General

In view of the merger of the three European Communities it is improtant that attention be paid also to the least known of them: Euratom. In *Les Problèmes de l'Europe,* 1965, No. 28, pp. 20-31, *Hans Heinrich Kruse* discusses briefly the functioning and the aims of this Community, and goes on to analyse the German attitude towards it. This member State objects to the policy of the Euratom Commission, namely, concentration on the ORGEL project (development of a special kind of reactor, using enriched uranium); it considers incorrect such intense specialization in one project only. Moreover, Germany denies that it belongs to the task of Euratom to develop its own projects: primarily it should stimulate and aid indirectly the research in the member States. The article makes clear that Germany is not very happy with the functioning of Euratom, although it does not object to the supranational character of the Community itself.

H. Ph. Visser 't Hooft writes on the research-contracts of Euratom in *Cahiers de droit européen,* 1965, No. 2, pp. 148-153. He deals particularly with those features of the contracts which are related to the special aspects of their subject matter, and thereby distinguish them from ordinary contracts. It appears that in almost all these contracts exclusive competence is given to the Court in Luxembourg to decide disputes arising between the parties.

Council of Europe

In the *Revue de droit international et de droit comparé,* 1965, Nos. 3-4, pp. 189-211, *H. Golsong* provides a survey of the legal activities of the Council of Europe in 1964. Most important was the fact that the new Committee for Legal Cooperation has held its first meetings. It has recommended the publication of a report on the preparatory documents of all conventions concluded, in order to further a uniform interpretation of them. The Commission of Human Rights has amended its rules of procedure; individual complainants may now obtain free legal aid. During 1964 the Commission decided upon the admissibility of 284 complaints by individuals; in 9 cases the complaints were admitted. In two cases the Commission has transmitted a report to the Committee of Ministers; no cases were refered to the Court.

Under the title "The Protection of the Right of Property of Nationals under the First Protocol to the European Convention on Human Rights", *Egon Schwelb* criticized in the *American Journal of Comparative Law,* Vol. 13, No. 4, pp. 518-541 the way the Commission of Human Rights has interpreted Article 1 of that Protocol in its decision *Gudmundsson* v. *Iceland,* Yearbook III, p. 394 (1960). The clause concerned in this Article reads as follows: "No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law." The Commission has said that those principles of international law deal with the confiscation of the property of foreigners, and that consequently "... measures taken by a State with respect to the property of its own nationals are not subject to these general principles..." Schwelb argues that this conclusion is contrary to the text of the Article, and to a prior decision of the Commission. It also strikes at the roots of the Convention, which aims at the establishment of a European "public order". Schwelb disagrees with the Commission also on the way it has used the preparatory documents.

A. Kohl deals with the European Social Charter in *Juristische Blätter,* 1965, Nos. 3/4, pp. 75-83. He includes a general survey of the significance of the Charter, and describes furthermore the problems that arise in connection with the application of Treaty provisions in Austria.

Agriculture

In *Revue du Marché Commun,* 1965, No. 83, pp. 387-391 *Annie Proux* writes on a French statute of July 10, 1964. It aims at stimulating individual insurance against all agricultural risks that are insurable; for other risks it sets up a guarantee-fund, so that all risks can be covered. According to the author an arrangement of this kind should be made in all member States.

Free Movement of Persons

F. Duerinck pays attention to the insurance against sickness and invalidity of migrating workers in *Tijdschrift voor Bestuurswetenschappen en Publiek Recht,* 1965, No. 3, pp. 173-181. After a discussion of the important role played by the International Labour Organisation in favour of better international cooperation in the field of social security, the author turns to Regulations Nos. 3 and 4 of the E.E.C. His article offers a very useful survey of the complicated subject matter, dealt with in the two regulations.

W. J. Slagter goes into a special question raised by Regulation No. 3 in *Verkeersrecht,* August 1965, pp. 169-173: the right of recourse of the insurer, as provided for in Article 52 of the Regulation. From two cases decided by the Court of Justice (Cases Nos. 31 and 33/64) it can be concluded that Article 52 is directly applicable, butonly applicable to migrating workers.

