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## BOOK REVIEWS

Linda Senden, *Soft Law in European Community Law*. Oxford: Hart Publishing, 2004. 533 pages. ISBN 1-84113-432-5. GBP 60.

The Commission White Paper on European Governance stated that differentiation of the modes of governance, or legal instruments, would enhance the effectiveness, legitimacy and transparency of Community action. In a generally compelling book, Linda Senden sets herself the task of discovering how this new legislative process of Community soft law instruments fits into the Community legal system and whether the Commission assertion of the benefits of soft law in increased effectiveness, legitimacy and transparency are supported. The objectives of the study are clearly delineated. Soft law is defined by Senden as "Rules of conduct that are laid down in instruments which have not been attributed legally-binding force as such, but nevertheless may have certain (indirect) legal effects, and that are aimed at and may produce practical effects", a definition more complex than those previously posited by commentators as it takes into account indirect legal effects, and one which is substantiated in this study. This is a carefully constructed investigation which entirely fulfils its objective.

Senden describes the characteristics and functions of Community legislation and legislative instruments and how they satisfy the demands of democratic governance. Some material is very familiar as we are reminded of the basic principles of law which underpin and justify the legislative process, but we are then asked to consider whether the guiding principles of legislation should be applied to soft law measures. Senden looks at the array of instruments used, principally by the Commission, to determine which are capable of functioning as an alternative to hard law. Familiar instruments, such as action programmes, codes of conduct, communications and notices are investigated for their mode of adoption, legal nature, function, scope and application, and this is an unexpectedly fascinating read. Senden finds that some instruments, such as Council conclusions, are declaratory and intended to inform the public, while others, which are interpretative and seemingly not intended to have legally-binding effects, have been used by the Commission to impose far-reaching legal obligations. Few of these instruments have status under the Treaty, but the category of recommendations is provided by the terms of Article 249 EC, which designates them as non-binding. When used by the Council, they are adopted in accordance with Treaty requirements of legal base and decision-making process. On the other hand, Senden discovers that the Commission may address recommendations to the Member States who are then required to give effect to their contents by legislative or administrative means. As such, the legal effects of these recommendations resemble EC directives; a startling revelation of the impact of a non-binding measure. The use of Commission recommendations is seen in a wide range of areas, including the internal market, environment, energy, consumer and health protection and matters concerning small and medium sized enterprises. There are various reasons posited as to why the Commission may, instead of proposing legislation, proceed by way of recommendation, one being that the Commission has reached an impasse with the Council, such as happened with respect to the internal market in pension funds. Whilst they may be based on existing legislation or be adopted at the instigation of another institution, there is no consistent process for the adoption of recommendations. Their use may be necessary in order to produce effective law, but it is not clear that this is legitimate procedure.

The direct and indirect effects of soft law and their impact on the legislature, judiciary and executive are considered. The legislature is not bound by them, the Court of Justice

largely ignores them, except when recommending them to the national courts as aids to consistent application, and the executive, "in principle the Commission is bound by its decisional acts, until it decides to change them." Soft law measures are found binding according to the general principles of law in some areas, but Senden finds the Courts inconsistent in this regard. She finds no "spill-over effect" from principles established in one sector to another, for example from staff cases to State aid, and no clear pattern emerges. This is actually the least satisfactory part of Senden's study as the differing outcomes may be explained by reference to factors other than inconsistent application of the general principles of law. The result may be dependent on the area of law which the rules seek to regulate, or the degree of discretion available to the institution in exercising its powers, or the relationship between the institution and the claimant.

The general principles of law which guide the adoption of legislation, institutional balance, equality, effectiveness, Community loyalty, transparency, legal certainty, were applied to the adoption of soft law measure, and Senden finds that, according to those standards, the new legislative policy using soft law does not enhance the effectiveness, legitimacy and transparency of Community law. It would appear that the principles of proportionality and subsidiarity have been used by the Commission as a means of circumventing the legislative process, so undermining the institutional balance. More than this, Senden suggests the use of proportionality and subsidiarity has ousted the overriding principle of legality creating a new hierarchy of norms, a most interesting contention. Despite the failure of the soft law measures to achieve the objectives envisaged by the Commission, Senden finds justification for the use of soft law instruments as the EC becomes a "mature administration." Preparatory and informative measures enhance democratic legitimacy involving interested parties and the national authorities, who may also ensure competence. But Senden wonders whether this contributes to a pseudo-democracy, with insufficient consultation and a diminution in the role of the European Parliament.

