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EEC COUNCIL CONSIDERS POULTRY QUESTION

THE COMMON MARKET COUNCIL OF MINISTERS will meet September 23 in Brussels to consider once more United States requests for lowering of levies on U.S. poultry imports into the Community.

The United States has said it will announce withdrawal of trade concessions on $46 million worth of EEC exports to the United States—the loss of market claimed by the U.S. because of increased EEC levies on poultry—should the levies not be reduced. This U.S. announcement would give the 30 days' notice required by the General Agreement on Tariffs and Trade before withdrawal of any trade concession previously negotiated.

The actual retaliation would not take place until sometime in October.

The list of goods for retaliation was being drawn up in Washington after hearings which began September 4. The goods were to be chosen from a longer list, representing $111.5 million in EEC exports to the U.S., announced on August 6. This list included products from all six EEC member countries. (Because of GATT regulations, any U.S. withdrawal of concessions would also apply to exports from non-Common Market countries. But the United States has promised compensation for loss by non-EEC countries).

Commission Disputes U.S. Loss

Jean Rey, member of the Common Market Commission responsible for external relations, declared August 6 that he regretted the U.S. intention to undertake trade retaliation. He also challenged the $46 million loss claimed by the United States. But, at the same time, he said that action by the Council of Ministers on proposals made "many months ago" by the Commission might have averted the dispute.

The Commission estimated at $19 million—not $46 million—the amount of trade on which the United States could rightfully invoke its negotiating rights. This reflected a difference between the United States and the Common Market in the method of calculating the sum. The U.S. used, as its base, the total U.S. poultry exports to the Community in 1960 ($23 million) and added a growth factor of 100 per cent. The Community used 1959 U.S. poultry exports ($12.8 million) and added a growth factor of 50 per cent.

The disagreement over the correct dollar total may have to be settled by GATT, as it stems from a difference of interpretation of GATT regulations.

Imports of U.S. poultry are the only aspect of the Common Market's common farm policy, in force since mid-1962, to give rise to such a dispute between the EEC and a non-member country.

Levy System Outlined

Until the advent of the Common Agricultural Policy, the German market for poultry (which takes about 95 per cent of Common Market imports) was protected by a 15.9 per cent *ad valorem* duty, the average incidence of which is held by the United States to have been 4.9 cents a pound, and by the Commission, 4.3 cents a pound. German poultrymen received a subsidy (food-grain cost differential) of 6.1 cents a pound intended to compensate them for the higher cost of imported feed-grain.

Under the common farm policy, protection of national markets was replaced by a levy system. The levy on poultry, considered a "processed cereal," is derived from the grain levy. It is made up of two elements: the first (at present, 6.7 cents a pound) is intended to compensate for the difference between feed-grain prices in the Common Market and those on the world market; the second (4 cents a pound) is simple protection. In addition, a "sluice-gate" price is set, based on world market feed-grain prices and on the cost of production for representative non-Commun-

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ity producers. This operates as a minimum import price, and poultry offered below that price pays a supplementary levy.

One cause of the present dispute is that the explosion of world poultry output has brought world market prices below the sluice-gate level, so that U.S. exports now bear an additional levy of 2.7 cents a pound.

In asserting that protection has tripled, the United States compares the original German tariff (incidence 4.9 cents a pound) with the total levy charge of 13.4 cents a pound now prevailing. The Common Market Commission maintains comparison should be between the former duty plus the feed-grain differential (10.4 cents a pound) and the present basic levy of 10.8 cents a pound.

Non-existent in 1957, U.S. poultry exports to the Common Market were $2.7 million in 1958, $12.9 million in 1959, $23 million in 1960 and $52.6 million in 1962. Nearly all of these exports went to Germany.

There was a marked drop in German imports of U.S. poultry in the second half of 1962, following the introduction of the levy system. Between the first six months of 1962—when imports were particularly high due to pre-levy stockpiling—and the first six months of 1963, the total fell from 52,516 metric tons (or 45 per cent of the market) to 12,093 metric tons (17 per cent). Total German imports from all sources dropped from 116,370 to 70,160 metric tons over the same period. Poultry sales by other Common Market countries increased from 31 per cent to 51 per cent of total poultry sales in Germany, but in absolute terms barely rose at all—from 35,680 to 36,025 metric tons. Denmark's market share rose from 19 to 27 per cent, but her actual sales fell from 22,153 to 18,949 metric tons.

According to 1960 figures, U.S. poultry exports to all destinations, including Germany, amounted to less than 4 per cent of total U.S. poultry output. The peak of just under $53 million in poultry exports in 1962 compares with a figure of $1.4 billion for U.S. sales of all farm produce to the Common Market in that year, and with the $4.45 billion of total U.S. exports to the Community.

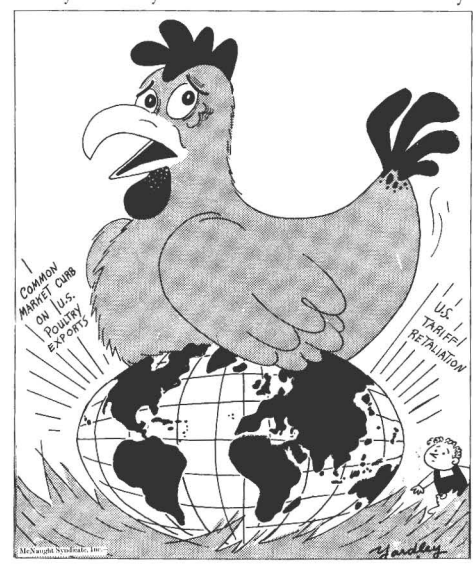
Commission Regrets U.S. Retaliation

"That the government of the United States has decided to adopt measures of reprisal does not surprise me. But I deeply regret a step which does not help to create a good atmosphere for the negotiations now being prepared—negotiations which are of a far greater importance [the Kennedy Round trade negotiations to begin in May 1964].

"What does surprise me, however, is the scale of the measures announced. This greatly exceeds negotion rights the U.S. Administration can properly invoke on the basis for commitments accepted by the Community.

"Be this as it may, it is most unfortunate that the proposals made months ago by our executive commission—which would almost certainly have enabled the Community to avoid the dispute—have not been adopted [by the EEC Council of Ministers]. But this will not deter us in our efforts to reach a solution satisfactory to both sides."—*Jean Rey, member of the EEC Commission, August 6, 1963*

"Nobody Can Stay Out Of World Politics These Days!"



YARDLEY—*The Baltimore Sun*

Community imports of U.S. farm produce covered by the Common Agricultural Policy (cereals, pork, fruit, vegetables, poultry, eggs, and wine) rose from $227.8 million in 1958 to $509 million in 1962, and the rise has continued since the common policy took effect.

Factors other than the levies have also contributed to the fall in U.S. exports.

Community poultry farmers are now applying American techniques, and home production of cheap poultry has climbed steeply. The EEC Commission forecasts a 13.2 per cent rise in Common Market output in 1963, as against a 3 to 4 per cent rise in consumption.

European consumers also have bought European fresh poultry, when available at competitive prices, rather than deep-frozen U.S. poultry. The selling-off late last year of the long-preserved, pre-levy stock of frozen chickens hastened this trend.

When the Common Market un-bound the German poultry tariff and refused a new binding because of the coming common policy, it officially recognized that the United States had negotiating rights in GATT to compensate for any increase in protection.

The U.S. exercised these rights on June 1 of this year when it asked either for 1) the replacement of the levy by a 25 per cent *ad valorem* duty or for 2) a quota allowance of 20 per cent of Common Market requirements at a 20 per cent duty. The Commission, on behalf of the Common Market, rejected this as meaning abandonment of the common policy system. Moreover, it said, a 25 per cent duty would not cover the feed-grain differential.

In March of this year the Commission proposed to the EEC Council of Ministers reductions in both the levy and the sluice-gate price. The Council made only a 0.7 cent-a-pound cut in the sluice-gate price.

On July 10-11, when the Commission renewed its proposal, the Council took no action.

On July 29-30 the Council again took no action, but gave the Commission a mandate to explore temporary or permanent solutions with the United States and to report accordingly to the September 23 Council meeting. It was then that the United States government, considering that no substantial response had been made to its representations, announced its intention to take retaliatory measures.

