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Law of the European Communities (Vaughan Ed.)

Joseph Weiler*

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LAW OF THE EUROPEAN COMMUNITIES. Edited by David Vaughan. London: Butterworth Legal Publishers, 1986. US\$264.00.

*Reviewed by Joseph Weiler**

What book would (or should) *any* European Community law lawyer—regardless of specialization—have on his or her desk or shelves?

The answer to that question, at least for the English-language Community lawyer, is *Law of the European Communities*, edited by David Vaughan. The book is also Volumes 51 and 52 of the fourth edition of *Halsbury's Laws of England*.

Let me first state, to adopt an Americanism, my “bottom line.” Publication of this book is an important event in the English-language Community-law literature. It is an outstanding achievement: the veritable first fully-fledged treatise on the subject. It is exquisitely organized and edited and has the technical perfection of *Halsbury's*. Its tables of materials (cases, treaty articles, legislation, etc.) are the best I have seen. The quality of the contributions is usually high, a point to which I will return later. Again, this is the book that every English-speaking Community law lawyer should have always close by.

Vaughan has divided his two volumes into a total of twenty-one chapters. Volume One starts with *The Communities* and covers a brief legal history of the EEC, the EEC Treaty's first few Articles on objectives, and then the institutions and financial provisions; *The Court of Justice* covers all heads of jurisdiction; *Application of Community Law in National Courts* (perhaps better described as application of Community law in the national legal orders) has, as expected, a special section dealing with the United Kingdom. There is then a chapter dealing with *External Relations*, which covers both constitutional issues and commercial policy and development. There are chapters on *Monetary and Economic Policy*, as well as a useful chapter on *Industrial Policy*, rarely dealt with in such a tight legal way. *State Aids and Regional Policy* are dealt with in one chapter—frankly a

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* Professor of Law, University of Michigan; External Professor, European University Institute, Florence.

creative editorial choice. *Environment and Consumers* receive their own chapter. This chapter is convincing because it includes both a general discussion and a separate treatment of the legal regime governing specific products and types of environmental hazards. One chapter deals with *Coal and Steel* and another with *Energy Other than from Coal*. Volume One ends with a chapter entitled *Undertakings*, which deals essentially with the company law directives, and with public contracts, including public supply contracts.

Volume Two includes chapters on *Movement of Goods*, on the EEC's *Agriculture and Fisheries* policies, on *Movement of Workers, Establishment, Services, and Capital* — one chapter for each — and concludes with chapters on *Transport, Competition, Taxation, and Social Policy*.

One sees then a traditional organization that will make finding one's way easy, with the occasional innovative flash, such as the chapter on *State Aids and Regional Policy*.

It would be inevitable in a treatise of this size not to have some unevenness of quality. Certain sections of the first chapter that deal with general constitutional principles of the Community, such as direct effect, overlap with the chapter on Community law in national courts. I must confess that I found the latter chapter more tightly and originally argued. All in all, Chapter One was the weakest. Another overlap concerns the field of external relations. The constitutional provisions concerning these relations are dealt with both in Chapter One and in Chapter Four. These overlaps lead to *lacunae*. Mixed agreement—the most important instrument of Community external legal relations—receives inadequate treatment, and in general the whole area of international competences is not covered deeply enough in terms of identifying very real problems that exist in the day-to-day operation of the Community in the international field.

Chapter Four, on external relations, is strongest in its treatment of commercial policy. The section on antidumping cannot compete with the specialized treatises on this subject but it is the best of its kind in such a short space.

The chapters on the Court of Justice and on free movement of goods are very good indeed.

This new publication should be viewed against the back-

ground of already existing work in the field. A lawyer whose principal working language is German, French, or Italian could instantly come up with his or her preferred text on the EEC. For the German it would be a tight choice between Grabitz¹ and Groeben, Ehlermann, and Thiesing.² The French speaker would no doubt mention the formidable Mégret series,³ lamenting, perhaps, that some of the volumes are dated. The Italian would boast the recent Pennacchini, Monaco, and Ferrari-Bravo commentary.⁴

What about the English speaker? Here there would be a lot of Hms and Ahs. The competition lawyer would have a wide choice, probably opting ultimately for the magisterial Hawk series.⁵ The antidumping specialist may choose Van Bael and Bellis,⁶ while the "goods specialist" will have a hard time in electing Gormley⁷ or Oliver,⁸ probably ending up with both. And, of course, books on the Court exist in abundance and with a remarkably high level of excellence: Hartley,⁹ Lasok,¹⁰ and Schermers,¹¹ to mention but a few. But a general Community text covering the entire field?

To be sure, there are some fine books around—but none that would really take one sufficiently deeply into the subject matter. Why is this so fifteen years after British and Irish accession? One reason turns on a matter of form. Most of the

1. KOMMENTAR ZUM EWG-VERTRAG (E. Grabitz ed. 1986).

2. H. VON DER GROEBEN, C. EHLERMANN & J. THIESING, HANDBUCH DES EUROPÄISCHEN RECHTS (1957-).

3. J. MÉGRET, LE DROIT DE LA COMMUNAUTÉ ÉCONOMIQUE EUROPÉENNE (1970-).

4. E. PENNACCHINI, R. MONACO & C. FERRARI-BRAVO, MANUALE DI DIRITTO COMUNITARIO (1983).

5. FORDHAM CORPORATE LAW INSTITUTE, ANTITRUST AND TRADE POLICIES IN THE EUROPEAN ECONOMIC COMMUNITY AND UNITED STATES (B. Hawk ed. 1974, 1978, 1982-).