Whether Senden has actually revealed a major problem with the use of soft law instruments is not clear, but on balance it would appear not. She explains that even the problematic Commission recommendation may have the objective of establishing closer co-operation , co-ordination or a concerted approach between Member States. Abuse of soft law, where measures attempt to impose new legal obligations without legal foundation, are readily annulled by the Court of Justice, so that although they have the potential to undermine the institutional balance, Senden deems annulment to be an adequate remedy. Nevertheless, to overcome any invalid use of soft law measures she proposes a tighter articulation of procedural requirements so that soft law has some foundation within the legal system. Whether, within a mature administration which should be characterized by the ability to be responsive and operate flexibly, this may have the effect of creating an ever-more bureaucratic Europe – unresponsive and inflexible – is not considered.

The book will be a valuable reference for all those concerned to discover the nature, status and validity of soft law instruments through their adoption and application. It is an excellent resource, shedding light on a grey area of rule-making and legislative process. The study effectively answers the questions posed, but it is a pity it did not go slightly further, beyond the Commission's stated aspirations for the use of soft law. This top-down analysis of soft law modes does not reveal whether a system of multi-layered participation and multi-level governance is evolving. The justification for the use of soft law proposed by the Commission is to improve the operation of the current system but offers no dynamic. The constitutional culture the Commission seeks to legitimate is rooted in the creation of the single market and its assertion that the use of soft law will increase legitimacy, may simply serve to perpetuate a system poorly attuned to the needs of the modern European citizenry. It has been argued by other commentators that soft law measures could be used to achieve change in favour of socially marginalized groups such as could not be achieved by hard law. Addressing the interests of groups otherwise overlooked could increase democracy

within the EU. It will be interesting to read the further developments in this area as other commentators build on this work, and the further observations of the author.

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Mitchel de S.-O.-L'E. Lasser, *Judicial Deliberations; A Comparative Analysis of Judicial Transparency and Legitimacy*. Oxford: Oxford University Press, 2004. 382 pages. ISBN 0-19-927412-6. GBP 50.

Professor Lasser's new book analyses and compares judicial reasoning and discourse at the United States Supreme Court, the French *Cour de Cassation* and the European Court of Justice. The author argues that the three courts studied employ radically different strategies for the generation of accountability and legitimacy, with the Supreme Court following an "argumentative", the *Cour de Cassation* an "institutional" and the ECJ a "conglomerate" approach. Each of these strategies in turn corresponds to a particular "problematic" that confronts, shapes and is shaped by the judicial system in question (Introduction, p. 23 and Ch. 9, p. 298). The book's methodology, analysis and conclusions reconfigure the debate on comparative judicial reasoning and suggest novel approaches to important classic questions of judicial legitimacy. The study is of particular relevance for the topic of reasoning at the Court of Justice, on which relatively little comparative literature exists.

Traditional American accounts of deliberative practices at the French *Cour de Cassation* form the initial background to the analysis (Chapter 2). Studying this court's published decisions, influential twentieth century American comparatists, struck by the court's patently formalistic reasoning, concluded that the French legal system had in effect never moved beyond a "pre-realist" era (pp. 28–29). One of Lasser's main theses is that this perception was seriously misconceived. He demonstrates that not only did French legal academics develop a strongly realist view on judicial reasoning (even labelled "virulent", p. 170, apparently nodding at Duncan Kennedy's *Critique of Adjudication*), French judicial practice too does in fact show an acute awareness of the inevitable normative role of courts. To make the latter point, the author develops an original comparative law methodology that includes as its material the "unofficial" discourse at and surrounding the courts studied (from p. 38). Lasser subjects unpublished Opinions of Advocates General, draft decisions by Reporting Judges and doctrinal case notes published alongside the official decision to rigorous analysis along "literary theory" lines, in order to show the partially hidden equity and policy discourse that surrounds and informs the French official judgment. This analysis leads him to conclude that the distinctive trait of French judicial discourse is not its formalism or its exclusion of policy arguments, but its "bifurcation" into two "spheres" of deliberation (p. 158). In one of these spheres – the official published decision -, solutions are held to follow logically from the written law. In the other sphere – the hidden internal deliberations of French magistrates, as influenced by authoritative doctrinal comments -, equity and policy implications of decisions are clearly acknowledged and do exert their influence. In fact, the author argues, it is precisely because of the secluded nature of this second sphere, that the normative debates involved assume a paradoxical "openness" that is rarely achieved in more public discourse at other courts or institutions (p. 324).