Transport

Les Annales du Marché Commun, 1965, No. 5, pp. 13-21 contains the address delivered by *L. Schaus,* a member of the Commission, to a congress of shipping-agents held at Copenhagen in September 1965. After some introductory remarks on the crisis in the Communities, he stresses that the E.E.C. must be an open community with extensive commercial relations with the rest of the world. International trade demands an efficient transportation system; transport by sea and by air are especially important. Schaus notes that the E.E.C. has not yet shown much activity in these areas, and he discusses what the reasons have been for that. According to him it is necessary that a common policy is developed in these sectors also: it is impossible to ignore them when the goal is a coherent economic policy of the Community. Better cooperation within the E.E.C. will also strengthen the Community position on the world transport market. Schaus also pays attention to the position of harbours and their special interests.

Joseph Lemmens writes on support tariffs in *Revue du Marché Commun,* 1965, No. 85, pp. 500-506. Whereas Articles 92-94 of the Treaty forbid direct aids by the member States, Article 80 prohibits indirect means of support through the setting of special tariffs in the transport area. The prohibition of support tariffs applied by the member States offers numerous problems to the Commission, since it is very hard to find out whether a particular tariff quoted by a consignor results from the competitive situation on the transport market, or is imposed by one of the member States. The Commission interprets "competitive tariffs", permitted by the third paragraph, in such a way that quotations by a consignor dictated by his own interest in getting the business are not objected to. On the basis of the second paragraph Lemmens investigates the conditions under which the Commission may approve support tariffs. It has been very careful to prevent dis-

tortions in competition between the different forms of transport. Thus it authorized a support tariff by the French railways for Breton cauliflower only on the condition that similar measures be taken for transport by road. Until now the Commission has approved support rates in only ten cases, most of which concerned transport from and to Southern Italy.

In the *Revue du Marché Commun,* 1965, No. 84, pp. 451-454 a short note has appeared on the E.E.C. measures on transport taken in the first half of 1965. The anonymous author is of the opinion that a real common transport policy will have been developed by the end of the transitional period. He foresees that it will affect especially transport by rail, and that it will increase transport by road.

Competition

A general comparison of the E.E.C. and E.C.S.C. systems of competition, with a summary analysis of the policy and practice of the High Authority, may be found in a contribution by the Dutch member of that body, *J. Linthorst Homan,* in *Wirtschaft und Wettbewerb* 1965, No. 12, pp. 901-911. The reader is also referred to other fairly recent observations on the same topic, cited at 2 C.M.L.Rev. 1964-5, p. 462. Worthy of note are the author's observations that it is precisely the existence of a strict prohibition of price discrimination that requires a firm cartel policy; concentrations are still to be encouraged, to increase both internal and external competition; the relevant market is coinciding more often with the entire Common Market. The modalities of application of Articles 65 and 66 are explored. The article can be considered a long footnote to the High Authority's own Report in Bulletin No. 47 of April 1964 (reprinted in *Wirtschaft und Wettbewerb* 1965, No. 1, pp. 31-48).