6. I. VAN BAELE & J. BELLIS, INTERNATIONAL TRADE LAW AND PRACTICE OF THE EUROPEAN COMMUNITY: EEC ANTI-DUMPING AND OTHER TRADE PROTECTION LAWS (1985).

7. L. GORMLEY, PROHIBITING RESTRICTIONS ON TRADE WITHIN THE EEC: THE THEORY AND APPLICATION OF ARTICLES 30-36 OF THE EEC TREATY (1985).

8. P. OLIVER, FREE MOVEMENT OF GOODS IN THE EEC UNDER ARTICLES 30 TO 36 OF THE ROME TREATY (1982).

9. T. HARTLEY, THE FOUNDATIONS OF EUROPEAN COMMUNITY LAW: AN INTRODUCTION TO THE CONSTITUTIONAL AND ADMINISTRATIVE LAW OF THE EEC (1981).

10. K.P.E. LASOK, THE EUROPEAN COURT OF JUSTICE: PRACTICE AND PROCEDURE (1984).

11. H. SCHERMERS, JUDICIAL PROTECTION IN THE EUROPEAN COMMUNITIES (3d ed. 1983).

Continental texts adopt the established "commentary" format—they cover European Community law through an Article-by-Article analysis. Continental lawyers are accustomed to this format and feel comfortable with it. The Anglo-American tradition, however, has shied away from this type of scholarship—and arguably for good reason.

One such reason is theoretical. The treaties are only partly systematically arranged. A few examples will illustrate this point. The common commercial policy is centered on Article 113 and its immediate "neighbors." But to get a complete picture of this subject, one would also have to consult Articles 228, 238, the Annex dealing with the Associated Territories, and others. As the Court reminded us in the *Rubber Case*,¹² the ambit of the common commercial policy cannot be read in the 1980s in the narrow confines of 1958.¹³ Similarly, judicial remedies will be found in the Articles following 164, but to get the full picture one cannot forget, say, Article 93. And finally, intellectual property issues fall, uneasily if excitingly, between Articles 36 and 85.

Practical experience with commentary-type publications of Community law in English seems to support this theoretical unease. Two publications fall into this category. Smit and Herzog¹⁴ is the first that comes to mind. This publication was an early and audacious commentary that appeared very soon after British accession to the Community and followed the Continental style of Article-by-Article treatment. The swiftness of publication, which did not result in a compromise of a high scholarly and technical standard, is an illustration of the spirit of enterprise that the New World continues to demonstrate in comparison to the more sedate pace of British and Irish scholarship. But Smit and Herzog has not been a success. It is not, in my experience, widely used and in any event not nearly as widely used as its Continental brethren. Many would say that its relatively low use is due precisely to the format adopted.

The second work of this style, albeit with different objec-

12. Opinion 1/78, 1979 E.C.R. 2871 (1979).

13. *Id.* at 2873, ¶4.

14. H. SMIT & P. HERZOG, *THE LAW OF THE EUROPEAN ECONOMIC COMMUNITY: A COMMENTARY ON THE EEC TREATY* (1976-).

tives, is Simmonds's formidable multi-volume *Encyclopedia of European Community Law*.¹⁵ Although geared in some of its volumes to the United Kingdom user, it is in all other respects a wonderful research aid. It is one of the best sources to follow the evolution of the mass of secondary Community law. Its notes to the Treaty Articles are a model of conciseness and a useful source of recent jurisprudence. The updating is regular and frequent. (The latest update already incorporates in the annotation all the changes effected by the Single European Act¹⁶ — where else will one find such annotation so soon after the Act's adoption?) However, Simmonds deals with *notes* to the Articles and the secondary legislation—not with fully-fledged treatment. This observation is not a criticism, since the *Encyclopedia* serves a different function from that of a treatise; it is not intended as a treatise and in fact it is not one.

In the final analysis, I believe that an Article-by-Article commentary can be very useful—witness the regularity with which one turns to the foreign-language commentaries in one's research. The English speaker has simply not yet had the advantage of a truly accomplished work of this genre. One awaits with high hopes the latest venture—a Continental-style commentary under the general editorship of Dr. A. Barav, to be published in the near future in England.

Returning to the Vaughan work, the overall impression left by this treatise is very satisfying. The texts are concise and usually precise. It is annoying to find only a few references to other secondary literature, but such is the format of *Halsbury's*. The book attains an overall high standard despite occasional weaknesses. But even at its weakest, the standard is high. One would be hard-pressed to find a misleading statement anywhere in the book; if there is criticism, it is where the text does not go far enough.

The *Law of the European Communities* will rarely suffice as a sole source in one's professional or academic research. But it will always be a convenient first place from which to start.

One historical contingency mars the overall picture and merits a word of caution. Work on the volumes was completed before the conclusion and entry into force of the Single Euro-

15. K. SIMMONDS, *ENCYCLOPEDIA OF EUROPEAN COMMUNITY LAW* (1973-).

16. Single European Act, O.J. L 169/1 (1987).

pean Act. The Act has important effects in a variety of areas, not the least in institutional matters, and more importantly, in the area of free movement of goods. There will accordingly have to be some serious revision in the first supplement to this book.

However, in terms of an overall treatise that approaches Community law by subject area, occasionally with real innovation, Vaughan's work is singularly important. No European Community library can afford to be without it.