

THE LAW OF THE EUROPEAN UNION

VOLUME 2

**Economic Law and
Common Policies**

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THE LAW OF THE EUROPEAN UNION

VOLUME 2

Economic Law and Common Policies

CASES AND MATERIALS

Alain A. Levasseur

HERMANN MOYSE, SR. PROFESSOR OF LAW
DIRECTOR, EUROPEAN STUDIES
PAUL M. HEBERT LAW CENTER, LOUISIANA STATE UNIVERSITY

Richard F. Scott

DISTINGUISHED PROFESSOR OF INTERNATIONAL LAW
THOMAS JEFFERSON SCHOOL OF LAW

Arnaud Raynouard

PROFESSEUR, UNIVERSITÉ DES SCIENCES SOCIALES TOULOUSE I
VICE-RECTEUR, AFFAIRES EUROPÉENNES

Melchior Wathelet

PROFESSEUR DE DROIT EUROPÉEN
UNIVERSITÉS DE LOUVAIN-LA-NEUVE ET LIÈGE
FORMER JUDGE AT THE EUROPEAN COURT OF JUSTICE

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Richard F. Scott
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Arnaud Raynouard
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Preface

This casebook on “European Union Economic Law and Common Policies: Materials and Cases” is our second volume on the law of the European Union and the European Community. The first volume, “The Law of the European Union: a New Constitutional Order” was published in 2001 and updated in 2005. Since some fundamental concepts and principles presented in the first volume are important to a relational understanding of the subject matters included in this second volume, we have considered it helpful to provide the reader with a concise background information under the form of an Introduction made of “Surveys”. We recommend this Introduction for a better understanding of the topics selected in this second volume.

Thereafter, an instructor or a reader will have much latitude and flexibility to pick and choose among the topics presented here. The extensive variety of the topics selected is explained, first and foremost, by the overall relative importance of each one of these topics in the political and economic operation of the EU, but also by the particular field of interest of each one of the four co-authors. In this respect, it is noteworthy that two of the co-authors are “European citizens” (from Belgium and France), another is a dual national (USA and France) and the fourth, an American national, has had a very long professional career in Europe. It should not come as a surprise, therefore, to find that the approach to and the presentation of the topics in this casebook have a definite “soupçon” of a European conceptualistic and Cartesian flavor mixed with the forceful drive of the American technique and style of drafting. We believe that the end product is a fruitful harmonization of multiple legal styles and cultures in the image of the EU itself.

An instructor using this book in the classroom, or a reader who wishes to be acquainted with the economic law and common policies of the EU/EC, has different options available in this casebook depending on time, interest, audience.... One may want to focus on the “Internal Market” described narrowly as the free movement of goods, persons, services and capital (ECT Art 3-1(c)). These ‘movements’ in the EC Internal Market can become one part of a comparative analysis made up as a second part of the US cases listed at the end of the chapters as an illustration of what could be referred to as the US Internal Market. To these topics one may want to add “Competition” as a topic intimately related to the movement of goods, persons.... Again, the chapters on Competition can be used in a comparative perspective with the US cases identified at the end of the Chapters on Competition. Since Competition can be hindered by the exercise of Intellectual Property Rights, one may choose to add the appropriate Chapter to the Competition Chapters. Why not add “State Aids” considering the impact of a State’s involvement in the market?

This casebook is also offering a balanced distribution among the important “Common Policies” of the EU/EC from which the instructor or reader can choose on the

basis of one's interest or from the news and current developments of the time. Considering the major place occupied by farming in Europe and the share of Agriculture in the EC budget, one may want to find out why the CAP is such a burden on that budget. Since consumers are the driving force of the economy, why not include together the Chapters on "Consumers", the "Euro", "Movement of goods"...? And in these days of "energy" problems affecting everyone why not focus on "Energy", "Trade", "Abuse of Dominant Position"...?

The choices that are offered have intentionally been made many and it must be acknowledged, at the outset, that all the chapters cannot be covered in a one semester course. We only wanted to offer a range of topics from which one could choose and make a "variable" selection from one year to the other.