The decision in the case LTM v. MBU (Building Machinery Case) of the Court of Appeal, Paris, July 7, 1965 (see for English summary, 3 C.M.L.Rev. 1965-6, pp. 244-245; for the French text with conclusions of the Advocate General see Rev. Trim. Dr. Eur. 1965, p. 491), and a lengthy rather general note thereon by *P. H. Teitgen* appear at *Droit Social* 1965, No. 9-10, pp. 483-491. The commentator agreed with the Paris court that the reach of the various texts affecting the legality of the sole-distributorship agreement in question under Article 85 was indeed unclear at the time of decision. The DRU-Blondel decision of the Commission (O.G., July 17, 1965, p. 2194/65, see 3 C.M.L.Rev. 1965-6, p. 250), issued since then, would however have provided the Paris court with the answer: applicability of Article 85(1), and consequently nullity under Article 85(2), in absence of exemption by or even notification to the Commission. The question of separability of the agreement as to the effects of such nullity has also been referred to the European Court in this case. Examining the nature of the questions referred here for preliminary judgment, Teitgen praised the Paris court both for its rejection of the theory of "automatic" reference of all questions of interpretation, and for its apparent application of the theory of the *acte clair* in refusing to refer Article 9(3) of Regulation No. 17. The general view on the *acte clair* and in particular the example of the latter provision, have been open to serious criticism, although Teitgen supports this decision as a practical balanced one. Another salutary development he cites is this first reliance by a French court, for the priority of Community law over national law, not only on Article 55 of the French constitution, but also on the special nature of the Community legal order. Though incomplete, this marks an important departure from the notion, more current among German and Italian dualists, that national constitutional law determines the status of Community law in the national order.

The same case, additional facts gleaned from the conclusions of the Advocate General and an extensive annotation provided by *P. F. Ryziger* appear at *Cahiers de Droit Européen,* 1965, No. 3, pp. 250-265. First explored was whether the ques-

tions referred for preliminary judgment were properly formulated: with an eye to the Luxembourg court's narrow competence to deal with points of interpretation, not applications, the annotator concluded in the positive as to both questions referred. Ryziger also draws support from the DRU-Blondel decision, as well as the Hummel-Isbecque case (O.G., Sept. 23, 1965, p. 2581/65, see 3 C.M.L.Rev., 1965-6, p. 374), for his opinion that the agreement restricts competition, but thinks the Court will have to deal more closely with the meaning of "effect on trade between the member States". He himself favours an interpretation condemning only reductions in the volume of intra Community trade, despite the Commission view expressed in Grundig-Consten which extends to any effect on such trade, positive or negative, provided the effect is quantitatively significant. On this last point, which he considers at present of greater practical importance, Ryziger notes the difficulties of evaluation for the national court, whose perspective and economic information will inevitably be narrower than that of the Commission. In important cases, the Commission should initiate a procedure under Article 3 of Regulation No. 17 to disseize the national court. On the question of nullity under Article 85(2) E.E.C., the national rules are reviewed, all of which allow the national judge a certain leeway. The annotator favours severability of a contract, when justice requires it, depending on the importance of the offending clause to the contractual relationship as a whole. The matter should be left to the national judge to decide.

The DRU-Blondel decision is reprinted and commented upon by *Friedrich Kirschstein* in *Wirtschaft und Wettbewerb,* 1965. No. 11, pp. 863-867. He is scarcely critical of the Commission, confining himself rather to underlining several salient points. In connection with the earlier "Grosfillex" and "Vitapro" negative clearances, he notes that the Commission did not examine the extent of competition with DRU hollow-ware, to bring the agreement under Article 85(1), but held as decisive the *possibility* that consumer preferences could be a factor for individualised brand-name products. Thus, on the *assumption* that DRU-ware formed a separate sub-market, the finding was made of a "perceptible" (*"spürbar"*) influence on the competitive position of parallel importers who cannot buy directly from the manufacturer. On the exemption aspect, Kirschstein observes that the test under indispensability of the restrictions is not whether the improvement in distribution can be *better* obtained by another type of sales system, but whether the same improvement could be reached by a less restrictive technique. He notes the importance, further, of Blondel's practice and intent not to enforce the agreement against parallel importers. Since French law permits this, even in the absence of a parallel export prohibition on the foreign supplier, absolute territorial protection (earlier condemned by the Commission in "Grundig") would otherwise have been a decisive element in the opinion. He comments also on the Commission assumption, without investigation, that the agreement met the text of no "exclusion of competition for a substantial part of the affected goods".