This structural perspective on judicial discourse provides the map on which comparative analysis of the three courts is plotted. Having established "the French bifurcation", Chapter 3 is devoted to showing that the American legal system, by contrast, "goes out of its way to combine its formalist and policy discourses in one and the same place": the American judicial Opinion. American judicial reasoning is characterized by a precarious "interpretive and rhetorical balance", in which both considerations of policy and the formalist application of legal norms are at the same time universally derided and constantly influential (p. 62). This

leads to an interpretive practice described by the author as the "formalization of the pragmatic" (p. 22).

Deliberation at the ECJ is again "bifurcated", but in a "softened" form (Chapter 4). While the Court's decisions are "magisterial", "deductive" and "forcefully dismissive of contrary viewpoints", Opinions by Advocates General openly acknowledge the "interpretive controversy" involved in European law adjudication (pp. 105, 107, 134 and 140). There are, however, important differences with the French approach. First, unlike in French practice, the ECJ publishes both aspects of its discourse. Secondly, and possibly because of this publication practice, the interpretive modes of the two discursive spheres converge. The author coins the term "meta-teleological" to describe how reasoning in both Opinions and Judgments almost invariably "escalates" towards discussions on the fundamental systemic attributes of the European legal system, no mater how technical or seemingly mundane the issues involved (p. 206).

These three descriptions form the basis for the analysis in Parts II and III of the book. Part II, "Bifurcation", deals in more detail with the characteristic structures and contexts of discourse at the *Cour de Cassation* and the ECJ. Part III, "Comparison", provides first an elaborate defence of the comparative methodology used and then engages the central problem of what it means for legal and judicial systems to function in such bifurcated or integrated ways (p. 301).

Part II, in Chapter 6, addresses "the sixty-four thousand dollar question" of how the "radical French discursive bifurcation" can be maintained in good faith (p. 166). This is possible, the author argues, because the French system generates legitimacy primarily through an institutional framework that operates within a remarkably homogeneous normative field, rather than through argumentative means deployed in individual decisions (p. 168). A hierarchical, heavily centralized institutional environment and a "meritocratic *étatiste mentalité*" ensure that control over judges "begins long before those judges actually decide cases" (pp. 181 and 308). As a second check on judicial power, the French legal system adheres to a particular conception of "law" that withholds full "lawmaking" power from judicial decisions (pp. 171 and 307).

Chapter 10 in Part III compares this two-tiered approach with the accountability and control strategies used at the US Supreme Court and the ECJ. In the absence of normative unity and institutional hierarchy, the American approach of necessity relies on "discourse-based judicial accountability", generated through full disclosure of reasoning by individual judges in individual decisions (p. 312). Faced with similar disagreement over interpretive issues and with a "fractured demos", the ECJ has moved towards an "argumentative variation on the French institutional model" (p. 347). The benefits of the "argumentative enrichment" generated by the use of "meta-teleological reasoning" and the Court's more extensive publishing practice however, can easily be overstated. The author ultimately follows Weiler in his suggestion that the ECJ should abandon its "cryptic, Cartesian style" of reasoning (p. 351).

The novelty of Lasser's analysis can in some sense be measured by the number of illuminating methodological and conceptual innovations he introduces. "Meta-teleological" reasoning as the dominant mode of argument at the ECJ, the American system's "formalization of the pragmatic", and, most importantly, the opposites of "bifurcation" and "unification" as structural descriptions of judicial discourse are all terms we can look forward to seeing used more often. Among these successful introductions, the key concept of "problematic", may turn out to be slightly more, well, problematic. The author argues that the strategies described are "both indicative and formative" of "particular problematics" that are fundamental in shaping, and are in turn shaped by, the three judicial systems (pp. 20 and 298). One central difficulty is that the three problematics seem to function at different levels of abstraction, which impedes the usefulness of the concept as a cornerstone of comparative analysis. France's problematic sounds convincingly enough like a modern version of the ubiquitous counter-majoritarian dilemma: "how to maintain legislative supremacy