In light of the huge amount of primary and secondary sources of law, we have opted to publish a separate volume of "Selected Documents" to accompany the casebook itself. These "Documents" will provide more detailed information on "selected" topics.

Alain A. Levasseur
Richard F. Scott
Arnaud Raynouard
Melchior Wathélet

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We want to express our sincere admiration and gratitude to Megan Lawrence, coordinator of European Studies (LSU), who, single handedly, materially put together this whole casebook. Only she knows what a grueling experience it has been to handle, and please, the four of us! Megan’s knowledge of foreign languages proved to be a very valuable asset in her understanding of the EU/EC documents she had to identify and sort out.

We are indebted to many of our 2004 and 2005 law students for briefing the facts of most cases included in this casebook. Particular thanks to Sandi Varnado and Mark Merrill, two outstanding recent graduates of the Paul M. Hebert Law Center, for the generosity of their time and their stimulating intellect.

We also acknowledge most gratefully the un-wavering backing and assistance of the Library Staff of the Paul M. Hebert Law Center and, in particular, of Professor Randall Thompson, Director of the Law Library, Vicenç Feliu, Foreign, Comparative, and International Law Librarian, Charlene Cain, Mary Johns, Ajaye Bloomstone, Mary McCameron and our much regretted friend Georges Jacobsen.

Alain A. Levasseur
Richard F. Scott
Arnaud Raynouard
Melchior Wathelet

Introduction

The European Union: A Survey

1. History: A Survey¹

The European Union is barely fifty years old for those who date its origin from the 1957 European Community Treaty which created the European Economic Community or EEC. For others, the movement towards the integration or unification of Europe started in 1947 when George Marshall, then US Secretary of State, prompted the European countries involved in the second world war to band together to rebuild their economies with the help of the United States. This bold initiative, which became known as the Marshall Plan and led to the creation of the OEEC, enabled and inspired the movement that was to bring together as quickly as 1951 the original 'Six' members of the future EEC. Indeed, the 'Schuman Plan' presented to western European nations in May 1950, became a reality with the signing of the European Coal and Steel Community (ECSC) and its entry into force on 23 July 1952. The ECSC was a Community or a Common Market of six founding members, Belgium, Germany, France, Italy, Luxembourg and the Netherlands. From a joint management of their coal and steel industries, the Six decided to extend this form of a common market and its management to their economies in goods and services. It became the *raison d'être* of the Treaties of Rome of 25 March 1957 which formalized the creation of the European Economic Community or EEC and the European Atomic Energy Community or Euratom (EAEC). Both Treaties entered into force on 1 January 1958. From that time forward, the EEC grew in size and powers. A series of 'enlargements' occurred between 1973, with nine members then, and May 1, 2004, when the Community became an entity of 25 Member States.

In the meantime the Single European Act was adopted in 1986, the Treaty on European Union (Maastricht) was signed on February 7, 1992 (entered into force on November 1, 1993), to be followed by the Amsterdam Treaty of October 2, 1997 (entered into force on May 1, 1999), the Nice Treaty of February 26, 2001 (entered into force on February 1, 2003), a draft Treaty establishing a Constitution for Europe presented in July 2003, signed in October 2004, ratified by a few countries but rejected in the first half of 2005 by two of the six original founders, France and the Netherlands. The

1. This summary is based on: *The Law of the European Union: a New Constitutional Order*, Alain A. Levasseur and Richard F. Scott, Carolina Academic Press, 2001 and 2005; *The ABC of Community Law*, by Dr. Klaus-Dieter Borchardt, European Documentation, 5th ed. 2000; *Europe in 12 lessons*, by Pascal Fontaine, European Documentation 2004; *How the European Union Works, A citizen's guide to the EU institutions*, European Documentation 2003.

Treaties of Maastricht, Amsterdam and Nice, the latter in particular, are today the governing Treaties of the European Union.

