SURVEY OF LITERATURE

General and Institutional

With increasing publicity being accorded to the pending fusion of Community executives and the debate surrounding the strengthening of the European Parliament, the anonymous contribution on the budgets of the European Communities in *Rev. du Marché Commun* (No. 68), April 1964, pp. 116-124, is to be welcomed. Five pages of tables on the evolution of budget figures, with breakdowns according to functional, operational, and special funds credits and personnel posts provide a useful measure of the expansion of Community activities and their impact on administrative structure. The commentary expresses criticism of the haphazard growth of personnel and organisational charts, indicating that "Parkinson's Law" applies in the Communities as fully as in other bureaucracies. The implications of the doubling of expenditures in the years 1960-1964 for the relationship of Community institutions and the role of Parliament are, however, not treated. See in this regard, the article by *Druker*, this issue of *C.M.L. Rev.* at pp. 168-196.

"The official pressure group of the Council of Europe's Consultative Assembly" is the title of an article by *A. Glenn Mower Jr.* in *International Organisation*, Spring 1964, pp. 292-306. Its object is to draw attention to the work of the Permanent Working Party on Parliamentary and Public Relations, which consists of parliamentarians from both the majority and minority groups in the national parliaments. The group aims at securing acceptance of the resolutions of the Assembly in the member countries, and promotes resolutions themselves in the Assembly. The author is right to point out the low level of public awareness of the Council of Europe and its activities, and the need for all the publicity that the working party is able to give it.

Above all in Germany have the legal problems arising out of the precedence of Community law over national law been viewed in the light of the well-known antithesis between the monistic and dualistic conceptions of the relationship of national law to classical international law. The contrast between these two theories is the subject of a methodological analysis by *Heinz Wagner* of the European Institute of Cologne University, *Archiv des Offentlichen Rechts*, June 1964, Vol. 8, pp. 212-241. He comes to the conclusion that both theories are equally defensible as logical systems. The adherents of the monist theory in particular have "adapted" their views on the existing practice. According to them, national law, a which violates international law, remains intact as long as the competent legislators need to abolish or amend it. Wagner is of the opinion that it is only in this form that the monist theory is accepted at present by a number of authors. This "adaptation" considerably reduces the differences in practice between the contrasting theories. The author nevertheless prefers the monist principle, mainly on psychological grounds: it presents more opportunities for international rules to penetrate into the internal legal order of the state, because it recognizes international law to be *eo ipso* a source of law in the domestic legal order. The dualist conception on the other hand prevents by definition international law from influencing national law.

Dennis Thompson has drawn up a balance sheet on the internal development of the E.E.C. since the breakdown of the British negotiations in the *I.C.L.Q.* 1964, pp. 830-853. He points out that the political crisis of January 1963 persists, although the Community has clearly made progress in some technical fields. Of these latter he refers in particular to the competition rules, agricultural policy and the harmonisation of laws. Attention is also paid to the new case law of the Court of Justice.

Human rights

A number of stimulating articles have recently been published on the European

Convention on Human Rights. *Prof. Hermann Mosler* (himself a judge of the Court on Human Rights) has given a general account of the Convention during the first decade of its existence in *Georgetown L.J.*, 1964, pp. 800-823. The author indicates that the Convention has had a positive effect, but that the categories of rights in the social sphere should be enlarged, He also urges that there should be access to the Court in all cases where the decisions (now made by the Commission or the Committee of Ministers) depend on the solution of legal issues. A survey of the legal effect of the Convention in the various member countries has been given by *Thomas Buergenthal* in the *Buffalo L. Rev.*, 1964, pp. 354-392. It is disconcerting that only in the Netherlands are the provisions of the Convention quaranteed against being superseded by a subsequent national law. Finally the note of *Dr. W. P. Pahr* on the Fourth Protocol of the Convention must be mentioned (*Jur. Blätter*, April 11, 1964, pp. 187-197). The new protocol has been signed on September 16, 1964 and will enter into force upon ratification by five member States. It contains an additional set of rights which will now fall within the scope of the Convention. The author regrets that Article 6 of the protocol opens the possibility of acceptance of the individual complaint procedure for a limited number of rights only. This constitutes a derogation from the procedure laid down in the Convention itself and weakens the significance of the protocol as a general declaration of human rights,