L.P. Suetens has severely criticized the DRU-Blondel decision (likewise reprinted) in *Cahiers de Droit Européen,* 1965, No. 3, pp. 237-249. He argues not only that the purpose and effect of an "open exclusive dealings contract" is to create competition, not restrain it; but also that the Commission refusal to accept increased competition between producers as a compensation for decreased competition between distributors and retailers, for "individualized products", is based on an unjustified oversimplification of market realities. It is precisely to be shown in each case whether a product is sufficiently individualized in the view of the consumer, so that intra-brand competition is to be given prominence. Further, like Ryziger in the same journal (see *supra*), he condemns the Commission interpretation of "effect on inter-member trade", and adds that no proof was adduced to show that the impact on French-Dutch trade was of any importance quantitatively. As for the exemption, it is considered weak on its own terms, for the benefits of the

exclusive agreement, deemed "indispensable" by the Commission, could have been equally obtained by the inoffensive appoinment of sales representatives. This part of the decision was criticized also by Kirschstein.

Suetens has written a note also on the Massage-instruments case (3 C.M.L.Rev. 1965-6, pp. 93-94) in *Sociaal-Economische Wetgeving.* 1965, Nos. 10-11, pp. 624-629, in which he presents the same kind of criticism as in his comments on the DRU-Blondel decision. The case dealt with an exclusive distributorship agreement, which was declared void (the agreement was not notified to the Commission). According to the German Court the agreement restricted competition on the Common Market and affected trade between member States.

The exclusive distribution of Grundig products in Belgium and the trademark GINT were at stake in the case Sieverding and Futura Electronics v. Hemes, decided by the Tribunal de Commerce of Brussels on May 18, 1965. The action was instituted by Sieverding, sole distributor in Belgium, against Hemes, a "parallel importer" on the ground of unfair competition. It failed, however, since the court considered the sole distribuotrship agreement between Grundig and Sieverding as null and void already prior to its notification (at the time the suit was instituted it had not yet been notified). *G. Bricmont* has annotated this decision in *Journal des Tribunaux,* 1966, No. 4514, p. 11. He is of the opinion that the decision is incorrect since it violates the principles of the Bosch case: at the time the action was brought the national authorities were competent to apply Article 85, para. 1.

Interesting is a judgment of the Oberlandesgericht Nürnberg of September 21, 1965: proceedings based on Article 85 of the E.E.C. Treaty should not be brought before the ordinary courts in Germany but before the special cartel courts. (*Betriebsberater,* 1965, p. 1164). A note observes that it is very doubtful that this decision is correct, since it must be assumed that the German statute giving competence to the cartel courts in competition-cases relates only to cases arising under national law.

Harmonisation of Laws

According to Article 99 of the Treaty the Commission has been given the task of considering in what way turnover taxes, excise duties and other forms of indirect taxation can be harmonised in the interest of the Common Market. In *Revue du Marché Commun,* 1965, No. 84, pp. 432-440 *Jean Mespoulhes* deals with this problem of harmonisation, and reviews the activities of the Commission in the area. Different opinions exist on the interpretation of Article 99. One view is that the purpose of the provision is to secure harmonisation of tax law only to the extent that compensatory measures at the frontiers will become more accurate and easier to apply. On the other hand it is maintained that Article 99 aims at the total abolition of fiscal frontiers, which would mean a complete unification of indirect taxation. The Commission favours the second solution. In its first draft directive it has recommended the abolition of the cumulative cascade system and the introduction of an added value system for turnover taxes to become effective on January 1, 1970. Less attention has been paid until now to the harmonisation of excise duties, although that would be also essential for the abolition of fiscal borders. The proposals of the Commission have already had some success: in Germany a bill has been introduced on "*Mehrwertsteuer*", and in France also a reform project based on these proposals is in preparation.

Pierre Raissac discusses in *Les Problèmes de l'Europe,* 1965, No. 25, pp. 30-38 the tax systems of the member States. His survey is too short to be very useful. Interesting, however, is his description of the new French tax on dividends, which purports to bring about a certain degree of harmonisation within the Com-

mon Market, but which in fact results in a tax on dividends paid to non-residents which is double that on dividends paid to residents.