COMMISSION PROPOSES MEDIUM-TERM ECONOMIC COORDINATION

THE COMMON MARKET COMMISSION has sent to the Council of Ministers and to the six member governments its proposals for coordinating medium-term national economic policies within the Community.

This is the last of three sets of proposals for economic coordination announced by the Commission in its Action Program of October 1962. The two earlier proposals, already before the Council, concern monetary and budgetary policy.

The new proposals, announced by Commission Vice President Robert Marjolin at a press conference in Brussels on July 31, cover policies the effects of which will be seen in the period 1966-70.

If the outline proposal is approved by the Council of Ministers, the Commission will take the following steps:

- Consult with independent experts, who would advise on the general aims and outlines of detailed proposals to be submitted later to the Council of Ministers.
- Set up a committee on medium-term policy, composed of senior officials responsible for medium-term economic policy in the member countries' national administrations. This committee would complement the Community's Monetary Committee and the Business Cycle Committee.
- Obtain the views of the Community's Economic and Social Committee and of the European Parliament, and consult interested parties in the Community such as employers' organizations and trade unions.

In light of this advice, the commission would then work out proposals for coordinating member governments' economic policies, and for coordinating these policies with steps being taken at the Community level. These proposals should be submitted to the Council early in 1965.

Introducing the Commission's proposals to the press, Vice President Marjolin said that the Commission would welcome the opportunity to coordinate the medium-term policies of the Community with similar policies in nonmember countries, particularly in Great Britain and the United States.

This was the first time Community proposals had been put forward for coordinating economic policies in the medium term—defined by Mr. Marjolin as a period of four to five years. The Commission believed that the kind of cooperation and coordination already under way in the field of short-term policies must necessarily be extended to areas where decisions are taken in the light of longer-term considerations. In all member countries a third of the national income was spent by governments, much of it under medium-term programs, Mr. Marjolin said.

Preparatory Studies Proposed

As a basis for coordination, the Commission would make detailed preparatory studies of medium-term prospects. These studies would aim at ensuring that national and Community decisions took into account the foreseeable medium-term effects for the Community as a whole and the interaction of national policies. The studies would cover all aspects of national production and distribution, which in itself would demand a high degree of coordination between the various national methods of medium-term economic forecasting.

The Commission emphasized that although the forecasts would be in quantitative terms—a system intended to help smaller firms, who are at a disadvantage by being unable to undertake their own economic forecasts—they would not in any way represent growth targets. They would, on the contrary, be drawn up on the basis of reasonable assumptions regarding government policy in the period under examination. Except in special fields such as agriculture, energy, transport and housing, the studies would not be on a sector-by-sector basis but would deal with the economy as a whole. The overall aim would be to evaluate future increases in income in relation to expected increases in production, and the consequences of such developments for the balance between consumption and investment.

The Aim: A Framework

The coordination of national medium-term policies would provide a framework within which national and Community economic decisions could be taken in full awareness of their implications for the Community as a whole.

The program the Community plans to work out would cover the following main areas of activity:

- *Government income and expenditure.* Coordination would aim at keeping government expenditure at its optimum level, both to meet the various needs of the population as a whole and to ensure the desired rate of general economic development.
- *Balanced regional development in the Community.* Coordination would cover development plans for backward areas, and manpower policy—vocational training and measures destined to ease problems connected with movements of the labor force.
- *Problems relating to certain specific fields of government expenditure.* These would include economic infrastructures (roads, harbor facilities, railways, for example), where national programs usually cover periods exceeding a year; vocational training, and scientific and technical research.
- *Government action in agriculture, energy, transport and housing.*

In presenting its proposals, the Commission dropped the term "programming" and adopted the term "coordination of policies."

Mr. Marjolin said that the proposals would mean no new state intervention, and would contribute to a reduction in the kind of intervention which resulted from lack of foresight or from inadequate knowledge of the factors involved.

At the same time, coordination of policies would in no way clash with the various kinds of medium-term planning which do exist in some member countries (France, Italy and the Netherlands), Mr. Marjolin continued. "Nevertheless, the continued development of economic union among the Community countries and, above all, the free movement of capital and the establishment of a single capital market, would tend to make isolated planning at the national level more and more difficult," Mr. Marjolin said.

ECSC INDUSTRIES REPORT RECORD INVESTMENT IN 1962

ANNUAL INVESTMENT BY Community steel, iron-ore and coal firms rose by nearly 80 per cent between 1954 and 1962, according to the European Coal and Steel Community's recently-published investment report for 1963.

But a slowdown in steel is forecast for next year.

During the 1954-1962 period, total capital expenditure by ECSC industries amounted to $10.8 billion. In 1962, investment reached a new record level of $1.7 billion, compared with $933 million in 1954. The forecast for 1963 is even higher at $1.9 billion.

The growth of total investment in ECSC industries has been almost entirely due to the continued expansion in steel, as the following table shows.

INVESTMENT IN ECSC INDUSTRIES

$ '000,000	1954	1955	1956	1957	1958	1959	1960	1961	1962	Forecast 1963
Coal	450	416	409	473	474	411	377	391	392	398
Iron-ore	30	31	44	50	41	40	43	52	56	47
Steel	453	524	570	708	644	587	775	1123	1218	1435
Total	933	971	1023	1231	1159	1038	1195	1566	1666	1880

Steel

Total capital expenditure in the Community's steel industry hit new records in 1961 and 1962, but mainly as a result of investment programs started in previous years. The level will also remain high in 1963. Production will thus continue to be burdened, the report says, with investment costs that will be hard to bear since they coincide with a general fall in selling prices. Some producers are already cancelling or postponing planned investment, the report says, and this trend is expected to increase in 1964 and 1965.

Investment in pig-iron production also remained high in 1962. The maximum production forecast for 1965, given a 96 per cent utilization of plant, is about 73 million metric tons for pig-iron and 71 million metric tons for sintered ore.

Steel-making investment should lead to a maximum production of some 92 million tons in 1965 (at a 96 per cent utilization rate), the report says. Of this total, some 16 million tons will be oxygen-blown steel.

Rolling mills have continued to absorb about half of total investment in the Community's steel industry since 1960. Since that date, however, growth in both wide hot- and cold-strip mills has declined in favor of a more-balanced distribution of investment between output of flat products and sections. Several wide hot-strip mill projects have been abandoned, but total capacity of all mills of this kind will reach some 28 million tons by 1965, even though available crude steel will be sufficient for production of only 22 million tons.

The report, issued by the High Authority of the Coal and Steel Community, concludes that some of the reductions in investment programs may soon affect the Community steel industry's competitive position, making it exceedingly sensitive to movements in world steel prices.

Although investment in iron-ore mines remains relatively high, the High Authority states, production potential will be only about 108 million tons in 1966, compared with 105 million tons in 1962.

Coal

Mines accounted for nearly 60 per cent of capital expenditure in the coal industry in 1962, and the level of investment in this sector remains remarkably constant—$1.00 per ton produced in 1962, compared with $1.02 in 1961 and $1.05 for the period 1952-1960.

Investment in pit-head power stations remains high, and maximum capacity is expected to increase from 8,863 MW at the beginning of 1962 to 11,881 MW at the beginning of 1967. At the present utilization rate, electricity produced from this source should reach about 53,000 million kWh by 1966.

Expenditure on coking plants (both mine and steelworks owned) remains low at $0.79 per ton of coal produced in 1962, compared with an average of $1.30 in the years 1952-1960. The maximum possible coke production in 1966, at about 83 million tons, should be sufficient to cover foreseeable needs, the High Authority report says. This forecast takes into account falling coke consumption in blast furnaces and declining need outside the steel industry.

High Authority Loans

Total loans made by the High Authority for investment in the Community's coal and steel industries now amount to nearly $337 million. They have been distributed as follows:

	$ '000,000	Per cent
Coal Industry	147.6	43.8
Iron-ore	29.3	9.0
Steel industry	159.9	47.2
Total	336.8	100.0

The High Authority's latest borrowing, on the Belgian, Dutch and Italian money markets, provided $32.7 million, of which $8.1 million has been earmarked to help the construction of workers' houses in Belgium and Italy. The remaining $24.6 million (included in the above table) will be used to finance industrial projects.