while simultaneously encouraging and yet controlling judicial interpretive flexibility and normative management" (pp. 20 and 300). This description however, is so general that it is not immediately easy to see how it could serve to differentiate the French judicial system from, say, its United Kingdom counterpart. The ECJ problematic of "how to maintain and adjust the French model to the European Union's publicly controverted environment", on the other hand, incorporates so much "context" in its definition, that its explanatory power begs some of the most interesting questions – for example as to why the Court would be concerned to maintain the French model in the first place (p. 300).

*Judicial Deliberations*, to its great credit, establishes the fallacy of the "formalism/realism divide" between American and Continental judicial reasoning (cf. p. 299) and replaces it with a comparative model based on differing strategies of incorporating both formalist and policy-oriented arguments in judicial decision making. Although vulnerable to the opposite charge of underestimating the differences in attention to formalism and policy across legal systems, this original model provides a sophisticated new framework for analysis of important questions of judicial accountability and legitimacy. Application of this model to relatively new and enormously important courts such as the ECJ and the European Court of Human Rights (not yet included in the analysis) has produced a stimulating book, and looks set to generate further valuable insights.

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Christoph T. Feddersen, *Der Ordre Public in der WTO; Auslegung und Bedeutung des Art. XX lit. (a) GATT im Rahmen der WTO-Streitbeilegung*. Berlin: Duncker & Humblot, 2002. 368 pages. ISBN 3-428-10765-9. EUR 86.

This excellent doctoral dissertation, which was accepted by the University of Hamburg in 2001, has become topical by the fact that, for the first time in the history of the World Trade Organization, one of the "public morals" and "public order" exceptions in WTO law was invoked in a WTO dispute settlement proceeding and examined in a WTO panel report which, at the time of writing this book review, continued to be under appeal in the Appellate Body of the WTO. In United States – Measures Affecting the Cross-Border Supply of Gambling and Betting Services (WT/DS285/R of 10 Nov. 2004), the Panel concluded that the US prohibitions were indeed designed so as to protect public morals and to maintain public order; yet, the US had failed to demonstrate the "necessity" of the prohibitions since the US had not shown that there was no WTO-consistent alternative measure reasonably available that would provide the US with the same level of protection against the risks it had identified. The Panel considered it relevant in this context that the US had not accepted Antigua's invitation to discuss and consider WTO-consistent alternatives that could address the US' concerns. The Panel's stringent interpretation of the "necessity" requirement in Article XIV(a) GATS could not rely on previous GATT/WTO jurisprudence because – in the 48 years of the General Agreement on Tariffs and Trade (GATT 1947) – the "public morals exception" in Article XX(a) GATT was invoked only once in a GATT dispute settlement proceeding (i.e. the 1992 beer panel report), without leading to any panel findings on the interpretation of Article XX(a).

Chapter I of the book explains why WTO law derives legitimacy not only from the international rule of law (as protected by the WTO dispute settlement system) but also from its "general exceptions" (e.g. Arts. XX GATT, XIV GATS, 27 TRIPS Agreement) protecting the right of each WTO Member to give priority to its "public morals" and – in the words of the Appellate Body – "important State interests". Chapter II discusses the various rules and methods for the interpretation of WTO law, including the applicability of general international law rules among WTO Members and the emergence of "constitutional principles"

(like legal "security and predictability", in *dubio mitius*, prohibition of abuse of rights) in WTO law, which enhance the legitimacy of WTO rules and the "optimal balancing" of the rights and obligations of WTO Members. Chapter III examines whether the "public morals exception" in Article XX (a) GATT permits WTO Members to comply with the admonition by US President Franklin Roosevelt that "goods produced under conditions which do not meet a rudimentary standard of decency should be regarded as contraband and ought not to be allowed to pollute the channels of interstate commerce." Feddersen rightly admits that Article XX(a) may justify trade restrictions to protect morals not only in the importing country, but also abroad (as in the case of the "Kimberley Protocol" restricting trade in conflict diamonds). He also convincingly explains why "process and production measures" (PPMs) are not exempted from the scope of application of GATT Article XX. The 1998 ILO Declaration on core labour rights and the widespread conditionality of tariff preferences for developing countries on compliance with ILO-standards are recognized as objective standards for the interpretation of the WTO provisions on the protection of "public morals" and "public order". Beyond such multilaterally agreed objective standards, WTO dispute settlement bodies should – like the EC Court and the European Court of Human Rights – respect a national margin of appreciation in the interpretation of "public morals" and national "public order" and try to find objective standards in the national constitutional laws, or in the international obligations, of a WTO Member invoking national "public morals". Respect for such a national "margin of appreciation" limits also the right of WTO Members to resort unilaterally to trade restrictions as a means for imposing their own "public morals" on other WTO Members with different national values.