P. Sanders wrote a short note on the obligation of companies to publish their balance sheets and other data in *Naamloze Vennootschap,* 1965, No. 4, pp. 53-55. In all member States but the Netherlands two types of companies exist; only for one of them has an obligation to publish data been provided in the first draft-directive on company law. Since all Dutch companies would be covered by the directive, he pleads for the creation of a second type of company in the Netherlands, in order to arrive at a similar situation as in the other countries.

The harmonisation of law within the Benelux is often interesting for the Community of the Six, since it provides an example or a starting point for harmonisation in the larger context. The draft Benelux Treaty relating to mutual execution of judgments in criminal cases signifies a turning point in the ancient tradition of criminal law, based on the principle of territoriality (sovereignty over the national territory). This is the observation of *J. Rommel-Devos* in *Rechtskundig Weekblad,* 1965, No. 13, Nov. 28, cols. 609-618. After brief mention of the necessity for mutual execution —namely, the spread of international crime — and a review of previous steps in this direction, the problems of recognition of a foreign judgment as a bar to further prosecution and the execution of the penalties decreed in a foreign judgment are distinguished. On the former point Belgian penal law at present denies the binding effect of the foreign decision itself as *res judicata,* but the execution or lapsing of the judgment abroad may serve as a bar. Belgium also, like most lands, refuses to execute penalties decreed elsewhere or attach full consequence to the foreign judgment in assessing punishments in own courts, although certain attention is given it. The Draft Treaty opens the possibility of such execution: In addition to the normal substantive requirements to be fulfilled by the foreign judgment (effective where decreed, observance of guarantees of the Human Rights Convention, and no violation of public order of the executing state), a number of further conditions are established: that the act be punishable in both countries; that the judgment be final, or other disposition already complete. Execution can be refused for political or military crimes, or when execution conflicts with principles of the internal legal order. The judge is given a broad discretion with regard to execution of penalties involving imprisonment, etc., once he has recognized the judgment with the usual *exequatur,* while the department of justice (*openbare ministerie*) may deal with money penalties, fines etc. Rommel-Devos would, however, enlarge the Treaty to allow the convicted the right to request imprisonment in his own country or language region. Praising the Draft Treaty system for default judgments, which offers broad guarantees with respect to due process, the author also suggests a clearer right of defense when heavy prison penalties are at stake.

The complement to the above material, namely, the recognition and execution of foreign civil judgments, is one of the areas regulated in wider E.E.C. context in the draft convention already mentioned in this section (see 3 C.M.L.Rev. 1965-6, No. 3, p. 384). *C. W. Dubbink* offers an analysis of the major provisions of the draft convention in *Sociaal-Economische Wetgeving,* 1965, No 10/11, pp. 601-611. With regard to the regulation of judicial competence, he notes that Article 2 contains merely a rule of reference to the national law, while Articles 5-15 contain a number of "self-executing" rules. The influence in the Netherlands of the principle of suit in the land of the defendant will be complex. The rules for recognition of the foreign judgment are similar to those of the draft Benelux Treaty: the foreign judgment is not to be examined for irregularities, except chiefly in the case of default judgments; recognition may also be refused for violation of the public order. The competence of the foreign judge may not in principle either be examined; the Treaty provides rules itself regulating "excessive competence". The exequatur procedure remains largely a matter of national law. The author concludes that adop-

tion of the Treaty will mean a deep intervention into national legal independence, necessitating various changes in the legislations.