High Authority Levy Unchanged

The Coal and Steel Community High Authority has decided to leave its levy on Community coal and steel producers unchanged at 0.2 per cent of the value of production for a further 12 months from July 1, 1963. At the same level last year, the levy produced $10.75 million.

These funds are used to pay the High Authority's operating expenses, to guarantee loans raised on world money markets, and to help finance readaptation and redevelopment projects.

GREECE MEETS THE CHALLENGE OF THE COMMON MARKET

GREECE IS MAKING EFFORTS to ensure full membership in the Common Market by—at latest—the end of the 22-year transition period envisaged under the present association agreement.

In its 1963 budget, the Greek government has earmarked $280 million for public investment, and larger amounts are planned for future years. This action is being matched in the private sector by an upsurge of effort by Greek and foreign firms.

The association agreement between Greece and the Common Market came into force on November 1, 1962. It takes the form of a customs union to be established gradually during a transition period, and has been specially designed to encourage Greek economic development. Although Greece will share most of the economic opportunities offered by the Common Market, precautions have been taken to protect her developing economy in competition with her more advanced partners.

The Greek investment program still depends, however, on help from abroad. Greece has received promises of aid from the German Federal Republic, France, the United States and the European Investment Bank (a Community institution). Negotiations are also taking place for the establishment of a development consortium in which it is likely that other OECD countries will participate.

Government investment under the current program is aimed at four main goals:

- *Increasing the output of energy.*
- *Aiding the development of small and medium-sized firms.*
- *Improvement of economic infrastructure.* A modern network of roads and railways, port improvements, and up-to-date telephone network are planned as a basis for the establishment of new industrial areas.
- *Improving agricultural output.* In this context, the Greek government is paying particular attention to farm mechanization.

During the past year, new private and Government investment amounted to roughly $700 million, and over the past seven years, total investment in both sectors has risen by 147 per cent. In 1961 and 1962 alone, private industrial investment rose by 45 per cent. Total private investment in Greek industry now amounts to roughly $644 million and work has started on a new industrial complex valued at some $112 million. This project is being undertaken by a group of American firms.

By the end of 1984—the year in which the transition period envisaged under the association agreement will end—Greece will have had to fulfill the following objectives in order to gain full Common Market membership:

- Expansion and rationalization of Greek industry must have reached the stage where Greece will be industrially competitive with the six Community countries.
- Greek exports must have been increased sufficiently to eliminate the present structural weakness in the country's balance of payments.
- Agricultural output must be greatly expanded, particularly for those products for which there is an export demand.

Farm Policy Being Harmonized

The Common Market Commission's special agricultural committee has decided to set up a new body to study ways in which Greek and Common Market agricultural policies can be harmonized.

Such harmonization, for products covered by the Common Market's agricultural policy, is specifically envisaged in the association agreement between Greece and the Community. To prevent a divergence of Greek and Community politics, the Community recently informed the Greek government that it was ready to apply this provision for grains, pork, eggs, poultry, fruit and vegetables. To begin with, the new committee will submit a questionnaire to the Greek government on grains, fruit and vegetables.

ISRAEL NEGOTIATIONS AT STANDSTILL

NEGOTIATIONS FOR A TRADE AGREEMENT between Israel and the Common Market, begun in the autumn of 1962, are adjourned and not expected to be resumed for several months.

The Israeli delegation in June rejected as too-limited a Community offer of tariff and quota concessions on imports of Israeli grapefruit, bathing suits and some kinds of fertilizer. Israeli counter-proposals envisaged tariff and quota concessions by the Community on nearly 40 groups of items, including oranges, special measures for some farm products, and lower tariffs for goods exported only by Israel. In addition, the Israeli delegation asked for duty-free entry into the Community for goods processed in Israel but made from raw materials originally purchased from Common Market countries.

Initially Israel had asked for a full association agreement with the Community "or any other form of agreement which would cover all Israeli trade relations with the Community." This possibility was rejected by the Common Market Council of Ministers, which instructed the EEC Commission to negotiate on the Community's behalf on the basis of a more limited mandate. As the new Israeli proposals still exceed this mandate, they must now be referred back to the Council of Ministers.

Jean Rey, member of the Common Market Commission responsible for external relations, said on June 28: "The negotiations began in a situation which I shall not hesitate to describe as disappointing. . . . I myself consider that the results to date are both insufficient and a disappointment. . . . (The Israeli proposals in June) will, at all events, call for a change of outlook from our governments on the whole matter of these negotiations . . . We cannot remain in the present position, which is . . . not compatible with what the European Community wants to do for Israel."

Court in session: (left to right) Advocates-General Maurice Lagrange and Karl Roemer, Judges Alberto Trabucchi and Otto Riese (recently retired and replaced by Walter Strauss, German Secretary of State for Justice), President of the First Chamber Louis Delvaux, President of the Court Andreas Matchias Donner, President of the Second Chamber Rino Rossi, Judges Charles Leon Hammes and Robert Lecourt, and Clerk of the Court Albert Van Houtte.

COMMUNITY'S COURT OF JUSTICE BUILDS EUROPEAN LAW

by Robert Lecourt

Judge of the European Community Court of Justice

THE EUROPEAN COMMUNITY COURT OF JUSTICE recently celebrated its tenth anniversary—with the habitual discretion of the legal world.

The Court has changed a great deal since 1952. Set up in that year under the Paris Treaty to meet the needs of the Coal and Steel Community, it acquired new and wider powers in 1957 when the Rome Treaties established the Common Market and Euratom. It then became the Court for all three communities, and since that date an integrated system of Community law has been evolving—an inevitable result, and at the same time, a condition of European unification.

This development is indeed vital to European integration. One can imagine the difficulties and confusion that would result if each Treaty had its own judicial system, embodying its own specialization, guardian of the particularisms of its own regime, and applying Community law in its own way. Without a supreme court to decide conflicts of jurisdiction and precedent, European unity would have been threatened by lack of conformity in the interpretation of the Treaties.

A Single Body of Law

The hopes placed in a united Europe would have been close to disappointment if we had applied the usual system, common to most international institutions, of making each separate body autonomous, complete with its own courts in which specialists deliberated among themselves. European unity requires a common interpretation of the Treaties—a single body of law. And a single body of law presupposes a single judicial system.

But such a system is a means, not an end. Its main function is to ensure the development of European law—without which the Community would remain a fragile construction, vulnerable to political hazard and economic recession.

An organic Europe would hardly remain viable for long if it rested on a fragmentary legal system, composed of many varied and contradictory laws, and applying this or that law indiscriminately, as the occasion seemed to demand. Nor can one conceive of a United Europe without the gradual establishment of not only public, but also private, Community law, applicable to all matters covered by the Treaties.

Finally, one can have no illusions as to what would happen to free circulation for people and goods if producers, workers, tradesmen and merchants were hampered in their desire to do business or earn a living beyond the frontiers of their own country by the unknowns of a strange system of law different from their own.

Private European Law

The birth of a body of European private law should encourage European economic expansion. Perhaps indeed it is not unrealistic to believe that the development of an integrated system of European private law would release a driving force comparable to that which was suddenly released by the economic provisions of the Rome Treaty. In each of the six countries one can clearly see the need for harmonization and integration going beyond the necessarily limited and circumscribed attempts to unify commercial law and judicial procedure. Law is the reflection of people's lives, and the gradual unification of European law has many possibilities for the future.

This was in the mind of the President of the Court in 1958—the year the Common Market was set up—when he proposed that the six Community countries should seek, without delay, a method of gradually harmonizing their legal systems. Today, five years later, the problem remains unsolved, but how much more urgent it has become.

This was also the aim which inspired the authors of the three Community Treaties when they empowered national courts in the Community countries, in cases brought before them, to apply not only the Treaties' rules but also the interpretations of these rules handed down by the Community's Court of Justice. If one day it were fully achieved, the same system of Community law could be applied from Amsterdam to Bari, from Brest to Bonn.

The functions of the Court of Justice are not limited, as is generally believed, to settling specialized disputes concerning coal and steel or the industrial and agricultural products of the Common Market. Its real purpose is to ensure the consistent interpretation of the Treaties and, through this, the consistency of legal practice at a European level. In this way it is preparing the ground for a true system of European law.