A second achievement of the Council of Europe is the European Social Charter signed at Turin in 1961. *F. M. Baron van Asbeck* devoted a study to the legal significance and the implementation of the Charter in the Festschrift *Mélanges Henri Rolin*, Paris 1964. He analysed in particular the etent to which the contracting parties have bound themselves and the control over the execution. He comes to the conclusion that the binding effect of the Charter is very limited, in comparison with the original proposals of the Consultative Assembly and the Convention on Human Rights. As far as the control on the observance of the rules is concerned, he points out that in general any direct applicability is excluded ("the member States bind themselves to..."). Only in two instances a more positive wording has been chosen: "The member States recognize the right ...". This phraseology may be interpreted in such a way as to enable a national Court to adjucate on any violation of these rights.

Agriculture

The "chicken war" between the United States and the E.E.C. in 1963, the legal aspects of which were discussed by Daleiden in this Review, 1963-4, pp. 339-351, was not only of interest to the American exporters of frozen poultry-meat, but in a sense constituted a test case for the development of trade in agricultural products between trade blocs. This is clear from the contribution of *Herman Walker* in *A.J.C.L.*, July 1964, pp. 671-686. The origin of the dispute lies in the first negotiations between the E.E.C. (in process of formation) and its trade partners, pursuant to Article XXIV of the G.A.T.T. Neither at that time nor at the occasion of the package deal of March 7, 1962 could agreement be reached on the export of poultry from the United States (together with wheat, rice, corn and sorghum). Walker pointed out that the settlement procedure followed in this case (advice to the parties by an independent panel appointed by the Council of Ministers of G.A.T.T. about the amount of exports as from August 1, 1960) may prove to be a useful precedent in future disputes. An arbitration procedure is not formally provided for in the G.A.T.T. as it was felt to be premature in 1947.

Establishment and services

Few areas of Community law have until now received so little attention in the general literature on the Common Market as the right of establishment and the free supply of services. This may be explained by the fact that the Treaty indicates only the way in which existing restrictions must be abolished. The general programmes based on Articles 54 and 63 have no direct binding force and received therefore limited notice at the time of their publication. These programmes serve as legal basis for the directives which are to implement the abolishment of restrictions for the different sectors; directives are, however, not directly binding for individuals. Consequently, only those who have felt themselves specifically and seriously affected have received any knowledge of them. The surveys of the present state of affairs by *Oppermann* in *Betriebsberater*, May 20, 1964, p. 563 and by *Van Gerven* in *Journal des Tribunaux* of May 31, 1964, pp. 357-362 are therefore very useful to the general reader of Community law. Oppermann's compressed survey indicates mainly the sectors in which directives have been enacted (see also the Legislation Sections in this Review). Van Gerven, on the other hand, deals specifically with the object of the Treaty provisions, the status of foreigners in Belgium, and the nature of the bilateral treaties of establishment which existed already prior to the entry into force of the E.E.C. and which aimed at restricting discrimination between foreigners and nationals. In a second part the author described the principle underlying Articles 52-66 in a manner similar to that of *Gaudet* in Sociaal Economische Wetgeving 1961, pp. 52-68. He rightly indicated the great difficulties which still have to be overcome in the co-ordination of national rules concerning diplomas and mutual recognition of certificates.

Transport

How much remains to be done in order to achieve a common transport policy becomes clear from a reading of *Carl H. Fulda's* contribution in the *A.J.C.L.*, 1963, pp. 303-336 on "The Regulation of Surface transportation in the European Economic Community". It contains an analysis of the various and varying national laws relating to transport in the member States, together with the Treaty provisions in the E.E.C. His conclusion that the Community policy is moving slowly along the right track, is certainly not shared by all governments of the member States!

The *Betriebsberater* of June 30, 1964, p. 741 contains an anonymous contribution on the special tariffs instituted for the Saar territory by the West German railways as of June 1, 1964. These tariffs are intended to enable the railways to meet more effectively the potential competition which will arise as a result of the construction of the Saar-Pfalz Canal. Query, however, whether these tariffs do not fall under Article 70 par. 4 E.C.S.C. and therefore need the authorisation of the High Authority or whether they constitute general tariff measures pursuant to Article 70 par. 5. For these latter no consent by the High Authority is required. Both the High Authority and the Court of Justice favour the former alternative. The author believes that, even so, the special tariffs will be approved, in view of the fact that a positive decision has been taken on this point in respect of the French railways.