The objectives and tasks of the European Union resemble very much those of sovereign States. Article 2 of the TEU (Treaty on European Union) sets a list of objectives of the Union. Among these objectives, we find that the Union is to promote economic and social progress and a high level of employment ... ; it is to assert its identity on the international scene, in particular through a common foreign and security policy including the progressive framing of a common defence policy ... ; the Union intends to strengthen the protection of the rights and interests of the nationals of its Member States through the introduction of a citizenship of the Union....

A component part of the EU is the European Community (EC)² governed by the European Community Treaty (ECT). The European Community is entrusted with a series of objectives to achieve and tasks to accomplish which go much beyond what the original European Economic Community's goals and objectives were. Foremost among the EC's objectives are the establishment of a common market and an economic and monetary union to unite the national markets of the Member States into an internal/single market wherein people, goods, services and capital can move freely, to promote a harmonious, balanced and sustainable development of the economic activities of the Member States, to implement a system ensuring that competition in the internal market is not distorted, to foster economic and social cohesion and solidarity among the Member States...., in other words to weld the Member States into a European Community. The introduction of a common European currency, the euro, in January 1999, was an additional sign of the greater integration and interpenetration of the economies of the Member States into a strengthened European Union.

The European Union is also based on a wide array of democratic and human values which, besides being common to the Member States, are often the foundation of decisions of the European Court of Justice. Some of these values are the respect for human rights and fundamental freedoms, liberty, democracy, the rule of law... (ECT Art. 6). In December 1989 a Charter of Fundamental Social Rights of workers was adopted³ and in December 2000 a Charter of Fundamental Rights⁴ was proclaimed but not actually given the force of law because of the 'political' failure to incorporate it in the European Treaties. Nevertheless, the Charter is considered as a binding or authoritative source of fundamental rights since it incorporates the principles and fundamental rights common to the constitutional traditions of the Member States. Of particular significance are the fundamental rights attached to the Citizenship of the Union created by the TEU (Art. 2) and the ECT (Arts. 17–22) as a complement to the national citizenship. As a result, a European citizen can move and reside freely within the EU, has the right to vote and to stand as a candidate for election to the European Parliament and in municipal elections, the right to diplomatic and consular protection... All in all, a national of a Member State has the right, which is enforceable, to be treated in all Member States without any discrimination in the same way as they treat their own nationals. This principle of equal treatment is the foundation of all the basic freedoms granted by the Treaties.

2. Formerly the EEC or European Economic Community.

3. [1989] 12 EC Bulletin 1.1.10.

4. [2000] OJ C364/1.

2. Powers: A Survey

The TEU and the ECT do not vest all general powers of ‘government’ in the institutions and bodies created to serve the Union as a single institutional framework (TEU Art. 3). The principle that governs the distribution of powers between the EU and EC on one side and the Member States on the other side, is the principle of attributed or delegated powers. The Member States did not intend to surrender all their sovereign powers to the European institutions but only those powers necessary for the institutions to carry out their tasks as entrusted to them by the Treaties (ECT Art. 7). Some of these powers are vested exclusively in the Communities whereas others are shared. Among the exclusive powers we can include competition in the single internal market and trade with third countries. Among the shared powers one will find the creation of the internal market, the planning of the Community agricultural policy, the policies of transport, the environment, immigration and asylum, energy ... In other domains, such as education, culture, public health, sports ... the Member States have reserved their powers to act but the Union or Communities provide their support to the actions taken by the States. In the fields of economic and employment policies, the Union endeavors to coordinate or harmonize the national policies of its Member States by ensuring that they all move at the same pace and in the same direction. This variety in the distribution and exercise of all these powers leads inevitably to the occurrence of grey or uncertain areas of responsibilities. Two important principles are relied on to ensure that whatever necessary action has to be taken for the benefit of the Community as a whole is, at one and the same time, protective of the interests and powers of the Member States and still enables and empowers the Community institutions to carry out their tasks. One of those two principles is that of subsidiarity. As stated in ECT Art. 5, “... the Community shall take action, in accordance with the principle of subsidiarity, only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can, therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community.” It follows that, before taking any action in those ‘in-between’ areas, the Community institutions must show that there is a real and important need for a Community action under the form of some common rule taken as closely as possible to the people. This principle of subsidiarity is buttressed by a second principle, the principle of proportionality, which further constrains any attempt by the Community institutions to act beyond what needs to be reasonably achieved. (ECT Art. 5 in fine). The purpose of this principle of proportionality is, besides ensuring the proper exercise of their powers by the institutions, to confine the content and the form of an action about to be taken to what is necessary to achieve the objectives of the Treaty. The enforcement of these two principles through the availability of legal remedies before the European Court of Justice is a further ‘check’ on the institutions’ exercise of their powers so as to maintain the ‘balance’ between their powers under the Treaty and the powers reserved to the Member States.

