebs-berater* contains in its May issue (1963, pp. 125-130) an interesting survey by *Klaus-Dieter von Horn of* the national legislation in Western Europe with respect to dominant positions and monopolies. The laws of the Netherlands, West-Germany, Belgium, Denmark, Great-Britain, Norway and the E.C.S.C. are considered. Of each of these laws von Horn describes the definition of a dominant position, the legal provisions and their application. France and Luxembourg do not have any legislation in the matter and in Italy there exists a draft law of February 24, 1960 which still has not yet passed Parliament. The very useful survey demonstrates a great diversity in legislation which is both understandable and unnecessary.

In the first place of interest to practising lawyers and businessmen are the following three contributions. *Peter Hay* writes in the *Rutgers Law Review*, 1963, pp. 305-334 on "Some problems of doing business in the regional markets of Europe". It deals with problems of establishment in E.F.T.A. and the E.E.C. (but principally the latter) and covers problems concerned with the employment of non-nationals, the transfer of capital, and the anti-trust provisions. The *Journal of Business Law*, 1963, pp. 119-130 contains an article on the problems facing subsidiaries of companies when they intend to establish themselves within the Common Market. In it *Dennis Thompson* analyses the Treaty provisions with regard to companies, and makes some observations on the problem of recognition, and the position of subisidiaries in relation to tax and anti-trust matters. Thirdly there is a print of a lecture by *P. Leleux* of the Legal Service of the European Executives on "Companies and the Common Market" in the *Journal of the Law Society of Scotland*, 1963, pp. 103-111, which deals with similar problems.

The Commission has announced in the Sixth General Report on the Activities of the E.E.C. that it has undertaken a comparative legal study of the national regulations in the field of unfair competition in order to get an idea of those differences which hamper mostly the free movement of goods. Last June the Netherlands Association of Jurists discussed this subject at its yearly meeting (rapporteurs: C. H. Beekhuis and W. J. Slagter). *Prof. Eugen Ulmer* has also written on this subject

in *Industrial Property*, 1963, pp. 33-43. The author describes the divergent national laws within the Community and stresses the need for harmonsation. He recommends that the European Patent Court, if constituted, should also rule on matters of unfair competition so that a uniform standard may be established.

One of the key problems of the draft European Patent Convention, namely the question whether non-accessibility of the benefits of the convention to nationals of third countries would be contrary to Article 2 of the Paris Convention of 1883, is discussed by *Albert Colas* in *Industrial Property*, 1963, pp. 48-51. He comes to the conclusion that the nature of the extra-territorial rights conferred by the European Convention, together with the supranational character of the authorities supervising it, serve to bring the Convention outside the provisions of Article 2, but this view is hardly shared by *Professor Ulmer* writing in the same issue (pp. 51-60) on "The Availability of European Patents and the Paris Convention". In the *International and Comparative Law Quarterly*, 1963, pp. 886-897 there is an address by *Dr. Froschmaier* to a meeting of the British Institute dealing with some aspects of the draft Patent Convention, especially with the scope of the future European Patent Law, the procedure for granting patents under it and the future progress of the Draft. Finally there is a contribution by *F. G. Guttman* on another branch of the industrial property law, i.e. the draft convention for a European Trade Mark law. In the *Journal of Business Law*, 1963, pp. 176-179 he gives a summary of the main features of this draft, which the author considers is based substantially on the United Kingdom Trade Marks Act of 1938.

General

The *International and Comparative Law Quarterly* for April, 1963 contains some articles which are of interest to those studying the Community law. *Rudolf Graupner* writes (pp. 367-386) on "Some recent aspects of the Recognition and Enforcement of Foreign Judgments in Western Europe". He describes the principles underlying the recognition of foreign judgments in the various member States, as well as in Britain, and reviews the contents of the bilateral conventions already existing between them. He then gives an account of the draft convention which is being prepared by the governments of the countries of the E.E.C. *I. M. Sinclair*, assistant legal adviser to the Foreign Office, contributes an authoritative article on "The principles of Treaty interpretation and their application by the English courts" (pp. 508-551). The author analyses the principles of Treaty interpretation in international law and considers how far they have been applied by the European Court of Justice. He then examines the principles adopted for Treaty interpretation by the English courts, and arrives at the conclusion that much depends on the way in which the Treaty was made to apply to the United Kingdom. If the whole Treaty were made part of the law of the United Kingdom, then the same international law principles will apply generally, but where the provisions of the Treaty are separately enacted, then the rules of interpretation will be those accepted in other statutory contexts. His provisional conclusion of the analysis of methods of interpretation used by the Court of Justice in Luxembourg is, that although the unique character of the three Community Treaties and the special function of the Court as administrative judge have to some extent limited the elements of traditional public international law, there are nevertheless many indications to support the thesis that the Court, "is prepared in appropriate cases to adopt and to rely upon the established canons of construction of international treaties" (p. 524). In this same issue *J. T. Lang* presents "A constitutional aspect of economic integration: Ireland and the Common Market", (pp. 552-581). This gives a detailed account of the constitutional problems of the Republic of Ireland, and the extent to which under the Irish constitution the legislative power is vested in the *Oirachtas* and cannot except for subordinate legislation be transferred to any other body.

Joining the Common Market would probably require the amendment of the constitution, or at any rate the opinion of the Supreme Court.

Social matters

According to *Lionello Levi Sandri*, member of the E.E.C. Commission, some real progress has been made in the achievement of the social policy of the Community in the last five years (*Europa Archiv*, 1963, pp. 107-114). The most important results have so far been the high degree of employment, the increase in real wages and the shortening of working hours. The author gives a short but illuminating survey of the principles underlying the Commission's activities in the social field. Sandri's evalution of the future developments is somewhat too optimistic, since he believes that the social provisions are by themselves stimulated becasue of the operation of a Common Market. There would nevertheless seem to be two major obstacles: the first being the great divergences in social structure within the Six and secondly the fact that very few legal powers are given to the organs of the Community to implement a common social policy. The contribution by *J. J. Ribas* is of a more technical nature. He writes about the freedom of movement and social services for workers travelling within the E.E.C. in *Revue du Marché Commun*, No. 57, 1963, pp. 150-158. After having given a summary of the regulations which have implemented the principles of freedom of movement for foreign workers incorporated in Articles 48-51 of the E.E.C. Treaty, the author gives a survey of the provisions of a recommendation which the Commission addressed to the member States last year (Official Gazette No. 75, August 16, 1962). The purpose of this recommendation has been to direct the attention of the Social Services of the various countries to the manifold problems (such as housing, language etc.) facing workers which have adopted jobs abroad and to stimulate their activities in helping to overcome them. Already the first measures have been taken to implement this recommendation.