THE COURT'S TASK

Guardian and Interpreter of the Treaties

THE TASK OF THE European Community's Court of Justice is to ensure respect for the rule of law in the interpretation and application of the Treaties on which the Common Market, the Coal and Steel Community, and Euratom are based.

The Court consists of seven judges, assisted by two advocates general and a clerk. Its members are chosen by the six Community governments from among judges, practicing lawyers or academic jurists of repute. Not only must they be qualified to hold the highest judicial offices in their own countries, they must also be capable, if the need arises, of exercising judgment independently of their own countries' particular interests.

The Court can decide on the legality of acts committed by the Council of Ministers and the Community Executives (the Common Market and Euratom Commissions and the Coal and Steel Community's High Authority). It decides on appeals for exemption from Community regulations, questions of Community procedure, disputes over the interpretation of the Treaties or any of their implementing regulations, and cases where Community institutions are alleged to have exceeded their powers. It is also competent to decide in cases where one of the Executives is alleged to have failed to carry out some task required of it under the Treaties.

Right of appeal to the Court is open to member governments and to Community institutions such as the Council of Ministers and the three Executives. Under the Common Market and Euratom Treaties, private individuals or legal personalities may also appeal to the Court against Community rulings which are directed at them, or which concern them directly and specifically.

The ECSC Treaty allows firms or associations of firms subject to the Treaty's provisions to appeal against particular Community decisions which concern them, or against general decisions which they feel result in injustice when applied in their case.

In addition, the three Treaties allow appeals, under certain conditions, from private individuals in cases where the Community Executives are alleged to have failed to carry out their responsibilities under the Treaties.

Apart from deciding on the legality of acts by Community institutions, the Court may also give judgment and award damages in cases where the plaintiff claims that he has suffered a loss as the result of an act by a Community institution. Under certain circumstances the Court may also decide preliminary issues submitted by national courts in the Community countries, where questions of interpretation of the Treaties or the validity of Community decisions are raised in domestic litigation.

How the Court Works

Composition: The seven judges, chosen "by agreement" among the Community member governments for a term of six years, elect from among their number the president of the Court, who serves in that capacity for a term of three years. The two advocates-general are also nominated by the six governments; the clerk is appointed by the Court.

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THE COURT AND AMERICAN LAW

by Victor J. Stone

Professor of Law, University of Illinois

THE FUNCTIONING OF THE European Community's Court of Justice during its first decade has revealed striking parallels and contrasts with common law patterns and American federalism.

Few important Community actions fail to produce litigation challenging the legality of the ends sought and the means employed by Community executive bodies or the fulfillment by member governments of their Treaty obligations.

Yet this single Court—the entire judicial system of the three Communities—has no less a mission than ensuring "observance of law and justice" in Community affairs. Only through careful, time-consuming consideration can it achieve the desired blend of wisdom, strength, and restraint in deciding highly complicated and delicate matters. As an increasing caseload from the accelerated activities of the Common Market begins to descend upon the Court, one may question whether it will be adequate to the quantitative demands laid upon if it is to continue to act as court of first and last instance in every case.

Regard for Precedent

Common-law judges make law by deciding concrete cases. Principles established by prior decisions will usually be followed in subsequent cases, and only a change in conditions or unsatisfactory operation of an old rule is thought to justify departure from precedent.

Like their counterparts in common-law jurisdictions, the judges of the Community Court have had to do much lawmaking; the lacunae and ambiguities in the Treaties are many and significant. However, in accordance with continental legal tradition, which looks primarily to legislation rather than to court judgments for rules by which to decide cases, the Court does not acknowledge its law-creating role. Consequently, it does not recognize any binding quality in its own previous decisions. Nor does it cite decisions by courts of member countries in cases involving the same or similar issues.

This contrast with common-law practice was particularly striking in a recent judgment of great import. On February

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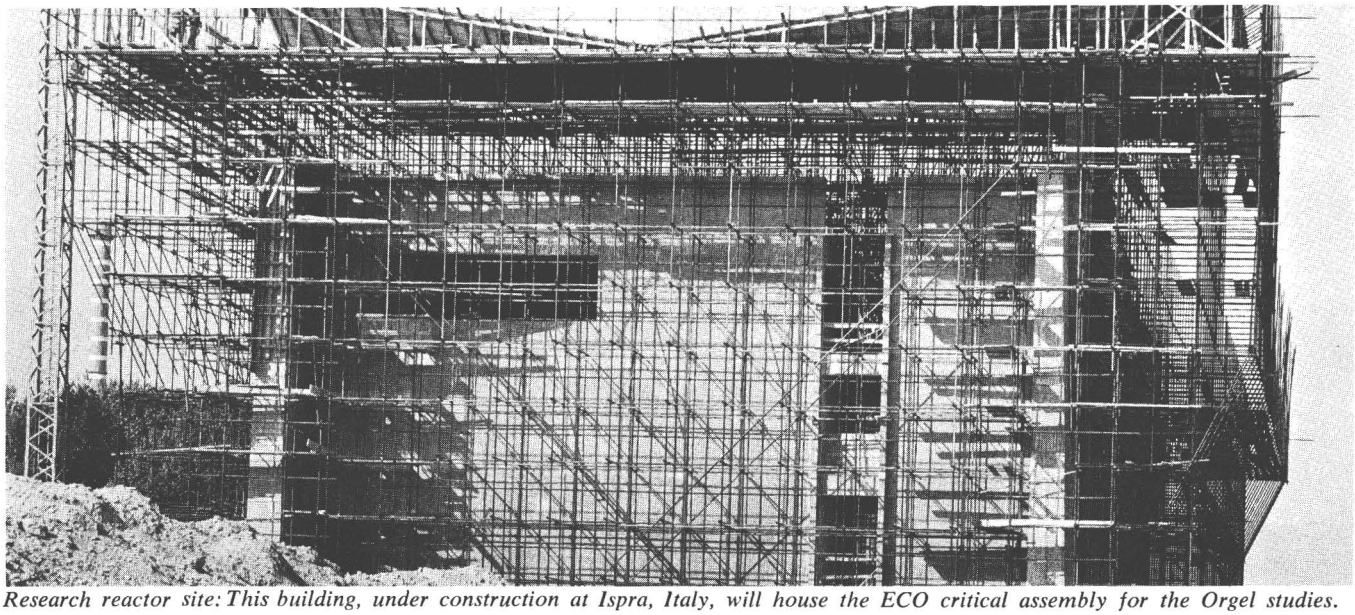

Research reactor site: This building, under construction at Ispra, Italy, will house the ECO critical assembly for the Orgel studies.

WORK BEGINS ON SECOND-GENERATION ATOMIC REACTORS

THE TEAM OF SCIENTISTS assigned to the European Atomic Energy Community's *Orgel* research program began to assemble at Ispra—the largest establishment of Euratom's Joint Research Center, near Lake Maggiore, Italy—on September 1.

The *Orgel* program involves research on natural uranium-fueled atomic reactors using heavy water as a moderator and an organic liquid as a coolant.

This formula for an atomic reactor has several advantages in terms of the European nuclear power program:

- Natural uranium is an atomic fuel which can be obtained with relative ease in the Community, and firms already process it for use in reactors in a large variety of ways;
- Heavy water is an effective moderator when natural uranium is used as a fuel;
- An organic liquid tolerates both relatively high temperatures (of the order of 400°C) in low pressure circuits, and allows the use of conventional structural materials.

Besides studying the many problems which remain to be solved before power stations can be equipped with this type of reactor, the *Orgel* program will cover problems relating to all types of reactors using heavy water or organic liquids. Among the subjects included in the program are metallurgy (the properties of sintered aluminium and uranium carbide, for example), nuclear chemistry and reactor physics. The equipment for the *Orgel* studies includes the ECO (Orgel critical experiment) research reactor, now under construction at Ispra and due to come into operation early in 1964. This will enable Euratom scientists to make precise studies of techniques for obtaining the best neutron economy in *Orgel*-type reactors.

Test Reactor Planned

A further stage in the *Orgel* program (most of which will be carried out at Ispra) will be the construction of a 25 MW test reactor ESSOR (Essai Orgel), which should be completed in 1965. ESSOR is intended for the general study of power reactors using heavy water as a coolant, and should enable a complete *Orgel* system to be tested under conditions similar to those in a full-scale nuclear power station. The design for ESSOR has already been completed, and it will be built by private industrial groups.

