

# Community Topics

---



Number **4**

**The Common Market and the Law**  
**by Michel Gaudet**

**Information Service of the European Communities**

---

**MICHEL GAUDET**

**The Common Market  
and the Law**

---

The creation of the European Communities has already opened up new legal dimensions—and created new legal problems—for its six member countries. These are discussed in this paper—originally delivered on December 17, 1960 to the Union Internationale des Magistrats under the title 'Le Marché Commun devant les Juges'—by M Michel Gaudet, Director-General of the Legal Service of the European Executives and Maître des requêtes au Conseil d'Etat de France. The original text, in French, has been published in the *Annales de Droit et de Sciences Politiques*, Tome XXI—No. 2, Brussels, 1961.

---

# THE COMMON MARKET AND THE LAW

---

Everyone is aware that the Common Market has set in motion a process of economic development which is both far-reaching and complex. The attention of the public at large is attracted to its different aspects in turn :

(a) The establishment of a customs union amongst the six Member States which, after a transition period of several years, will result in the complete abolition of customs and quota barriers among these States and the application of a common external tariff at the frontiers of the European Community in its trade with the rest of the world.

(b) The beginnings of a true economic union, since the free movement of goods is coupled with the free movement of workers and capital within the Common Market and with the elimination in each Member State of all discrimination as between nationals of Member States with regard to the right to take up and carry on professional or business activities or supply services ;

(c) The adoption of an economic policy with which will be either a common policy in the vital sectors of external trade, agriculture and transport, or a co-ordinated policy in the other fields of economic activity and especially in the social, monetary and financial fields ;

(d) The application, throughout the Common Market, of common rules of competition assuring all of an equal chance in a social and economic order consonant with the general interest of the European Community as a whole.

Setting itself the aim of raising the living standards and improving the lot of the 165 million inhabitants of the member countries, the European Community has also associated itself with the overseas countries with which it has particular links, and proposes to contribute to the expansion of international economic relations throughout the world.

No lawyer can doubt that the launching of so bold an economic programme must entail an equally vast and complex legal evolution. Did not Dean Savatier say, in 1959 at the Colloquy of the Faculties of Law in Lille, that 'economists are fated to postulate law' ?

It is the fate of judges in their courts to give shape to the changes of law. The task which the gradual establishment of the Common Market sets them in this respect is considerable. It appears under the twofold aspect of new departures in international private law and of the emergence of a system of Community law.

## NEW DEPARTURES IN INTERNATIONAL PRIVATE LAW

The definition of this branch of law, which, as often pointed out, is grossly misnamed, since it concerns the application of domestic rules of public law, varies from country to country and even, within one and the same country, from one authority on law to another. Setting aside any pretension to dogmatize, I should like, for the purposes of this paper, to use the term 'international private law' as meaning the whole complex of problems which obliges a judge sitting in one country to examine the law of another in order to solve a dispute laid before him.

In this context the course of events in the Common Market will affect the work of the courts in the individual countries in two different ways.

1. The number of disputes giving rise to problems of international private law will be considerably increased.

The growth of trade and the greater movement of persons within the Common Market will lead to a proliferation of legal relations between nationals of the various Member States. The courts will

be more frequently called upon to pronounce on classic, but nearly always complex, issues; the following examples may suffice as illustrations :

- (i) Nationality. Certain advantages stemming from the Common Market, especially concerning the right of establishment or social security arrangements, are limited to nationals of the Member States. This means that from now onwards the determination of nationality both for natural and for legal persons will take on new importance.
- (ii) International contracts. As they are the essential legal instruments for employment and trade, the number of these contracts will increase. So far, they have on the whole been limited to a relatively small circle of persons and firms experienced in international activities, but from now on they will be more widely used by parties unversed in the precautions and usages which must accompany international obligations. Often there will be no precise stipulations and sometimes such contracts will not even be formally drawn up, so that the judge will have to rule on how far he is competent and decide which law is applicable.
- (iii) Companies. The legal capacity and rules of internal organization of companies vary from one country to another. The courts in each country will be more frequently called upon to appraise the validity of engagements entered into by foreign companies which are parties to an international contract.