3. Institutions and Decision Making Process: A Survey

There are several actors on the European stage. Most of them are referred to as “Institutions” but only five are truly institutions under the ECT (Art. 7). There are also several bodies or organs that help run different policies of the EU. Using the expression “institutions” in a broad sense the main ones are: the European Council (Art. 4 TEU), the European Parliament, the Council, the Commission, the European Court of Justice,

the Court of Auditors (ECT Art. 7). Among the bodies or organs, mention should be made of the European Central Bank, the European Investment Bank, the Economic and Social Committee and the Committee of the Regions.

a: the European Council is an outgrowth of the summits that heads of states or of governments had originally planned outside the European Communities and before the EU was ever created. In 1974 those meetings or summits took on the name of meetings of the European Council. In 1987 it became a part of the Single European Act and a body of the European Union with the Maastricht Treaty. This Council is the main initiator of the policies carried out by the institutions of the EC. It is, in a sense and because of its composition, the highest-level policy making body of the EU. The common and foreign policy of the EU is conducted by the EU's High Representative (Mr Europe) who is also the Secretary General of the European Council.

b: the European Parliament (EP; ECT Arts. 189–201)) is a body of representatives or Members of the European Parliament (MEPs) directly elected by the EU citizens at parliamentary elections held every five years. The EP, which is made up of 732 members, expresses the democratic views and represents the interests of the EU's citizenry. It shares with the Council of the EU⁵ the power to legislate since the most common legislative procedure applicable to legislation in a wide range of fields is the co-decision procedure which places the Council of the EU on an equal footing with the EP. The Parliament is also entrusted with a democratic function as a supervisor over the other EU institutions and most particularly the Commission. In this function the Parliament approves or rejects the nomination of Commissioners, it may censure the Commission, ask questions from the Commissioners ... The Parliament has also the power 'of the purse' since it shares with the Council the responsibility of looking at the details of the EU's budget which the Parliament can approve or reject.

The position of 'European Ombudsman' was created by the TEU. The Ombudsman is elected by the European Parliament. He acts as an intermediary between the EU citizens and the EU authorities and reports, yearly, on the failures of the EU administration.

c: the Council of the European Union (formerly known as the Council of Ministers, ECT Arts. 202–210)) is the voice of the Member States. This Council is the main decision-making institution in which the governments are represented by a Minister or equivalent. The topic for discussion at a meeting of the Council will lead to the appropriate minister to attend. The Council, because of its leading role as representing the States, has many responsibilities: pass, often jointly with the EP, European laws, co-ordinate the many policies of the EU and the States, conclude international agreements, approve or reject the budget in conjunction with the EP, develop a common foreign and security policy ... Depending on the field of the decisions to be taken, the Council will take a decision either unanimously or by a qualified majority or by a majority.

d: the Commission (ECT Arts. 211–219) is made up of 25 commissioners, one for each Member State, and is headed by a President. The members of the Commission are appointed by common accord of the governments for a renewable period of five years. After the President-Designate has been approved by the EP, the Member States and the President-Designate select the Commissioners. The composition of the Commission is then submitted to a vote of the EP and, assuming the vote is affirmative, the Commissioners are then appointed by the governments. The Commissioners "shall, in