Euratom's second five-year research program allots $57 million for the *Orgel* project.

The *Orgel* program is based on a method of producing electricity from nuclear energy which seems particularly appropriate for Europe's medium-term needs, as it uses natural uranium for fuel, and the fuel cycle is relatively simple. Fuel costs are expected to be no higher than those for current reactor types; investment costs should be lower.

Industrial Application Seen

While *Orgel* belongs to the second generation of atomic reactor projects, Euratom's main short-term aim is to put nuclear power on an economic footing through the development of known reactor types which, in the present state of knowledge, hold out the best hope of industrial application. These include gas-graphite reactors, of which experience has been gained primarily in Great Britain and France (up to 4,000 MW of capacity in operation or being installed), and light-water reactors developed in the U. S. (over 1,800 MW in operation or being installed). As a result of this policy, Euratom hopes to help make nuclear electricity available in Europe at prices competitive with those of the cheapest alternative energy sources by 1970 at the latest.

More Funds for Euratom Research

The Euratom Council of Ministers, meeting in Brussels on July 29, approved a supplementary budget making an extra $3.9 million available for the Euratom Commission's second five-year research program. The new funds represent the unspent portion of the Commission's budget under Euratom's first five-year research program (1958-1962). A total of $425 million was originally allocated for the second program, compared with $215 million in the first five years.

HIGH AUTHORITY ASKS PARIS TREATY REVISIONS

"Undeniable signs of reviving national, isolated economic policies are already visible, which explains perhaps the slowness with which some Community policies are being defined and put into practice."

This is one of the conclusions in a new report, assessing 10 years of European integration, by the High Authority of the European Coal and Steel Community. (The High Authority's report, "Les dix premières années d'une intégration partielle", will be published in September in French and German editions, and later in Italian and Dutch.)

The report sets out to answer three main questions:

- To what extent has the ECSC fulfilled the hopes placed in it at the time of its creation?
- On what points have results been in line with the objectives laid down in 1950 and on what points in 1963, is there a divergence between them?
- Is it possible to ensure that there will be further progress?

The High Authority report recalls that the ECSC was created with essentially political objectives—as a first step toward a united Europe—and concludes that it has indeed been a driving force in the political evolution of Europe. After five years of experiment in Community methods, it was possible to organize the general Common Market. And in 1961-1962, new requests for Community membership confirmed the success of these first years, the report says.

The Coal and Steel Community's powers in the economic and social field under the Paris Treaty have been generally effective, the report says. This is particularly true of the provisions dealing with the general objectives (which provide guide-lines for investment and production), the Community tax, the raising of funds and loans; with financial arrangements such as the scrap perequation plan; with investments, research, readaptation and redevelopment. On these last points, the report says, the contribution of the ECSC has been particularly important, as it has given real meaning to the principle that technical progress must not take place at the expense of the worker.

Changing Conditions Stressed

Since the Paris Treaty was drafted, however, the positions of the coal and steel industries in Europe have changed. While at the beginning of the Common Market, competition from outside hardly counted, today coal has become very vulnerable to it, the High Authority points out, and European steel is fighting hard to maintain its competitive position.

As a result, the report says, some of the Treaty's rules have shown themselves to be inadequate. It points out that Article 58 of the Paris Treaty, covering the declaration of "manifest crisis," could not be used during the severe structural crisis in the coal industry in 1959. Instead, it was necessary to return to more flexible rules (often the so-called procedural article) to deal with the problems facing the Community. Article 37, covering fundamental and persistent disturbances in a national economy, was used to cope with the Belgian coal situation. Article 95 was used when paying special unemployment allowances to miners in Belgium, for financing coal stocks, and for widening the Treaty provisions on readaptation and redevelopment aid to depressed areas.

The High Authority report also declares that Paris Treaty Articles 71 to 75 on trade policy are anomalies. The Rome Treaties (establishing Euratom and the Common Market) define the common external tariffs and envisage a common foreign trade policy, it points out, while the Paris Treaty stipulates only the harmonization of external tariffs and has no provisions for a joint policy on imports.

The provisions of the Paris Treaty are also incomplete in three other important sectors, the report states:

- *social policy,* which, with certain important exceptions, does not fall directly within the Community sphere;
- *transport,* for which, with certain exceptions, the Community has no power to make its own decisions;
- *trade policy,* for which the powers of the ECSC are strictly limited and for which there is no common external tariff.

ALBERT COPPE, *Vice President and acting head of the ECSC High Authority*

Lastly, the report states, it has been recognized since 1958 that it is necessary to put all energy sources under common rule, but it has still not been possible to provide the Community with the means to create and administer a common market in energy supplies.

The difficulties which the High Authority faces today arise from the fact that the Paris Treaty provided for integration in two sectors only—coal and steel—and that its powers within those sectors are limited to specific objectives which do not always correspond to today's economic needs, the report declares.

Thus, the report continues, in several important fields—notably in energy policy—the High Authority has had to go beyond the business of administering the common market for coal and steel, for which it has specific decision-making powers (sometimes subject to approval from the ECSC Council of Ministers). In today's conditions, it is not possible to implement policies for coal or steel without entering areas which do not fall within the High Authority's original mandate, the report says.

Treaty Revisions Recommended

The Paris Treaty must be supplemented and revised, the report declares, particularly in making some basic rules of the Treaty less rigid. On the question of subsidies, for example, the High Authority asks that the present absolute prohibition be replaced by certain selected and carefully administered subsidies as a means of solving gradually some of the coal industry's current structural problems.

The High Authority report also advocates a formula for Paris Treaty revision which does not try to define immediately all the measures which may eventually be required. It proposes instead adding a number of rules to the Treaty which would merely provide guidelines for future action. If at the same time the three Communities (Coal and Steel Community, Common Market and Euratom) were given a single executive body, it would permit more effective use of these new powers, the report concludes.

ROBERT SCHUMAN

ROBERT SCHUMAN, first president of the European Parliament, died September 4 at his home near Metz, France.

Born on June 29, 1886, in Luxembourg, son of a Lorraine farmer, Mr. Schuman rose to world-wide political prominence as author of the "Schuman Plan."

The "Schuman Plan"—for pooling the coal and steel economies of Western European nations under a common authority—was the first step in the creation of the European Community. As French minister of foreign affairs, Mr. Schuman introduced his proposal on May 9, 1950, the eve of the London Conference of the foreign ministers of the United States, Great Britain and France.

Speaking in Paris on behalf of the Government of France, he said, "World peace cannot be safeguarded without constructive efforts equal to the dangers which threaten it." These efforts were realized in 1952 with the establishment of the European Coal and Steel Community, which eventually led the six member nations to form, in 1958, the Common Market (the European Economic Community) and the European Atomic Energy Community.

Worked for European Unity

Mr. Schuman's contribution toward the unification of Europe stemmed from a career in French-German relations and an over-all concern for world peace.

In World War I, Mr. Schuman served in the German army. After the war, when Alsace-Lorraine was recovered by France, he became a French citizen. In 1919, he was elected deputy from Moselle for the Popular Democratic Party. Mr. Schuman became president of the Alsace-Lorraine Commission of the French Chamber of Deputies in 1928 and remained in that post until 1936.

On March 22, 1940, Mr. Schuman was nominated under secretary of state for refugees in the cabinet of Paul Reynaud. He served in that capacity for four months and then returned to Metz, where he was arrested by the Gestapo and deported to Germany. He escaped German imprisonment in 1942 and joined the French resistance movement.

After the Liberation he joined the Mouvement Republican Populaire and was elected deputy from Moselle in October 1945.

In June 1946, Premier Georges Bidault appointed him minister of finance. He remained in the government until December 1952, except during the term of Leon Blum in December 1946.

Mr. Schuman served as premier of France in 1947 and 1948.

Pioneered European Community

In January 1950, Mr. Schuman held discussions in Bonn with Chancellor Adenauer regarding the statute of the Saar and its bearing upon future Franco-German relations. These talks resulted in the historic Schuman declaration of May 9, which placed France-German production of coal and steel under a common High Authority, within the framework of an organization open to the participation of the other countries of Europe.