2. Together with the increase in the number of such issues, the Common Market will necessitate the confrontation and unification of the principles of law in the various member countries.

Protected by economic frontiers which only the initiated crossed – and they but rarely – each domestic system of law has so far been able, without serious practical drawbacks, to evolve its own rules of international private law. This situation will soon become incompatible with the practical requirements of persons subject to the law in the Common Market.

Some illustrations will easily prove this :

- (i) Questions of nationality. A person, recognized as German in Italy, there enjoys the status of a national of a Member State and, as such, can benefit from all the advantages of the Common Market. But under the French law of nationality this same person may be declared a Swiss citizen by the French Courts, and may therefore be barred from these advantages in France. Such conflict between national legislations, unsatisfactory at all times, gives rise to intolerable discrimination and absurdity in the Common Market.
- (ii) The application of the 'renvoi' doctrine in cases of conflict in the law of contracts. In some of our countries the law applicable to an international contract is that of the place of performance, unless the parties decide otherwise. Under this rule a contract of sale concluded in Germany, but performed in Italy, should come under Italian law. But jurisprudence in certain countries, which sometimes hesitates in unpredictable fashion, says that in such a case it is not the Italian law of sale which should be applied, but the Italian rules on conflict of laws; this states quite clearly that the law applicable is that of the place where the contract was concluded, in this case, therefore, the German law. Though they have their origin in subtle analyses, which are worthy of all respect, such divergencies and hesitation give rise to uncertainty which is incompatible with the security required as business expands in the Common Market.

If discriminations and uncertainty are to be eliminated, they must first be recognized and then measures must be taken to promote appropriate remedies. The Common Market therefore leads to a call upon comparative law, which in the European Community will become an essential instrument in the search for a coherent legal system.

The remedies will be found in the gradual unification of law, which in itself has two classic aspects. One is the harmonization of legislation, of which more later. The other is the narrowing of divergences in jurisprudence within the limits that the written law leaves to the discretion of the courts. There is no doubt that judges can exercise a direct or indirect influence on these two processes by which law is unified. In conformity with a long tradition, this influence will make itself felt in favour of clarity and coherence.

Nevertheless, the slowness and complications of the traditional methods of unifying law are scarcely compatible with the economic impulse behind the Common Market and the requirements of the time-table fixed for its introduction. The founder states of the European Communities have therefore had the foresight to couple with the measures of economic integration so far adopted a certain degree of legal integration.

## **THE EMERGENCE OF COMMUNITY LAW**

From our standpoint here the essential legal innovation of the European Communities is the introduction of common rules which are directly applicable to all Member States on the model of domestic laws, and the institution of a common jurisdiction to watch over their interpretation and application. This ensures both the strict unification of written law, by the application throughout the Community of a single text, and unity of jurisprudence in the interpretation of this text.

This method, which was first introduced by the European Coal and Steel Community (ECSC) in 1951, was confirmed and perfected in 1957 in the Treaties of Rome setting up the European Economic Community (EEC or Common Market) and the European Atomic Energy Community (Euratom). The method is applicable to relatively limited sectors in the two specialized Communities—the Coal and Steel Community and Euratom—but in the Common Market it covers a very wide field of legal and economic relationships.

Without claiming to tackle all the numerous problems involved in the emergence of a Community system of law, I will briefly present the sources of this new law and the jurisdictional measures provided to ensure its proper application.

### **A. The sources of Community law**

If we leave aside jurisprudence, which will be dealt with later, the common rules which are the essential part of Community law derive, on the one hand, from the Treaties establishing the European Communities, and on the other, from the acts of the common Institutions. In order to simplify, the following comments will apply only to the Economic Community, since the two other European Communities present certain peculiarities of their own.