Harmonisation of Laws

As the objectives of the E.E.C. customs union are achieved the necessity for harmonisation (and in some fields for unification) of laws becomes more urgent. Contributions mentioned in previous surveys stressed public law harmonisation. This time several articles must be mentioned which deal in particular with the adaptation of private laws. *Günther Beitzke* points in the *Zeitschr. f. Rechtsvergleichung*, 1964, pp. 80-94, to the influence of the Common Market on the national cartel-, contracts- and company laws. In the latter field the author observes a regrettable development. More and more unrelated new regulations are being designed to solve separate problems. Thus, the existing patterns become even more confused, raising a further obstacle to the desired harmonisation of the diversifying legal systems. Prof. Beitzke's views are further developed in an article in *Zeitschr. f. d. gesamte Handels- und Wirtschaftsr.*, June 1964, pp. 1-47, which is an abridgement of his study performed for the Commission on Article 220 sub par. 3 E.E.C. This provision foresees new agreements between the member States on the mutual recognition and the transfer of the registered office of companies. In this contribution Beitzke deals with the problems which would remain even with the adoption of a European Company law. He explains that not only the right to do business, but to own property, bring and defend claims, and retain management of internal affairs are involved. For two events, recognition and changing the *siège social*, the importance of unifying the law is underlined by the wide variations in nationally accepted company forms, the complex rules for protection of shareholders and creditors, and the existence of special public law concessions or restrictions. Further, the current practice of inquiring mainly into the actual *siège social* rather than the place of incorporation may be difficult to square with the Treaty. On the other hand, a firm from outside the Community with its actual seat in an E.E.C.-country, but incorporated under laws with adequate creditors' protections, ought to be recognised at least in the other member States, although there exists no present rule to that effect. Moreover, agreement on determining actual *siège social* is clearly necessary. Adherence to the Hague Convention of 1951 is shown to provide only minimal help, as the implications in the Treaty for unification of practice are much broader.

The discussion on the European Company law itself is marked by agreement on its utility, but by disagreement on the techniques to realize it. Nonetheless, *Prof. M. Vasseur's* essay in *Zeitschr. f. Schweiz. R.* 1964, pp. 135-162 focuses new insight on the very necessity for such a construct. Not only would freedom of exchange of goods and investment capital be improved by removal of mistrust due to ignorance of other company laws, but also the establishment of subsidiaries and branches, the changing of *siège social*, and the cross-national merger would be facilitated. E.E.C. textual support may be found in the "Principles" (Articles 3c, f, h), Article 100 ff., and the articles relating to corporate activities (Articles 52 ff., 67, and 220). The mere fact of "full mutual recognition" of national companies, however much that may include, would not eliminate the dispartities in each national system. He rejects too narrow the adoption of the limited liability company over the general corporation. Similarity with the approach of the Draft European Patent Convention will be seen in the author's argument for a European company law which neither forces uniformity among the member States, nor devises a new "supra-national" company. Urged is an institution to supplement existing forms, but to remain under the national rules. Finally, he notes the different possibilities which may be left open to the incorporators, and the requisite of a uniform interpretation.

Another subject of harmonisation mentioned by Article 220, the reciprocal recognition of judgments (sub par. 4) is discussed in a short note by *Kurt Nadelmann* in *A.J.I.L.*, July 1964, pp. 724-728. In it he voices sharp criticism of the E.E.C. draft convention, as it contains in his view a number of jurisdictionally improper *fora*. In view of the other existing efforts in this field, he expresses the wish that the E.E.C. draft will be modified so as to diminish "exorbitant" claims for jurisdiction.

Patents

A penetrating analysis of the present position of the Commission in respect of patent licensing agreements has been contributed by *Richard M. Buxbaum* in *Antitrust Bulletin* 1964, Jan./Febr. 1964, pp. 101-141.