5. The Council of the EU is not to be confused with the European Council previously mentioned under a: On the Council of the EU, see below c:.

the general interest of the Community, be completely independent in the performance of their duties ... they shall neither seek nor take instructions from any government ..." (ECT Art. 213–2). The tasks of the Commission, which are many since it is the driving force, the locomotive charged with promoting the common interest of the Communities, can be gathered under five headings: 1: the Commission has, first of all, the right of initiative which means that it proposes drafts for legislation to the Council and the EP; 2: the Commission has the duty to manage and implement the EU policies and the EU budget; 3: most importantly, the Commission is the guardian of the Treaties; in this capacity, the Commission enforces EU law, it monitors the 'Community' activities of the Member States, it can (and does!) bring actions against Member States for infringement of their Treaties' obligations ...; 4: the Commission represents the EU on the international stage; 5: the Commission is also an administrative authority, particularly in the field of competition where it checks the facts of a case, grants approvals of mergers, for example, or prohibits such mergers, it imposes penalties.... The Commission is made up of a large number of DGs or Directorates-General and services. Each DG is responsible for a particular policy area which gives it its name, in addition to each DG having a number. (ex: the DG IV is in charge of 'competition').

e: the European Court of Justice (ECJ), or 'the Court', (ECT Arts. 220–245) is to "ensure that in the interpretation and application of [the] Treaty the law is observed" (ECT Art. 220). The ECJ is made up of one judge from each Member State. The judges are appointed for a six year term by joint agreement of the governments. The judges sit in Chambers with the Grand Chamber of 13 judges being the largest Chamber to hear cases which used to be heard in plenary session. The ECJ is assisted by eight 'advocates-general' also appointed for six years; like the judges they enjoy full judicial independence. An advocate general (AG) is assigned a case and the AG's role is to present to the Court a reasoned opinion in the form of a non-binding proposal for a Court decision. The AG's opinion is part of the whole procedure of a case and it is published with the decision of the Court. Because of the tremendous increase in the number of cases brought before the ECJ and, as a consequence, the long delays in the ability of the ECJ to clear its docket, a Court of First Instance (CFI) was created in 1989 to relieve the ECJ of certain kinds of cases particularly those actions which can be brought by private individuals (as opposed to Member States) and actions in the field of antitrust or unfair competition between businesses. The CFI is made up of one judge per Member State and there is no Advocate-General assisting the CFI.

The EC Courts are entrusted with some general tasks outlined in ECT Art. 220: "The Court of Justice and the Court of First Instance, each within its jurisdiction, shall ensure that in the interpretation and application of this Treaty the law is observed...". Some details on the kinds of cases which can be brought before the Courts are given below.

f: the Court of Auditors was established in 1977, some twenty years after the Rome Treaty entered into force. The Court has one judge per Member State; the judges are appointed for a term of six years by the Council after consultation of the European Parliament. The Court's main role is to make sure that the budget is properly implemented both at the Community level and by the Member States. To carry out this duty the Court conducts investigations, carries out on-the-spot checks and publishes its findings in an annual report which draws much attention on the part of the Commission and the Member States. The European Parliament relies heavily on the Court's report when, every year, it must approve the Commission's handling of the budget.

g: the Economic and Social Committee (ESC) is an advisory body which must be consulted in some fields of activities of the Communities by the Council, the Commission and the Parliament. As an advisory assembly, the ESC expresses the voice of civil society representing employers, trade unions, farmers, consumers, the professions, managers of small and medium-sized businesses ... The ESC is made up of some 344 members.

The Committee of the Regions (COR) is somewhat new since it was created under the Maastricht or EU Treaty. The COR has 344 members who are elected municipal or regional politicians representing regional and local authorities in the Member States. The Committee is consulted on matters of relevance to local and regional public bodies. Such matters could be the environment, transport, education....