1. The Treaty is the fountain-head of Community law. It is of mixed nature. It was concluded and ratified in the usual form of international conventions and lays down a certain number of obligations which are binding on the Member States alone and not directly applicable to their nationals. In conformity with the more frequent usage in international public law, these provisions are not self-executing; they oblige the States to take the appropriate measures in their municipal law for the fulfilment of their obligations. In this category, for example, are the majority of the provisions concerning the customs union: the Member States are required to reduce their customs duties or to enlarge their quotas, but these reductions or enlargements are operated, not by virtue of the Treaty alone, but under the amendments which the responsible national authorities introduce into their national law on customs and quotas.

The Treaty also contains a code of common rules which are self-executing in all the Member States. This category of provisions, which anyone interpreting the law must distinguish from the preceding one, is directly applicable without the necessity for any intervention of the Member States, other than the ratification which they have carried out. As examples we may mention the following provisions of the Treaty:

Art. 58—defining the companies which are to be considered as nationals of Member States for the purpose of applying the right of establishment;

Art. 79—forbidding States and enterprises to apply certain discriminations in the matter of transport rates;

Art. 85—prohibiting and pronouncing null and void in law certain agreements between 'enterprises' described in the Treaty as 'understandings'.

Because of the nature and scope of its object, the Treaty often does no more than enunciate aims and lay down the fundamental rules, without settling in advance all the situations which might present themselves on the changing scene of economic life. The Member States have adopted the institutional method, and have created common institutions with the necessary powers to apply the rules and define the common policies.

2. It is in the exercise of these powers, carefully limited as to their object, and accompanied by precise procedural guarantees, that the decisions of the common Institutions are taken.

(a) Leaving the Court of Justice for later consideration, the common Institutions are three in number :

**The Council**, consisting of one member of the Government of each Member State. In fact, the Council is most frequently attended by the Ministers of Foreign Affairs and sometimes by the Ministers responsible for a particular matter on the agenda (agriculture, transport, finance, economics, labour). It meets once or twice a month, Member States occupying the chair in turn. This Institution is the essential decision-making body of the Community ; the Commission takes part in all its work.

**The Commission**, consisting of nine leading personalities who are nationals of the Member States and are appointed for four years by common agreement between the Governments of these States. The Commission has power of initiative and an administrative organization, and is the animator of the Community. Its task is to define, express, and further the general interest of the Community taken as a whole and to watch over the execution of the Treaty. This Collegiate Executive is collectively responsible for its actions to the European Parliament.

**The European Parliament** consists at present of members of the national parliaments nominated by those parliaments. It exercises the specific prerogative of parliaments : political control over the Executive, which it can oblige to resign in a body by a vote of censure. It should be noted that the Parliament is one and the same for the three Communities, and that its control consequently extends to both the Common Market and Euratom Commissions and also to the High Authority (which fulfils in ECSC, but with wider formal powers, the role of Executive played by the Commissions in the other two Communities). On the other hand, the Parliament has no real legislative power : it must, however, be consulted on all important acts of the common Institutions.

Alongside these three Institutions mention must be made of the Economic and Social Committee, which includes the representatives of the various categories of economic and social interests in the six Community countries.

(b) The elaboration of the legal instruments which, with the Treaty, constitute Community law, is generally the result of combined action by these various institutions and organs.

Sometimes, it is true, the Commission has exclusive power of decision under the Treaty either to make technical arrangements for the execution of the Treaty or to apply the Community rules to particular cases : to grant a safeguard clause to a Member State or an authorization to an enterprise. Sometimes, too, the Council decides alone, particularly in matters of administration or internal organization.

But the plan applicable to most of the decisions by which common rules are edicted is the following : a proposal is made by the Commission to the Council ; the Parliament, and if necessary the Economic and Social Committee, is consulted by the Council on the Commission's proposal ; the Council decides, by qualified majority if its decision is in conformity with the Commission's proposal, and by unanimous vote in the contrary case. It will be noted, however, that with a view to gradually introducing the system of majority vote in the fields where the States have so far made sovereign decisions, unanimity will continue to be required for most of the important decisions for several years more, but that the majority vote will become applicable to them as the Common Market is gradually established.