The author points out a number of discrepancies between the provisions of the Treaty, Regulation 17 and the announçements of the Commission on the subject of patent licensing and know-how agreements, and indicates that there are many problems still to be resolved. It is no doubt true that the Commission is to some extent tied up in its own red tape. but this is not altogether its fault. Buxbaum makes the point that the Commission has more power than either the U.S. Department of Justice or the Federal Trade Commission, but he does not sufficiently stress that the Commission cannot wield these powers without the consent and support of the member States.

Monetary Policy

"A new form of International Financing: Loans in European Units of Account" by *Jean L. Blondeel*, *Columbia L.R.*, June 1964, pp. 995-1011 is an interesting commentary on the suggestion of Professor Fernand Collin that the European unit of account (on which the financing of the Communities is based) should be used for private international transactions. The author describes the European unit of account, which was valued at the gold price of the U.S. dollar in 1950. It is not however, linked thereafter to this price (although in fact both have remained constant), but to fifteen reference durrencies, The value of the unit of account is only moved when two-thirds of these currencies move in the same direction. It may therefore provide a more stable form of evaluating payment than the multiple currency clause, for in respect of the latter the devaluation of any single currency may adversely affect one of the parties. At the same time the author asserts that a provision for payment based on units of account is not equivalent to a gold clause and he provides suggestions as to how such provisions might escape the U.S. gold clause legislation.

Case Law of the Court of Justice of the European Communities and of national courts

Robert Kovar and *Laurent Lucchini* have reviewed several judgments which were handed down by the Court in 1963 (*Journal du Droit International*, 1964, No. 2, pp. 387-412. Kovar summarised the three cases in which tariff-quotas requested by Germany for "Brennwein" (No. 24/62, *Rec.* IX, p. 131), oranges (No. 34/62, *Rec.* IX, p. 27/1) and clementines (No. 25/62, *Rec.* IX, p. 199) were refused (for a summaiy of these cases see 1 *C.M.L. Rev.* 1963-4, pp. 351-352, 353-354). More fully discussed is the complaint of the Italian Government (No. 13/63, *Rec.* IX, p. 337, 1 *C.M.L. Rev.* 1963-4, pp. 352-353) against a Commission decision allowing France to levy a special duty on the import of Italian refrigerators. Kovar supported the Court and advocate general Lagrange's concept of "discrimination", a view which was earlier expressed by the Permanent Court of International Justice in several cases: Minorities schools in Albania (Ser. A/B No. 64, p. 19), German minorities in Poland (Ser. B No. 6, p. 24), Treatment of Polish nationals in Danzig (Ser. A/B No. 44, p. 28). Lucchini dealt with the case of Mrs. Schlieker v. the High Authority (No. 12/63, *Rec.* IX, p. 175). The complaint by Mrs. Schlieker was declared unadmissible: she was not an enterprise in the sense of Article 80 E.C.S.C.; further, the right to attack a *decision* under Article 66 (5) E.C.S.C., may not be extended to cases of alleged unlawful *omission* on the part of the High Authority. Lucchini drew attention to this *lacuna* in the legal protection of private persons and suggested that the theory of "implied powers" might have led the Court in this situation to adopt a different solution. Finally the case of Wöhrmann v. E.E.C. Commission (Nos. 31 and 33/62, *Rec.* p. 967, 1 *C.M.L. Riv.*, 1963-4, p. 211) was discussed.

Another French international law quarterly, the *Revue génerale de droit international public*, 1964, No. 1, p. 000 contains and illuminating study by *Jean Amphoux* on the much-discussed case No. 26/62 (*Rec.* IX, p. 3; 1 *C.M.L. Rev.* 1963-4, p. 82 with annotation Sk.). The article is divided into three parts. The first deals with the place and significance of Article 12 in the structure of the E.E.C. Treaty. The second part contains an analysis of the Court's role in the procedure of Article 177 E.E.C. The national request for a ruling and the effect of the Court's opinion are also discussed. Thirdly Amphoux underlines the uncertainty of precedence of Community law over national law and the authority of a preliminary ruling. The doubts which Amphoux expressed on the question of priority after the first Tariff Commission case were recently dispelled by the ruling in the case 5/64 (July 15, 1964, *Costa* v. *ENEL*, this issue p. 000 with annotation Sk.P). It is already quite certain that this case will remain for some time in the floodlight of legal interests in view of its clear and far-reaching statements on the position of Community law vis-à-vis national law. A very thorough analysis of this case by *Jochen Frowein* may be found in *A.W.D.*