On March 19, 1958, Mr. Schuman was elected first president of the European Parliament. He served in that post for two years.

THE SCHUMAN PLAN DECLARATION

May 9, 1950

"World peace cannot be safeguarded without constructive efforts equal to the dangers which threaten it.

"The contribution which an organized and living Europe can bring to civilization is indispensable to the maintenance of peaceful relations. In taking upon herself for more than twenty years the role of champion of a united Europe, France has always had as her essential aim the service of peace. A united Europe was not achieved, and we had war.

"Europe will not be made all at once, or according to a single, general plan. It will be built through concrete achievements, which first create a de facto solidarity. The gathering of the nations of Europe requires the elimination of the age-old conflict between France and Germany.

"The first concern in any action undertaken must be these two countries.

"With this aim in view, the French Government proposes to take action immediately on one limited but decisive point. The French Government proposes to place Franco-German production of coal and steel under a common High Authority, within the framework of an organization open to the participation of the other countries of Europe.

"The pooling of coal and steel production will immediately provide for the setting-up of common bases for economic development as a first step in the federation of Europe, and will change the destinies of those regions which have long been devoted to manufacturing the arma-

ments of war of which they themselves have been the most constant victims.

"The solidarity in production thus established will make it plain that war between France and Germany becomes not merely unthinkable but materially impossible. The setting-up of this powerful production unit, open to all countries willing to take part, and eventually capable of providing all the member countries with the basic elements of industrial production on the same terms, will lay the real foundations for their economic unification.

"This production will be offered to the world as a whole without distinction or exception, with the aim of contributing to the raising of living standards and the promotion of peaceful achievements.

"Europe, with new means at her disposal, will be able to pursue the realization of one of her essential tasks, the development of the African continent.

"In this way there will be realized, simply and speedily, that fusion of interests which is indispensable to the establishment of an economic community; and will be the leaven from which may grow a wider and deeper community between countries long divided by bloody conflicts.

"By pooling basic production and by setting up a new High Authority, whose decisions will be binding on France, Germany and other member countries, these proposals will build the first concrete foundations of the European Federation which is indispensable to the preservation of peace. . . ."

ATLANTIC WORLD PAYS TRIBUTE TO SCHUMAN

"The Commission of the European Economic Community has learned with very great distress of the death of Mr. Robert Schuman.

"Mr. Schuman played a vital part in the building of a united Europe. His historic declaration of May 9, 1950, combining as it did boldness with political realism, lies at the very roots of the European venture of which the Communities are the expression.

"The members of the Commission pay tribute to the memory of this great European, who opened new paths for cooperation between nations and strove unremittingly, with passionate conviction, for a world of peace and human brotherhood."—*Statement by Common Market Commission, September 4, 1963.*

"With the death of Robert Schuman, . . . the world has lost a remarkable statesman. He shared with Jean Monnet a brilliant vision of a united Western Europe and lived to witness its realization, first with the European Coal and Steel Community, the outgrowth of the Schuman Plan, and ultimately with the creation of the European Economic Community.

"The spirit of a united Europe which animated Robert Schuman was broadly conceived. . . . As early as 1951, when Europe was just beginning to recover, with Marshall Plan aid, Mr. Schuman was saying that 'the future of underdeveloped countries for which we are responsible must more and more become the object of our concern and of our planning. . . .' He was, in President Kennedy's words, a man who 'combined vision with realism'."—*Washington Post, September 5, 1963.*

"The members of the Commission and of the European Atomic Energy Community have learned with great sadness of the death of President Robert Schuman. Europe loses in him an essential and exemplary personality, a real statesman of wide vision. Originator of the building of Europe, President Schuman also played a determining role in the establishment of the Rome Treaty which created the European Atomic Energy Community. This is why I wish personally, and in the name of my colleagues, to express, for this great man, our respect and sorrow."—*Text of telegram addressed to the family of Mr. Schuman by Pierre Chatenet, President of the European Atomic Energy Community.*

"The death of Robert Schuman, former French Premier and Foreign Minister, removes one more of the handful of great Europeans who wrought the miracle of the new Western Europe. More than 13 years ago he startled the world by launching the most novel and ambitious venture in international cooperation ever undertaken. Known as the Schuman Plan, it created the European Coal and Steel Community—a union that has blossomed into the European Economic Community and that may eventually provide the foundation for a United States of Europe as equal partner with the United States of America in an Atlantic Community. . . . Its success will be a monument to the vision and realism of Robert Schuman."—*New York Times, September 5, 1963.*

"Robert Schuman combined vision with realism. He was a friend of free men everywhere. His proposal for a European Coal and Steel Community marked the beginning of progress toward European unity. Robert Schuman was a citizen of France, Europe and of the world whose passing I mark with great regret."—*Statement by President Kennedy, September 4, 1963.*

". . . It was Schuman who in 1950, as French Foreign Minister, marked out the lasting framework of the Europe to come . . . The eventual political implications of the great progress already made are inescapable. Their fulfillment, when they are at length fulfilled, will be a memorial to Schuman, who died yesterday in Metz."—*Baltimore Sun, September 5, 1963.*

"In an age of biologically improbable fathers—fathers of the hydrogen bomb, of the atomic submarine, and of assorted better mousetraps—Robert Schuman had the rare distinction of being hailed as a grandfather: the 'grandfather of Europe.' His vision, his grasp of first principles, were instrumental in forging the postwar bonds of European unity. . . .

"Robert Schuman's was an outgoing vision, and one that transcended the pettier polemics of his times, or of our time. He was, after all, called, perhaps prophetically, the grandfather of Europe. His legacy may have been less to us of today than to those of another generation, who one day will inherit a Europe knit somewhat tighter because Robert Schuman was where he was, when he was."—*New York Herald Tribune, September 5, 1963.*

The Court's Task

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The Court is divided into two chambers, of three judges each, who deal with cases delegated to them by the President. The president supervises the work of the Court and its ancillary services and presides at full sessions of the Court and at deliberations in chambers. These deliberations, which may involve either of the two chambers or the full Court, are the means by which the Court arrives at its decisions. A simple majority of the judges is sufficient to ensure the adoption of a particular decision. No dissenting opinions are published.

Procedure: On receipt of an appeal to the Court, the president assigns the case to one of the two chambers, and appoints one of its three judges to act as reporter. Parties in the case are represented by counsel, who enjoys normal judicial immunity for the statements which he makes and documents which he produces before the Court.

After receipt of the plaintiff's memorandum, the defendant is allowed a month in which to present a written outline of his case, which may be followed by a reply from the plaintiff and a rejoinder by the defendant. The chamber dealing with the matter then presents an initial report on whether or not there is a case to answer. The Court listens to the advocate-general's opinion on this question, and then, if the case is to continue, proceeds, where necessary, to call witnesses and expert opinion.

Oral proceedings take place after the evidence has been recorded and are terminated by the advocate-general's conclusions. The Court then delivers its decision in public session. The decision has force of law in all member countries of the Community and takes effect from the day on which it is delivered. No Court fees are imposed on the parties for proceedings before the Court.

The official languages of the Court are German, French, Dutch and Italian. Documents must be translated into all four languages, but in oral proceedings before the Court only one of these languages is used. The choice of this language normally rests with the plaintiff unless a Community institution is involved, in which case the defendant's language is used.

Case law: A report of the Court's proceedings is published in the four Community languages. This report contains all the Court's decisions, together with the advocate-general's conclusions. In addition, it contains rulings delivered by the Court in cases where it has acted as an arbitrator.

When the Court handed down its opinions on the proposals of the Coal and Steel Community High Authority and the Council of Ministers to revise the ECSC Treaty, these opinions were also published in the reports.

The first seven volumes of the reports covering the years 1953-1961, contain details of 70 judgments handed down by the Court, covering 138 cases. They also contain three opinions on proposed minor revisions of the Coal and Steel Community Treaty.

Recent Cases Outlined

Among recent cases is one involving Article 12 of the EEC's Rome Treaty, stating that member countries must not introduce new customs duties or equalization taxes on intra-Community trade and must not increase existing duties.

On the basis of this Article, the Common Market Commission appealed to the Court against increases in the Belgian and Luxembourg special taxes on import licenses for gingerbread and the extension of these taxes to import licenses for similar products. The Court upheld the Commission's contention that the increases were contrary to the Treaty, stating that they were discriminatory in that they affected the price of imported products without affecting similar domestically produced goods. The Court therefore ruled that the Belgian and Luxembourg Governments had failed to fulfill their Treaty obligations.