(c) The legal instruments thus elaborated are of different types. Leaving aside recommendations and opinions, which have no obligatory force, the Treaty distinguishes three types :

(i) The Regulation, which is of general scope and directly applicable in all Member States. It has the same effects as the provisions of the Treaty itself, which it is intended, moreover, to define and in a way to extend.

(ii) The Directive, which is sent to the Member States and which is binding on them as to the purpose to be achieved, but leaves them free to choose the means. The directive obliges the Member State to act and lays down for it, in varying degree of detail, the aim to be attained. This procedure does not guarantee absolute uniformity of the law applicable in the six member countries, but allows each member country to adapt the required measures to the peculiarities of its domestic legal system.

(iii) The Decision, which may be addressed either to the Member States or to individuals and which is binding only on the addressees which it names.

If we refer to the criteria mentioned in relation to the Treaty itself, we notice that a regulation or decision addressed to an individual is self-executing, whereas a directive or decision addressed to a Member State calls for action by the latter. Except in a relatively limited number of cases, the Treaty leaves to the common Institutions the choice of the type of act which seems to them most appropriate to their aim.

The Treaty and the acts of the common Institutions therefore form the basis of Community law. To what jurisdictional supervision is this law subject ?

## **B. The jurisdictional supervision of Community law**

A Court of Justice set up by the Treaties shares the task of supervision with the domestic courts and tribunals.

1. As its name indicates, the Court of Justice of the European Communities, which at present has its seat in Luxembourg, is a common Institution which, like the Parliament, is one and the same for the three Communities. It therefore takes an overall view of the Community law deriving from the three European Treaties.

The Court is composed of seven judges appointed for six years by common agreement of the Governments of the Member States, and is presided over by one of them, elected by his colleagues for three years. It is assisted by two advocates-general, who despite their title do not play the rôle of Public Prosecutor – which does not at present exist at the Community level – but present publicly, and with complete impartiality and independence, their reasoned opinion on each case after the investigations have been finished and before the Court begins its deliberations.

The Treaties vest in the Court of Justice the power to take cognizance of a great number of disputes concerning the application of Community law. But the competence of the Court is neither exclusive nor general; however wide it may be it still remains a specific competence.

For the purpose of this brief summary, the chief powers of the Court of Justice may be grouped around a few essential subjects :

(a) As the administrative tribunal of the Communities, the Court is exclusive judge of the legality of the juridical acts of the common Institutions, of the non-contractual responsibility of the Communities, and of disputes concerning officials and agents of the Community. Contentious matters concerning legality constitute the most important and the most original part of its duties. Any Member State, the Council or the Commission, as well as natural and legal persons, within certain limits, may request the Court of Justice to annul a juridical act of the common Institutions on the ground that it is incompatible with the Treaties. This disputes procedure can be initiated either by direct appeal or by a plea of illegality introduced on the occasion of an executory measure pursuant to the act considered illegal.

(b) The Court of Justice, as the international court of the Community, is competent to decide on all disputes arising between Member States in connection with Treaties.

(c) Since it is the judge of breaches of the Treaty, the Court may take cognizance of any case referred to it by the Commission of failure to fulfil obligations resulting from Community law of which a Member State or an individual is accused.

A thorough study would bring out other powers of the Court of Justice which are, however, of a minor nature compared with the above. One of them, nevertheless, merits special mention: in order to protect the independence of the Communities, the protocols on privileges and immunities annexed to the European Treaties provide that the properties and assets of the Communities may not be subject to any measure of administrative or legal constraint without authorization from the Court of Justice.

The contribution of the Court of Justice to the elaboration of Community law is already considerable. Up to now, 157 appeals have been made to the Court, which has pronounced judgment on 102 of them. As 26 cases have been withdrawn, there are 29 still pending. With the exception of about twenty suits brought by officials of various Institutions of the Communities, the cases brought before the Court all concern the implementation of the Community law of the Coal and Steel Community, which has thus shown itself to be the pioneer of European integration even in the field of contentious jurisdiction. As might readily be supposed, no disputes were brought before the Court of Justice until the Communities had been functioning for some years. In the Coal and Steel Community, the way was opened by a Government which was the first to agree to submit to the sovereign decision of the Court a dispute in which it was opposed to the High Authority.