1964, No. 8, pp. 233-238. Before the Court of Justice had expressed itself the Constitutional Court in Italy decided in a situation practically identical to *Costa* v. *ENEL* (March 7, 1964, No. 14, this issue, p. poo with annotation Catalano) that the Italian judge was obliged to grant priority to a later national law over an older Community law provision, in view of Article 11 of the Italian constitution. Like Catalano, *Piola-Caselli* has criticised this restricted view of Article 11 in *A.W.D.* 1964, No. 7, pp. 219-221. It will be interesting to observe the repercussions of the Community court interpretative ruling on the Italian constitutional situation. It is understandable that this judgment was received attentively in Germany. The German financial court *(Finanzgericht)* Rheinland-Pfalz (1 *C.M.L. Rev.* 1963-4, p. 463 with annotation Riehle) has presented the German Constitutional Court *(Bundesverfassrungsgeicht)* with a number of similar questions concerning the constitutionality of the law approving the E.E.C. Treaty, to which the latter has not yet replied.

More and more attention is paid as well to the task of the national judge who has to apply Community law. *R.M. Chevallier* wrote a short annotation to the judgment of the Court of Appeal *(Cour d'Appel)* of Douai of October 8, 1963 (*Rec. Dalloz*, April 29, 1964, Jur. pp. 299-300). The case concerned a dispute over old age allowances for a worker who had been employed both in France and in Belgium. Consequently Regulation No. 3 was applicable, which in turn led the Court of Appeal to request a preliminary ruling. This request was addressed, however, not to the Court of Justice pursuant to Article 177, but to the Administrative Commission created under Article 43 of Regulation No. 3 whose task it is to settle all "questions" of an administrative or interpretative nature. Chevallier rightly criticised the Cour d'Appel for having done so. In no circumstance should the description of an administrative task in a regulation be construed so as to derogate from the competence of the Court of Justice to give a preliminary ruling wherever a question of interpretation arises in a dispute. Another judgment in the field of social security was annotated by *Jean Minjoz* in the *Rec. Dalloz*, June 17, 1964, Jur. p. 419. The Court of Appeal of Paris on March 4, 1964 confirmed the ruling of a lower judge, adding together the periods during which a worker has worked in various member States, for the purpose of calculating the old age benefits due to him. The plaintiff, however, had asked for a separate calculation of the benefit for the time-period he had worked in Italy and France, which would have amounted to a more favourable pension. Such a separate calculation would have been possible under the Franco-Italian Treaty which existed prior to the entry into force of Regulation No. 3. This regulation, however, contains enforceable law and prescribes for a cumulation of work periods. A separate calculation is therefore no longer permitted. Minjoz, who was acting president of the Chamber which gave the judgment, stated in his annotation that the court of Appeal had no other choice. He indicated, however, the desirability of Regulation No. 3. being changed on this point.

Competition

Not perhaps very revealing to the specialist, the extremely lucid survey by *Prof. G. van Hecke*, "Le choix des cartels et des monopoles dans la C.E.E.", in *Schweiz. Jur. Zeitung*, July 15, 1964, pp. 213-218, offers an interesting entrée to the material. Swiftly outlined are the national systems of competition regulation, including their methods of administration; and the import of the Treaty rules, with comments on some of the enigmas posed by Regulation 17. Analysing the latter more closely is *Prof. Plaisant*'s article "La compétence de la Commission et des autorités nationales pour l'application des Articles 85 et suivants du Traité instituant la C.E.E." in *Rev. de Droit Intellectuel* (Jan./March 1964, pp. 1-13). A first part is devoted to Regulation 17, Article 3, para. (2): Who are the legal subjects empowered to bring an action for "Ending of Infringements" before the Commission? The problems raised by the foreign company active within the Six, and the concepts of enterprise and "justified interest" pass briefly in review. Discussion of Regulation 17 Article 9 comprises the bulk of the article : the limited but important role left to national authorities by para. (3), and the French jurisprudence *(Brandt, Consten, Maison du Whisky)* on the question of what constitutes a "procedure initiated by the Commission". Unfortunately, how the national judge must dispose of cases pending decisions of the Commission or European Court (also under Article 177 E.E.C.)) is only incidentally broached.