European Investment Bank

Qualitative and quantitative changes in the resources of the European Investment Bank and in their application have nonetheless not obscured the continuity of the Bank's policy. This is the conclusion of *Michel Albert,* in *Revue du Marché Commun,* 1965, pp. 441-450. The accumulated return on operations and especially the greatly increased placing of loans accounted by 1964 for more than 180 million Units of Account, which in addition to the member States' capital contributions of 250 million U.A., meant a total of 430 million U.A. of disposable resources. By the end of 1964 also, nearly 90 per cent of the latter sum had been or was about to be reloaned. Over the years 1958-1964, 75 per cent of Bank loans went to projects in Italy, applied by the intermediary of *la Cassa per il Mezzogiorno,* which is unique in providing a regular mechanism for reception of Bank funds. About 50 per cent has been devoted to industry, 25 per cent to transport, 15 per cent to energy, and 10 per cent split between agriculture and telecommunications. Bank loans have averaged about 23 per cent of the total financing for the various projects. The Bank has also been active in administering loans granted to Greece, Turkey and the associated African countries and overseas areas. For the future, the author sees the role of the Bank increasing; within the E.E.C., as a result of the merger of the Communities; outside the E.E.C., as an instrument of expanding E.E.C. development aid.

Association

In *Revue du Marché Commun,* 1965, No. 84, pp. 424-431, E.E.C. Commission member *Henri Rochereau* reviews the vastly improved arsenal of development techniques available for application of the Yaoundé fund in the associated African states and other overseas areas. Aid has been increased from 581 to 800 million U.A., including 70 million to be made available by the European Investment Bank. Further, in addition to grants for projects in the general interest, loans can also be made for a wider variety of development projects, and for agricultural price-support and structural changes. Provisions for technical assistance and education are another important innovation. The second development fund has already been active in three directions: (a) direct improvement of local living conditions, including health, schooling, and water purification; (b) improvement of economic productivity, including economic diversification, spread of agricultural technology, cattle-breeding, electrification and light industry; (c) long-term development plans, relating to infra-structure improvement, higher education, erecting of cooperatives, and regional studies. In addition, export revenues have been supported. Assessing the balance of efforts to date, it is clear that the experience gained from administration of the first fund has been highly useful. Present success is marked by faster processing and launching of projects, acceleration of plans begun earlier, greater administrative cooperation between the Community and aid recipients and among E.E.C. member States.

Case Law of the Court of Justice of the European Communities and of National Courts

The legal protection of individuals within the European Communities is a topic that is still in the centre of interest. For good reason, since it is an important one, and the treaties leave ample room for doubt and uncertainty.

The situation is not too controversial in cases where an individual is the addressee of a decision of a Community organ. According to Article 173, para. 2 of the

E.E.C. Treaty, and to Article 33, para. 2 of the E.C.S.C. Treaty he has a direct right to appeal against the decision before the Court in Luxembourg. *M. Waelbroeck* discusses in *Cahiers de Droit Européen,* 1965, No. 3, pp. 225-236 under what circumstances such an appeal will be admitted. In the first place the Court has made it clear that it does not look merely to the form in which the Community organ has promulgated its act, but to its real character. If the Court qualifies the act as a decision, it requires further that the decision be taken by a competent Community institution; this does not include organs of a more subordinate character. Finally, the decision must have external effects.

The position of an individual is much more difficult with regard to a decision which is not addressed to him. Article 173 then provides for an appeal to the Court only if the decision is of "direct and individual concern to him". Until a short time ago no complainant had succeeded in meeting this requirement; in the Töpfer case (3 C.M.L.Rev., 1965-6, pp. 233-243, annotation J. Peters), however, the Court has for the first time upheld an appeal against a decision addressed to "another person". *L.J. Brinkhorst* has annotated the case in *Ars Aequi,* 1964-65, No. 11, pp. 293-299. He pays special attention to the words "direct and individual concern" and comes to the conclusion that the factual circumstances were so exceptional that it is not to be expected that many individuals will be able to follow the example of Töpfer. The right to appeal against Community acts on the basis of Article 173 para. 2 is indeed rather limited. The author points to the opportunities to attack acts of Community institutions in a more indirect way, *e.g.,* in a procedure based on Article 177. The interplay between Article 177 and Article 173 is studied in some detail by *Claus Brändel* in *Aussenwirtschaftsdienst des Betriebsberaters,* 1965, No. 14, pp. 301-305. He investigates the remedies open to an individual who is injured by an act of a national authority which has executed an illegal Community decision. According to principles of administrative law in the member States a decision based on an illegal decision is itself illegal. Consequently, the nullity of the decision of the national authority can be invoked before a national court, which may ask for a preliminary ruling of the Court in Luxembourg on the validity of the Community decision. This is possible even if the term fixed in Article 173 for a direct appeal has elapsed: otherwise a State could, merely by waiting for two months, deprive the affected party of all rights. The situation becomes more complicated if the same decision has also been the object of an appeal on the basis of Article 173. Brändel is of the opinion that, if the Court has upheld the decision in that procedure, a preliminary question on the validity of the same act is no longer possible. The author draws his arguments for this position from the need for legal certainty and from the rules on the right of intervention. The consequence is that a difference in binding force exists between decisions that have been appealed and upheld in a procedure under Article 173, and decisions which have not been appealed in such a procedure: only in the second case may a preliminary ruling be requested. *Brinkhorst* in his annotation, mentioned above, goes into another question that may arise if a preliminary ruling on the validity of a decision is requested in a procedure before a national court. If this court is one that is not obliged to refer a question of Community law to Luxembourg, the annotator suggests that it is incompetent to declare the challenged decision invalid. Consequently the court can answer the question of validity of the Community act in the positive without a reference to the Luxembourg Court; if it contemplates an answer in the negative, however, a request for a preliminary ruling becomes obligatory.