This example found ready imitators and at present all the Governments of the Member States, and various enterprises in the six countries, have succeeded each other on the floor of the Court of Justice. It is reasonable to think that the same will be the case in connection with disputes in the Common Market.

2. The domestic courts are also led to apply Community law. By virtue of the ratification in the proper form of the Treaties, this law is now a part of the municipal law of each Member State and thus falls within the competence of the domestic courts, as defined in the rules governing the organization of justice in each Member State.

The competence of the domestic courts with regard to Community law is limited by only two sorts of provisions in this law: those which attribute exclusive competence, and those which make it obligatory to refer preliminary questions to the Court of Justice of the European Communities. All these provisions are intended to satisfy the twofold anxiety to avoid any denial of justice in cases where domestic courts are normally incompetent (for instance, to judge the behaviour of a foreign government or the validity of an act of a common Institution) and to ensure unity of views in the interpretation and application of Community law.

(a) The first category of provisions is essentially concerned with the specific powers of the Court of Justice already referred to. It also includes the provisions of Article 65(4) of the ECSC Treaty, which confers exclusive power on the High Authority, subject to appeals to the Court of Justice, to rule on the validity of understandings, and any similar provisions which might be adopted by the common Institutions in application of Articles 85, 86 and 87 of the EEC Treaty.

(b) The second category of provisions concerns the reference to the Court of Justice of the Communities of preliminary questions arising in disputes referred to the domestic courts. The range of cases in which such reference is possible is different in the Coal and Steel Community and the other two Communities.

In the Coal and Steel Community, all the domestic courts are obliged by Article 41 of the ECSC Treaty to refer to the Court of Justice of the Communities for a ruling on the validity of resolutions of the High Authority or of the Council should this be contested before them. On the other hand, they are competent to interpret the Treaty and the acts of the common Institutions directly.



Article 41 of the ECSC Treaty thus guarantees persons subject to court decisions a jurisdictional check on the validity of the acts of the common Institutions, but leaves the door open to divergent domestic jurisprudence on the interpretations of Community law.

This lacuna, which would have been even more serious on the wide stage of the Common Market, has been filled in the other two Communities. Article 177 of the EEC Treaty—to which Article 150 of the Euratom Treaty corresponds exactly—provides for reference to the Court of Justice for preliminary determination of questions raised before a domestic court or tribunal in connection, not only with the validity of the acts of the common Institutions, but also with the interpretation of the Treaty and of these acts. Thus the whole interpretation of Community law lies within the competence of the Court of Justice through the medium of the preliminary question.

However, fearing the dilatory effects of obligatory reference to the Court of Justice of all preliminary questions in the interpretation of Community law, the States signatories to the Treaties of Rome have imposed such reference only on domestic courts from whose decisions no appeal lies under municipal law. The other courts and tribunals before which such a question is raised may order reference to the Court of Justice but are not bound to do so. This system, which is not entirely above criticism, tends to avoid the introduction of a permanent complication into the municipal procedures, while making the help of the Court of Justice available to all domestic courts in resolving the complex new problems raised by Community law. It also helps to guarantee unity in the interpretation of this law by the domestic courts and tribunals deciding as Supreme Courts. On this last point, however, the mechanism of Article 177 ensures the seisin by the Court of Justice only of those disputes whose parties are prepared to go to the final appeal under domestic procedure.

(c) It is a very noteworthy fact that domestic jurisdictions have already made an appreciable contribution to the elaboration of Community law. About fifteen cases have so far been the subject of decisions, some of which have not yet become executory.

Four of these cases, introduced before Belgian or Luxembourg courts, concern the determination of the fiscal system applicable to officials of the Communities, the significance of the transfer of a debt to an official of the Communities, and the cancellation of the employment contract of an agent of the Communities. They involve the interpretation of the protocols on privileges and immunities and the appraisal of the public or private nature of employment contracts concluded by the Communities with their agents.