In materials relating more specifically to the substantive content of the competition rules an article in *Journal des Tribunaux* of May 10, 1964 (No. 44-47, pp. 305-309) about the interpretation of Article 85 E.E.C. by *Prof. Helmut Coing* of the University of Frankfurt is certainly deserving of special mention. Prof. Coing analyzes carefully the most important piints of controversy about the text of Article 85(1). He concludes that they are lurking in the words "affedt trade between the member States" which are designed to prevent, restrict or distort compethe various tition within the Common Market or which have this effect. After a description of views, in which he mainly follows the German literature, he elaborates principles of interpretation for the Treaty text in an attempt to resolve the oppositions. He concludes that the first troublesome clause must signify an *unfavourable* influence exercised upon inter-member trade: the broader French text "*affecter*" makes way, in this view, for the more limited other texts "*pregiudicare*", "*beeinträchtigen*" and "*nadelig beïnvloeden*". The restrictions of competition ,which provide the second area of difficulties, must be understood to relate *exclusively* to competition in the context of damage to the likelihood of economic traffic *between* the States. Indeed, this second criterion indicates not so much the nature of the restrictions of competition, but rather only the terrain within which the norm must be applied. *A. Gleiss* turns his attention in "Der Begriff der "aufeinander abgestimmten Verhaltensweisen" in Artikel 85 EWG-Vertrag", WuW 1964, June (Heft 6), pp. 485-494, to a related problem of interpretation. Acknowledging the American origins of the concept of "concerted practices", which has no counterpart in the German cartel law, Gleiss borrows heavily from the American jurisprudence and analysis. Going beyond other definitions in the literature and stressing especially the element of mutuality, Gleiss deems unprohibited either parallel action or price leadership. These are both explainable (in an oligopoly market) as similar reactions to similar market conditions, individually followed upon, although with realization that others may also behave the same way. The distinguishing element is namely that of the *common plan*, where each market participant consciously assumes the role of a partner in a mutual understanding, without ever having come to even informal agreement. Needless to say, proof of this will always be difficult, given contemporary business sophistication.

An attempt at clarifying another difficult area where the results of Commission study groups have been long anticipated was the Round Table of the Association Française d'Etude de la Concurrence of December 14, 1963. A summary of discussion is contained in "La position dominante en droit français et en droit européen", 1963 *Droit Europeen* (No. 53), pp. 523-526, by *R. Foures*. Problems raised were the vagueness of the French Law of July 2, 1963 (receiving, incidentally, extensive commentary by Rolf Belke, in "Das Französische Wettbewerbsrecht in Finanzgesetz No. 63-628 vom 2. Juli 1963", 1964 *Zeitschrift für das gesamte Handelsrecht und Wirtschaftsrecht* (Juni) 1964, pp. 48-73); the areas of coverage common to both the French law and Article 86 E.E.C.; and the tensions created by greater stringency of national than Community law.

The content of "enterprise" in both national and Community law has continued to be explored recently, with varying success. *O. Gandenberger*, in "Was ist ein Unternehmen", reviewed in 2 *C.M.L. Rev.* 1964-5 at pp. 123-124, attempted to employ a functional economic approach to obtain a judicially acceptable concept, in the context of the German cartel law. *J. de Rochemont* notes the evolution of the term's usage in France and emphasizes the opposition of the legal and economic approaches.

In "La Notion d'entreprise dans le droit des Communautés Européennes", 1964 *Droit Européen* (No. 33), pp. 306-322, the texts of the three Treaties are analyzed and seen to leave many doubts, as they use the term in both ways. On the other hand, the European Court has tended, in the context of the E.C.S.C., to follow the juridical definition as urged by the High Authority—using the criteria of natural or legal persons, instead of unity of economic purpose. While application of this jurisprudence to the E.E.C., particularly Arts. 85-86, must necessarily be done cautiously, the aims of both Treaties and statements of the Court leave little doubt that the legal concept will be retained.