The European Central Bank (ECB) was set up in 1998 to introduce, manage and maintain the stability of the 'euro', the new European currency (ECT Art. 106). The ECB is also responsible for defining and implementing the monetary and economic policy of the EU. The ECB's independence is guaranteed so that it is protected against any outside interference. It operates through the network or system of the national central banks of the Eurosystem (ESCB).

The European Investment Bank (EIB), created by the Rome Treaty, is responsible for helping to achieve the EU's objectives by financing projects through loans and guarantees in all economic sectors. The EIB is a 'non-profit' bank that receives its money through borrowings on the financial markets and from its shareholders, the Member States of the EU.

4. Sources of Law and Legal Order: A Survey

a: Sources of Law

The sources of law in the Community legal order can be divided into two categories according to their outward manifestation as either written sources of law or unwritten sources.

The written, and primary, sources of law are, first and foremost, the Treaties extending from the original three founding Treaties to the most recent Treaties including the Nice Treaty. These Treaties contain the fundamental provisions on the EC's objectives and a wide range of policies, provisions on the structure and operation of the institutions, provisions on all sorts of activities ... all meant to create and strengthen a European Community.

Besides the Treaties (and International Agreements) the other written sources of law consist in the legal instruments that are meant to transcribe into legal forms the exercise of their powers by the Community Institutions. According to ECT Art. 249, these secondary sources of law are binding measures when they are under the form of 'regulations', 'directives' or decisions'. Regulations have a general application and they are binding in their entirety. They have the force of legislation, they are directly applicable in all the Member States and the latter cannot deviate from their binding force. A Directive is binding as to the result to be achieved but leaves to the Member States the choice of the form and methods they will resort to in order to achieve the specified result imposed by the Directive. Past the deadline to implement a Directive, the latter will become as effective and binding as if it has been implemented. A Decision is addressed to a particular Member State and is binding on that State. Decisions can be addressed also to undertakings and to individuals.

Under the same ECT Art. 249, there are two additional measures which enable the Community institutions to express their views to Member States; they are recommendations and opinions. These two measures have no binding force in the sense that they impose no legal obligation. They have, however, some political and moral persuasive effect on the addressee which can be a State, a legal entity or a natural person.

Besides these legal acts, the Community Institutions may adopt other measures under other names. The most important of these other measures are resolutions, declarations, action programmes, green and white papers.... Through these 'ad hoc' measures, the Institutions essentially express their views and intentions but do not bind them to legal requirements or obligations.

b: Legal Order and Legal Remedies

The legal order created by the Treaties and the Community legal system is original and unique; it is "A new constitutional order".⁶ The legal features or characteristics of this new constitutional order have been identified by Judge Pierre Pescatore as being the following:—fullness of the effect of Community law or the wholeness of the Community legal system in the sense that States cannot seek to enjoy the benefits of EC law without assuming the corresponding burdens;—unity of Community law in that it is the same throughout the Community and inside the legal order of every Member State;—mandatory nature of EC law as it is meant to maintain Community law and order;—direct effect or direct applicability of EC law in the Member States in such a way that EC law confers rights upon private individuals who can rely on them and which national courts are called upon to protect;—unconditional precedence or supremacy of EC law in the sense that national courts must set aside any conflicting internal legal measure whether adopted prior or subsequent to a Community legal measure.

Since the Community legal order is unique, original and new, the remedies that are available to ensure its effectiveness borrow the same characteristics.

Under ECT Arts. 226–228 proceedings can be brought by the Commission and/or a Member State against a Member State for having infringed its obligations under Community law. Because of the seriousness of the charge against a State, this action for infringement is brought before the ECJ itself (rather than the CFI) and must be preceded by a preliminary procedure which enables the State in question to submit its observations. If the Commission is not satisfied with the State's observations, the action can then be brought before the ECJ either by the Commission (which is most likely) or by the other Member State which had originally complained of the infringement by the defendant State. Should the ECJ rule that the defendant State did infringe its obligations, the Court may require that defendant State to take all the necessary measures to comply with its obligations. If the State, in a medium or long term, fails to comply with the ECJ's judgment, the Commission can then bring another action against that same failing State and "specify (for the benefit of the Court) the amount of the lump sum or penalty payment to be paid by the Member State concerned which it considers appropriate in the circumstances ..." (ECT Art. 228). The ECJ can impose on the State either a lump sum or a penalty payment.