Ten other cases, which are more significant, have called into question before German and Netherlands courts the rules of economic law laid down in the ECSC or EEC Treaties.

As regards the ECSC Treaty, the nullity of understandings alleged to be contrary to the Treaty was pleaded before two German courts. In implementation of the provisions of Article 65 (4) referred to above, the courts suspended the procedure initiated before them pending a ruling by the High Authority on the compatibility of the understandings with the Treaty. In addition, another German court has been led to interpret the stipulations of the Treaty concerning the improper use of dominant positions. Finally, a fourth case, which was particularly illuminating, has been settled by the German Supreme Court.

A purchaser who had noticed that the sales price applied to him included the equivalent of turnover taxes from which other purchasers were exempted, demanded the reimbursement of the taxes from the seller and, in addition, damages for breaches of the non-discrimination rules laid down by the ECSC Treaty. The Bundesgerichtshof (German Supreme Court), to which the matter was referred after passing through the two lower courts, interpreted the Treaty and decided that the price differentiation applied by the seller did not in this instance constitute a prohibited discrimination. The Court further ruled that the infringement of the rules of non-discrimination which were stipulated in the general interest and not for the protection of private interests (Schutzgesetz), could not give rise to a claim for damages under German law.

As regards the EEC Treaty, the two appeals brought before the German courts and the four cases introduced before the Netherlands courts relate to the application of Articles 85 and 86 of the EEC Treaty, which prohibit certain understandings and declare them null and void. These specific cases brought out a divergence in domestic jurisprudence on the immediate applicability of the provisions in question in the absence of any executory decision by the domestic or Community authorities.

They also led the courts concerned to interpret the field of application of Article 85 on understandings. Finally, on grounds which are, however, contestable, none of these courts saw fit to refer the interpretation of this Article to the Court of Justice in the specific cases brought before it. It should be pointed out, nevertheless, that one of the cases is at present pending before the Supreme Court of Appeal of the Netherlands, which will thus have to rule on the application of the provisions of Article 177 of the EEC Treaty concerning reference for a preliminary question.

### **C. Problems arising from the emergence of Community law**

However brief this introductory account may be, it cannot fail to call to mind very many varied and important questions concerning relations, both between Community law and domestic laws, and between the Court of Justice of the Communities and domestic courts and tribunals.

There can obviously be no question of discussing these or even of attempting to define them in such a restricted framework. Moreover, they have been tackled with remarkable authority in the closely documented report – all the more praiseworthy for having been drawn up during the first months of the application of the Treaty of Rome – submitted by M. F. Dumon, Advocate General at the Belgian Supreme Court of Appeal, and M. F. Rigaux, Deputy Prosecutor in Brussels, to the first International Congress of Judges held in Rome from 11th to 13th October 1958.<sup>1</sup> By studying and pondering the report of these two magistrates, their colleagues in the six Member States of our Communities could derive enlightenment on the problems of substance and of procedure which the introduction of the Common Market is likely at any time to bring up for them.

On the other hand, it would be somewhat impertinent to attempt to suggest solutions to magistrates whose task is precisely to reconcile, in complete independence, Community law and their domestic law. This reservation cannot conceal the fact that the decisions of the domestic courts concerning Community law and those of the Court of Justice, which are necessarily complementary, are being followed with equal attention in the Communities.

## **CONCLUSIONS**

The above remarks bring out the fact that, as agents in the approximation of domestic laws and in the elaboration of Community law, the domestic judges make a direct contribution to the progressive building of the Common Market undertaken by the Member States. They also suggest two remarks concerning the influence of the Common Market on the task of the judges.

**1. The Common Market imposes on judges the rôle of guardians of the law.** This first remark, it is true, principally concerns the collaboration of the judges working out Community law. In fact, this is being constructed on the basis of texts which are few in number and exceptionally succinct, both as to the rules of substance and to the procedural provisions. The written law of the Common Market, which is bold in its conceptions and prudent in its provisions, offers a wide field for the creation of jurisprudence.