Prof. *R. Plaisant* adds to the body of commentary on exclusive dealings arrangements with "Les contrats d'exclusivité", 1964 *Rev. Trim. de Droit Comm.* (Janv.-Mars, No. 1), pp. 1-28, an examination of French case law and legislation and the provisions of the Rome Treaty. An early distinction is made between the commercial relationships which in fact merely represent extensions of the producer's own chain of distribution, and contracts between truly independent economic agents. The exclusive supply or dealing contract is found on principle to be enforceable against third-person outside subventors (parallel importers), without the qualifications found in other jurisdictions. The serious impact of the rigorous prohibition against refusals to deal in the law of June 30, 1945 has been somewhat limited so that certain exclusive relationships may be maintained, but on the bases of economic justification nowhere found within the law itself. Article 85 E.E.C., coupled with Regulations 17 and 153, provides for exclusive arrangements a more liberal regime than French law, although consumers will tend nonetheless to be protected from high prices in practice. As for determination of national or Community competence, neither French nor Community jurisprudence has yet clarified the vagueness of Regulation 17 Article 9(3) and the *Bosch*-case. What "affects commerce between the countries", what is a "procedure initiated by the Commission", and "when must a judge suspend decision" are the familiarly recurring questions here summarily raised in a treatment similar to that in the author's other recent contribution noted above. The Italian viewpoint in the same area is presented by *R. Morera*, in "Considérations sur la clause d'exclusivité", 1963 *Le Droit Européen* (No. 53), pp. 297-305. Articles 1567-1568 of the Italian Civil Code, the only ones to deal expressly with exclusive dealings contracts, relate to supply contracts, but their principles are applied by analogy to other areas. Article 1743, relating to exclusive agencies, and the accessory or independent nature of an exclusive agreement are discussed in terms of the necessary economic consequences of the arrangement, as well as the reasons (*cause*) for entering it. Whether parallel importers can be attacked, is still a controversial point As for the Community rules, *Morera* agrees, with *Plaisant*, *supra*, that Regulation 153 is meant to provide only procedural simplifications, but argues that its material implications are indeed inconsistent with the framework of Article 85(1) and (3) E.E.C. Further, unlike Plaisant, he questions the Commission's exclusion of various representatives, whose effect on competition may be almost as deleterious as that of the independent exclusive dealer.

Recent action by the Commission has finally begun to provide guide-lines in this difficult terrain. "Gegenseitige Kollektive Ausschliesslichkeitsbindungen", 1964 *Aussenwirtschaftsdienst des Betriebs-Beraters* (30 Juni, Heft 6), pp. 187-188, contains a statement of background facts and excerpts from the first Recommendation of the Commission to a cartel, directed to discontinue offensive practices (E.E.C. Bulletin No. 5/1964). A mutual exclusive dealings agreement between several producers of building materials and two associations of users and dealers, assuring delivery only to "recognized" clients, was found to violate Article 85 (1) E.E.C. Not only were both participants and non-participants in the arrangement substantially limited in their market freedom, with a negative effect on inter State trade, but also the weakness of purported expertise requirements and the arbitrary exclusion of general contractors persuaded against authorization under Article 85 (3) E.E.C.

The above Recommendation was followed on March 11, 1964 by the first Decision of Negative Clearance of the Commission. The mutual exclusive dealings agreement for Swiss territory, between a French producer (Grossfillex) and a Swiss firm, on whom was imposed a re-export prohibition, was found not to conflict with Article 85(1). The grounds offered for the conclusion that the agreement had neither the object nor the effect of *perceptibly* preventing, restraining or distorting competition within the Common Market were: 1) The Swiss dealer was unlikely to desire the reimport into the Common Market, because of the tariff and other price differentials; 2) there were sufficient competing producers within the Six; and 3) there had been no complaints by interested parties. This summary appears in 1964 *WuW* (Juni, Heft 6), pp. 558-562, noted by *F. Kirschstein*, under "Unbedenklichkeit eines Alleinvertretersvertrags und Reimportverbots mit EWG-Ausländern". The annotator believes that the limitation of the sweep of Article 85(1) by the qualification "perceptibly" is probably the most importatnt aspect of the decision. Further it provides relief for the numerous similar arrangements concluded with foreign firms. It is not clear, however, whether the first two material criteria of the Commission are to be applied cumulatively.