Court of Justice Headquarters: Cote d'Eich Street, Luxembourg.

In another recent case on Article 12, the Court ruled that its restriction on the activities of Community governments grants a right to the individual citizen, and that national courts must uphold this right. A litigant before a Dutch court maintained that the Dutch government could not require him to pay customs duties on a particular item in excess of the duty levied at the time the Common Market came into existence. The issue was referred to the European Court, as interpretation of the Treaty was involved, and the latter ruled that Community member governments could not oblige their citizens to pay customs duties which are illegal under the Rome Treaty.

The Court has at times also had to rule on the legality of national legislation under the Treaties. When a Dutch coal mining firm took action before the Court against the High Authority for failing to prohibit a German government subsidy on miners' wages, the Court decided that the High Authority, in failing to suppress the subsidy, had not carried out its obligations under the ECSC Treaty. Its judgment therefore had a direct effect on legislation in a member country.

A court's power depends on the respect with which its judgments are received and the degree to which they are obeyed. In the ten years of the European Court's history, there has been no occasion on which its decisions have been resisted by member governments, or any occasion on which a government has refused to carry out its rulings.

The Court and American Law

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5, 1963, in the *van Gend* case (case 26/62), the Court held that the Common Market Treaty grants private rights to individuals within the member countries and that the national courts must honor and enforce these rights, even against member governments. It rejected the traditional view that international agreements grant rights to and impose burdens on only *governments* who sign them, and that only the most explicit language will allow a citizen to claim a private benefit. It found in the sense and spirit of the Common Market Treaty many indications that both rights and duties for *people* within the Community countries should flow directly from Community law.

'States' Rights' Involved

In boldly asserting the supremacy of Community law, the Court made one of its most significant and controversial decisions, the emotional content of which requires no explanation to American veterans of battles over states' rights. Strong objections lodged by the Dutch, Belgian and German Governments were overruled.

There would appear to have been strong reason for the Court to support its decision by reference to a similar judgment in at least one of the member countries. Yet the fact that the Italian Council of State had decided the same issue the same way in November 1961 was not even mentioned in the Court's opinion.

Other illustrations could be given. A common lawyer notes an arresting difference in judicial technique. He may wonder whether the Court of Justice, in order to preserve its future freedom of decision, must forego the values thought to be served by the modern, liberalized common-law doctrine of precedent: equal treatment before the law; curbing of judicial arbitrariness; predictability and stability in the law; utilization of the wisdom and labor of previous generations of judges.

In a series of cases following *van Gend* which posed the same question, the Community Court saw no reason to re-open or reconsider it. There has been no inconsistency on this vital matter. Yet this observer knows of no doctrine which would militate against reconsideration and an opposite verdict the next time the question is posed.

Will the judges' feeling for consistency and continuity achieve the same results as the articulated doctrine of precedent produces in common-law countries? Will the difference prove to be only one of judicial technique, and of little or no significance in the jurisprudence of the Court? Perhaps observation during the Court's second decade will furnish an answer.

Federal Aspects of the Communities

Commentators have argued whether the Communities are federal governments; some seek middle ground by use of such terms as "pre-federal" or "quasi-federal." Without entering the semantic fray, one can note the following:

a. A new layer of governmental authority has been established. Community organs have the power to make laws which are immediately and directly applicable throughout member countries.

b. In those areas covered by the Treaties, or where Community organs exercise powers delegated to them, Community law is supreme. Inconsistent national law must yield.

c. On the other hand, subjects not regulated by the Treaties and powers not delegated to Community institutions remain within the competence of the member states. When necessary, the Community Court will protect them from illegal intrusion by Community executives.

d. Member governments are obligated to take affirmative action in some cases and to refrain from action in others, to make Community law effective within their countries. Cooperation at the executive or the legislative level may be required.

e. Judges in the six member countries share with the Community Court the power and responsibility of enforcing Community law.

A number of decisions by the Community Court form the judicial component of the emerging "constitutional law" of the Communities. (These cases bring to the mind of an American some of the landmark constitutional decisions of the United States Supreme Court.)

In the *van Gend* case, the Community Court ruled that Community law forms a part of the domestic law of each member country; that the Treaties grant rights to individuals which national courts must enforce; and that national courts must accept as definitive the Community Court's decisions on matters of Community law (recall *Mondou* v. *N.H. & H.R. Co.* (1912) and *Testa* v. *Katt* (1947), establishing the duty of State courts to enforce federal law; and *Martin* v. *Hunter's Lessee* (1816), establishing that Supreme Court determinations on federal law were binding on State courts).

Van Gend is the most dramatic of recent decisions, and probably the most discussed. For in it the Court went far toward recognizing Community Treaties as the constitutional basis of a new central government in the international economic sphere, having direct relationship with citizens of the Six, independent of the actions of member governments or national law

In cases like *van Gend,* however, an American observer notes what may prove to be a serious lack in the Court's powers; it cannot compel a national court to submit issues of Community law, arising in cases before the latter, to the Community Court; nor can the Community Court review the decisions of national courts on such issues. Litigants and the Community Court may find ways within present procedures of meeting this problem, but the solution is not yet apparent.

When a member state or one of the Community Executives charges that another member state has failed to fulfill its Treaty obligations, the Court must pass judgment. It has, for example, found the Italian Government delinquent for suspending imports of pork products from other member countries (case 7/61); the Belgian and Luxembourg Governments for raising the tax on importers of gingerbread from the other member countries (cases 2-3/61).

Judging sovereign nations to be delinquent in fulfilling their obligations is likely to be a delicate matter, especially since a government's very appearance in Court probably indicates a Cabinet-level decision that its course of action is justified. In each case the Community Court has very carefully stated the Treaty basis for its jurisdiction

and has scrupulously observed Treaty limitations on the kind of decree it can issue against a member state.

An illustrative example is the *Humblet* case (6/60). On the complaint of a Belgian employee of the Coal and Steel Community, the Court declared that the Belgian Government had violated the Protocol on Privileges and Immunities appended to the Coal and Steel Treaty by totaling his tax-exempt salary from ECSC and his wife's independent income to determine the tax rate, on a progressive scale, to be assessed on her income (shades of *Collector* v. *Day* [1871]).

Humblet asked the Court to annul the Belgian legislation and administrative action and to order a refund of amounts wrongfully collected. The Court refused these requests because the Treaty does not authorize such remedies against a member state (compare *Marbury* v. *Madison* [1803]). But the Court did declare the Belgian action violative of the Protocol, and observed that the defendant was under a Treaty obligation to take appropriate corrective action, which in this case, would include reparation of any financial injury.

The Court's decree was given full effect by the Belgian authorities despite their strong disapproval of the decision. Acceptance and compliance by the member state concerned has followed each decree determining failure to fulfill Treaty obligations, and may now be said to be a firmly established tradition.

Access to the Court

Only certain parties may challenge the legality of certain acts taken by the Community Executives on certain grounds. A fairly complicated set of rules drafted differently in the Coal and Steel and the Common Market Treaties, determines the admissibility of a lawsuit brought to annul regulations or decisions alleged to be illegal; the plaintiff's status, the general or individual nature of the action taken, and the impact of the act upon the plaintiff are crucial factors.

American administrative law takes the same factors into account in determining a plaintiff's standing to challenge the legality of governmental action. Generally speaking, however, one who shows a sufficient interest in a matter can obtain a court decision on the merits of his claim.

In a series of decisions under the Coal and Steel Treaty, the Court of Justice, by liberal interpretation of the Treaty provisions as to who may sue and what grounds he may assert, expanded the judicial protection afforded to private parties. Some of this jurisprudence was written into the Common Market Treaty, but some was rejected. Under the latter treaty, only the member governments and Community institutions are authorized to sue for annulment of *regulations* adopted by the Community Council of Ministers or Commission. Regulations are general acts, essentially legislative in nature, and directly applicable in each member state.