Furthermore, by its very object this law is profoundly novel. Community law serves a venture in economic integration which has no precedent in its scope and methods; it is linked with an institutional structure transcending the traditional categories, transposes into a new framework concepts borrowed from all branches of law, and presents simultaneously the features of an international convention, an institutional charter, and a code. It therefore calls for a collective effort of research and interpretation on the part of every jurist in the Member States, and more particularly, of the judges.

---

1. Primo Congresso Internazionale dei Magistrati – volume II, Relazioni Nazionali – Rapport belge – Ed. A. Giuffré – Milan 1958.

As the jurisprudence of the Court of Justice already shows, the final aim of the Treaties establishing the Communities constitutes one of the essential criteria of interpretation in this new field of study and action. This final aim alone will make it possible, in many cases, to guard against hasty and misleading analogies with state-dominated structures or with the rules of domestic systems of economic law designed for other ends.

The emergence of Community law thus opens a new creative period of law in which the function of the magistrate takes on its highest significance. It is impossible not to evoke the great precedent of 'praetorian' law, such as the work of the Courts of equity in England or the creation of administrative law by the Council of State in France. It is not indeed a question of filling in the lacunae of an incompletely sketched written law, but of contributing to the working out of the legal rules which a new stage of European civilization postulates. And this leads me to my second remark.

**2. The Common Market introduces a new dimension into jurisprudential work in our countries.**

Legal decisions can no longer be considered in an exclusively national framework, any more than economic decisions. This fact involves two aspects : on the one hand, the systems of law and jurisprudence in the Member States of the Communities can no longer turn their backs to each other. A confrontation and common development have become necessary.

The habits which have grown up in this respect in the economic field among enterprises and administrations in the member countries are a pointer and an example. An exchange of information and reflection in common from the angle of the Common Market are now a part of the preparation of decisions of any importance, so much so that no government can neglect them without encountering unanimous protest from its partners. The fundamental independence of judges protects them against any encroachment on their sovereign freedom of decision. However, it does not relieve them from informing themselves on the scope of their judgments, but makes it their duty to do so. For judges, knowledge of the comparative law of the member countries and symposia with their colleagues from these countries are more and more becoming necessary elements in the accomplishment of their tasks. Furthermore, the domestic courts cannot ignore the Court of Justice of the Communities. True, the former are not officially subordinated to the latter. But the domestic judges, when faced with the new and complex problems of Community law, will find in the jurisprudence of the Court of Justice, and in consultations with this Court by the procedure of referring preliminary questions, the particularly valuable support of a highly specialized tribunal vested with the supreme power of interpretation.

\* \* \*

Allow me to conclude on a more personal note, which is intended both as an expression of thanks and as an appeal.

The few dozen jurists from all the Member States who make up the Joint Legal Service of the three European Executives are endeavouring to blaze the trail in the still too little explored field of Community law. They know the joys of pioneers, but also their anxieties.

They welcome with gratitude and a lively feeling of encouragement gestures which, like your visit to-day, are proof of interest and a promise of aid on the part of the judiciary. They are indeed profoundly convinced of the need for judges to pursue, in the enterprise of new dimensions in which we are all engaged, their traditional work of justice and reason.

## **Community Topics**

*An occasional series of documents on the current work of the three European Communities.*

**No. 1 The Common Market, 1960-1**

Introduction to the Fourth General Report of the Commission of the European Economic Community (July 1961)

**No. 2 Economic integration and political unity in Europe  
by Walter Hallstein**

(August 1961)

**No. 3 A Guide to the study of the European Communities**

(November 1961)

**No. 4 The Common Market and the Law**

by Michel Gaudet  
(November 1961)

*Copies of these and other publications of the Information Service – which are available free of charge – may be obtained from:*

**Information Service of the European Communities**

*United Kingdom: 23 Chesham Street London SW1 Belgravia 4904*

*United States: 235 Southern Building Washington 5 DC*

*National 8-5070*