The ECJ is also charged with the duty to ensure that EC law is properly applied by the Community Institutions. It fulfills this obligation by reviewing the legality of acts of

6. See *The Law of the European Union*, Alain A. Levasseur and Richard F. Scott, Carolina Press, 2001 and 2005 supplement and update.

those Institutions. The purpose of an action for annulment, under ECT Art. 230, is to have some binding legal measure of an EC Institution declared null by an EC Court. If an EU citizen, a natural person or an undertaking brings such an action, the CFI will have jurisdiction. If a State or an Institution, let us say the Commission, brings an action against another Institution, let us say the Council or the Parliament, the action will then be brought before the ECJ. Such actions against acts of an Institution can be based on different grounds: lack of competence, infringement of the Treaty or of any rule of law relating to the application of the Treaty, misuse of powers ... If the party plaintiff is successful, the CFI or the ECJ “may declare the act concerned to be void” (ECT Art. 231–233)) and further decide on the temporal effect of its judgment.

As opposed to ‘acting’, an Institution may ‘fail to act’ (ECT Arts. 232–233). Complaints for failure to act further add to the panoply of remedies available to ensure that the Treaty is properly implemented by all Institutions involved. Before actually taking an Institution before the Court, the plaintiff must give the Institution an opportunity to act by calling upon it to act. If the Institution fails to act then the action can be brought. The Member States and the Institutions are privileged plaintiffs in the sense that they do not have to show a personal interest in the act that the defendant Institution failed to take, whereas natural persons, undertakings must show a personal interest in the particular act that the defendant Institution failed to issue. Neither the ECJ nor the CFI can order the Institution to issue the act sought by the plaintiff; that Institution is “required to take the necessary measures to comply with the judgment of the Court of Justice” (ECT Art. 233).

In the event a citizen, an undertaking, a Member State ... would sustain a damage at the hands of the Community then the latter, “in the case of non-contractual liability ... shall, in accordance with the general principles common to the law of the Member States, make good any damage caused by its institutions or by its servants in the performance of their duties. (ECT Art. 235 & 288).

Of significant importance within the Community new legal order is the procedure of the preliminary ruling which is fundamental to the uniformity of the legal system of the European Union, to its coherence and to the fulfillment of their obligations by the Member States (ECT Art. 234). This procedure is not, actually, a contentious procedure but, rather, a means of ensuring that the national courts, as a whole, do receive and apply the same Community law in a uniform manner in their internal legal orders. When a national court is concerned about the interpretation of the Treaty or an act of the Institutions of the Community, or about the validity of such an act ... the national court may (or must, depending on the stage of the procedure before the national courts) suspend or stay the proceedings and ask the Court of Justice for clarification and guidance. The Court of Justice does not rule on the substance of the case pending before the national court; it responds to the legal question raised by the national court under the form of a true ‘judgment’ and not a mere advisory opinion. The judgment of the ECJ is mandatory should the national court decide to make use of the ECJ’s holdings and ruling in its own national court decision. Besides ensuring the uniformity of the Community legal order, this procedure is an important remedy for the protection of individual rights. Indeed, the preliminary ruling provides the EU citizens with an opportunity to challenge actions of their own Member State which might be in violation of Community law and, thereby, make sure that the national court will acknowledge the supremacy of EC law which is its duty to enforce in the internal legal order as provided in ECT Art. 10. The breadth of this remedy in terms of its scope, its use made easy by its informal exercise by national courts, combined with the citizens’ direct access to their

own national courts to have their rights, including their rights under EC law, recognized and enforced explain why this remedy is the legal ground for many of the cases presented in the following chapters.

General Reading

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