Two recent decisions (cases 16-17 and 19-22/62) have generated criticism that the judicial protection of private parties is inadequate. The Court felt bound to reject lawsuits brought by French federations of meat and fruit wholesalers to annul Common Market regulations concerning the organization of markets in their products, even though the members of the plaintiff-federations were the

French nationals most directly affected. The Court itself observed that this result represents a diminution of the rights of private parties and associations by comparison with their position under the Coal and Steel Treaty, where private persons are at least entitled to appeal against general decisions on the ground of a "misuse of power concerning them."

To be sure, not all of the means of invoking the Court's jurisdiction have been fully explored. At this juncture, however, this observer does not believe that the restrictions on the scope of challenge found in the Coal and Steel Treaty can be justified, or that the need to protect legal stability in the infant Economic Community required the Treaty-drafters to eliminate direct judicial challenge of Community regulations by private parties.

Adversary Presentation

The litigant under common law is master of his case. His is the power and responsibility of submitting to the court every legal argument and every item of evidence favorable to his side. From partisan representations by adversaries, each motivated by self-interest, it is supposed that the court will have brought to its attention all the law, all the policy considerations, and all the facts bearing on the case. The judge acts as umpire, not as inquisitor. As Sir Frederick Pollack once said, "The Court . . . is not there to inquire . . . but to hear and determine between parties according to the proofs which the parties can bring forward."

American trial procedure focuses upon trial of factual issues before a jury. Trial courts have elaborate rules of

Italian Courts to Hear Appeal

An Italian steel firm, Metallurgica di Napoli, has appealed in the Italian courts against a fine imposed by the ECSC High Authority after the firm had failed to submit details of its scrap consumption.

Metallurgica has asked the Italian courts to rule whether the Paris Treaty is compatible with the Italian constitution, and whether its provisions are enforceable under Italian law.

This is the first occasion on which a firm has opposed a Community decision in its national courts. Nine other Italian steel firms, however, have appealed to the European Court of Justice against similar High Authority sanctions. These hearings will start on October 2.

evidence regulating what may be presented to a jury and what must be excluded. The same rules theoretically apply in non-jury actions. Partisan presentation and direct confrontation are the special techniques of trial lawyers, who prize cross-examination of opponents' witnesses as one of the best fact-finding devices ever developed.

Procedure before the Community Court resembles the adversary system up to a point. The Court is not self-starting; it acts only upon a formal written request filed by a plaintiff. In that request the plaintiff must state his main arguments, the relief he seeks, and the means of proof available. He may not thereafter expand his case. The defendant too is limited to the contents of his written answer. In an exchange of written memoranda, and later in oral procedure before the Court, attorneys make their partisan legal arguments.

But the Community Court is not limited by the adversary presentations of either law or fact. After the conclusion of the parties' submissions, an official of the Court—one of the two advocates-general—presents ". . . publicly, with complete impartiality and independence, reasoned conclusions . . . with a view to assisting the Court in the performance of its duties." In a Court where all cases involve public law, as opposed to merely private interests, it is hoped that through the advocate-general the public interest may find expression, and truth an impartial champion.

Adversaries have relatively little to do with determination of facts. The Court itself, and not the parties, decides whether there will be any factual investigation at all, and if so, what issues will be investigated and how. In the large majority of cases, it has dispensed with investigation. Attorneys may suggest modes of inquiry, the calling of witnesses and the putting of certain questions, but they may not call witnesses themselves nor question them directly. The Court decides how much weight to give to evidence; exclusionary rules of evidence are unknown.

A partisan of common-law procedure may complain that judges will not seek factual proof with the same diligence as partisans, not confront unreliable witnesses with the same vigor. Admission of all kinds of evidence may trouble him.

Yet one who seeks to appraise fairly must recognize that simple factual questions—who did what? when? where? how?—do not play a large role in most cases which come before the Community Court. Confrontation of witnesses to determine truthfulness or immediacy of observation would rarely serve a useful purpose. Some critics believe that exclusionary rules of evidence hamper judicial fact-finding as often as they help it. Indisputably, they are increasingly ignored in American non-jury cases, especially in the area of administrative law. One may well ask whether an adversary has a legitimate complaint about losing a case for a good legal reason *neglected* by his opponent, but brought before the Court by the advocate-general.

This observer's tentative opinion is that the Court's procedure in relation to the respective roles of judge, advocate-general, and litigant is well suited to the kinds of cases brought before it. Along with this conclusion, the hope should be expressed that when genuine factual disputation occurs, the Court will utilize the zeal and resourcefulness of partisan lawyers.

Conclusion

Within the scope of its powers, the Court has laid some firm legal foundations for effective operation of the Communities with full "observance of law and justice." Although member governments do not, at this juncture, appear willing to increase the powers of Community institutions, access to the Court by private parties could well be extended, and, at least in some circumstances, litigants in national courts should be allowed to compel submission of issues of Community law to the Community Court. Even as matters stand, there is solid ground for optimism, if not unreserved confidence, that the Court will be able to enforce the rule of law as the Communities move ahead.

Recent Court Decisions Affect Regulations

Two decisions of the Community's Court of Justice on July 15 are of considerable importance for the future framing of Community regulations, and of appeals against them.

In the first decision, the Court rejected the German government's appeal against a Common Market Commission decision on the tariff for imports of oranges from non-Community countries. The Court stated that the decision was justified and that the Commission had not exceeded its powers. The Commission, it ruled, was entitled to base its decision on factors which had not been advanced by national governments when they had consulted on the issue, because the Executive should consider all factors relevant to the situation, whether or not they were raised by the governments.

The case arose after the Commission had rejected a German request for reduction from 13 per cent to 10 per cent in the tariff on oranges imported from non-member countries. An alternative German request for a tariff quota of 580,000 tons at a 10 per cent duty was also rejected by the Commission.

In the second decision, the Court ruled that a person who was not the object of a Community decision could only be considered as being *individually* affected by that decision if it affected him by virtue of certain characteristics which were peculiar to him, or by virtue of a *de facto* situation which distinguished him from other people, and thus individualized him in a manner similar to a person who was the object of an individual decision.

This ruling was made when the Court rejected the appeal of a German wholesaler, Plaumann & Co., who argued that he had been adversely affected by the Commission's refusal to allow the German Government a tariff quota on mandarines and clementines imported from non-Community countries, or to reduce the common external tariff on clementines from 13 per cent to 10 per cent.

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European Community TV Begins Series

The first of a new monthly series of television programs entitled *European Community* will be transmitted throughout the six Community countries on September 23. The series has been planned during the last twelve months by an editorial team representing the television services of all six countries.

The first program, *The Countryside in 2000 AD,* has been prepared by the French national television network, and deals with the problems of European farmers and farming. It will be followed in October by a German-prepared program, *Homes and Building in Europe.* The Belgian contribution will be a feature on European traffic problems, and Télé-Luxembourg will use its program to discuss the state of European sport in relation to next year's Olympics. The Dutch contribution, *The European Tourist,* will be transmitted on the European network early in 1964, and the series will close with an Italian program on European fashions.

Neirinck Named Director General

The EEC Commission has appointed J.D. Neirinck as director general of social affairs. He succeeds Gust De Muynck, who retired last December.

Mr. Neirinck, 43, was previously assistant director general of the Belgian social security office.

German Unions Favor Coal Subsidies

The German Free Trade Unions (DGB) have called for subsidies for Community coal mines and control of investments and imports in the coal sector.

In a recent statement on the Energy Memorandum of the Community's Inter-Executive Energy Committee, the DGB's energy committee said that uneconomic mines should be closed and their share of production transferred to more economic ones. Subsidies to remaining mines should be paid out of a special Community fund, financed by a tax on oil and a levy on Community coal imports, the statement said.

Dutch Cabinet to Have "European" Group

V.G.M. Marijnen, the new Premier of the Netherlands, announced the creation of a "council" of European affairs under his own chairmanship when he recently presented his new Cabinet to the Dutch Parliament. The council—a special group within the Cabinet—will consist of the ministers of foreign affairs, finance, economic affairs, agriculture, social affairs, and transport.

Growth Forecast Modified

The Common Market Commission has amended its forecast for the increase in the Community's gross product during 1963 from 4.5 per cent to about 4 per cent.

Although the Community countries have made a good recovery from the effect of the severe winter, the Commission said, the present low rate of industrial investment —caused by shortage of available funds—is acting as a brake on overall expansion.

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