The preliminary procedure is the subject of a series of three articles by *Pépy* in *Cahiers de Droit Européen;* the first of them has appeared in No. 3, 1965, pp. 194-213. The author deals with several of the terms of Article 177. In respect of the word "validity" he notes that the Court has held in the Internatio case (2 C.M.L.Rev. 1964-5, pp. 95-100, annotation Sk.) that "validity" includes legality;

he observes that this is in conformity with French law. Concerning the word "interpretation" the author says: *"interpréter un texte ... c'est interpréter son sens, sa signification et sa portée";* this does not seem to be a very daring nor a very helpful interpretation itself. Pépy also deals with the expression "acts of the institutions of the Community". An important question is whether the interpretation and validity of directives may be brought before the Court in a preliminary procedure. *Dumon* is cited for the opinion that it may be done (see 3 C.M.L.Rev. 1965-6, p. 129). According to Pépy a distinction should be made between the period during which the directive has not yet been executed and the time thereafter. During the former obligations exist only for the member States; individuals are not yet concerned. Pépy also mentions the question whether treaties concluded by the E.E.C. with third countries are covered by "acts of the institutions of the Community."

The position of individuals may find some protection in Article 190 E.E.C., which states that regulations, directives and decisions must be supported by reasons. This requirement was at issue in the Schwarze case (3 C.M.L.Rev. 1965-6, pp. 363-366, annotation by Rigaux in this issue, pp. 462-468). *Roland Schibel* has written a note on the case in *Aussenwirtschaftsdienst,* 1965, No. 21, pp. 458-459. According to the Court the reasoning in the decision under consideration, fixing the free-at-frontier price of barley, was sufficient. Schibel doubts whether the requirement of Article 190 was really met, but he agrees that the compromise laid down by the Court is acceptable in view of the circumstances in which the Commission had to take the decision.

As he has done several times before *L. J. Brinkhorst* has offered a survey of the recent case law of the Court of the European Communities in *Bestuurswetenschappen,* 1965, No. 6, pp. 309-335; the survey covers the 1964-1965 term of the Court. In this term 39 cases were decided, twenty of which were brought to the Court by employees of the Communities. Because of the large number of the latter cases the author proposed the establishment of a special court for disputes between the Community institutions and its personnel. On the other hand these cases may become important, since general principles of law are often applied which may come into play also in other areas. Of great interest was the judgment in the joint cases 90 and 91/63, Commission of the E.E.C. v. Luxembourg and Belgium (2 C.M.L.Rev. 1964-5, pp. 340-348, annotation Sk.) which added a new characteristic to Community law. For a discussion of the author's views on the Toepfer case see *supra,* p. 485.

For a discussion of literature dealing with cases on competition see under that heading.