Feddersen discusses the longstanding GATT/WTO jurisprudence that "a contracting party cannot justify a measure inconsistent with another GATT provision as 'necessary' in terms of Article XX(d) if an alternative measure which it could reasonably be expected to employ and which is not inconsistent with other GATT provisions is available to it"; "in cases where a measure consistent with other GATT provisions is not reasonably available, a contracting party is bound to use, among the measures reasonably available to it, that which entails the least degree of inconsistency with other GATT provisions" (1989 GATT US-Section 337 Tariff Act panel report). He also refers to the jurisprudence (e.g. in the tuna and shrimp panel reports) requiring the importing country to engage in negotiations for internationally agreed standards prior to the unilateral imposition of import restrictions as a means to protect environmental resources abroad. It is to be hoped that the currently pending Appellate Body review of the above-mentioned US-gambling panel report will reverse the overly stringent panel finding that – in contrast to the EC Court jurisprudence acknowledging the right of EC Member States to unilaterally prohibit transnational gambling services through non-discriminatory measures – WTO Members with market access commitments for gambling services may apply such national prohibitions only after prior international consultations on WTO-consistent alternatives. WTO diplomats might be surprised to learn from future WTO jurisprudence that, even though "public morals" and national human rights traditions may legitimately differ from country to country, the WTO rules on the protection of public order already include a "social clause" and "human rights clause" that protects the right of WTO Members to ensure respect for labour standards and human rights inside their countries and – within multilaterally agreed limits – also beyond.

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Riccardo Pavoni, *Biodiversità e biotecnologie nel diritto internazionale e comunitario*. Milan: Giuffrè Editore, 2004. 526 pages. ISBN 88-14-11470-6. EUR 32.

This book is divided into two parts: the first, concerning the access to biogenetic resources as it is ruled in International and European Law, the second part dealing with the analysis of International and European Biotechnology Regulations.

GMOs are genetic modified organisms created by transferring genetic material from one organism to another. This process is called genetic engineering, or biotechnology. Although the transfer of genetic material has long occurred through selective breeding and other techniques, new technologies permit more controlled transfers, and transfers of genes from completely unrelated species. Although citizens and governments in different countries want to ensure that the GMOs do not pose a threat to human health or the environment, they do not agree on the best way to protect against these potential threats.

Trade problems can arise when countries have different (international and European) regulations regarding the testing and approval procedures necessary to place GMOs and their products on the market, or when they disagree about labelling and identification requirements (Chapters I-V). In this context, the author identifies different sources of regulations, considering that the conservation and continued availability of plant genetic resources is a common concern of mankind.

Before analysing the biotechnologies as they operate in international and European context, the author introduces his readers to the relationships between the TRIPS Agreement and the Convention on Biological Diversity. Intellectual property rights are important under both the Convention on Biological Diversity and the TRIPS Agreement, but the two agreements approach them from very different perspectives. A large and growing number of countries are both Parties to the Convention and member of the WTO. This creates a powerful motivation to develop a mutually supportive relationship and to avoid conflicts. Moreover, both the Convention on Biological Diversity and the TRIPs Agreement allow a significant degree of flexibility in national implementation. This suggests that there is potential for complementary and perhaps synergistic implementation. Another possibility is for the Convention and the TRIPs Agreement to develop procedures for exchanging relevant information.

In spite of the flexibility of the Convention and the TRIPs Agreement, and the potential for synergies, conflicts could still arise, also considering that the TRIPs Agreement doesn't contain explicit reference to its relationship to the Convention on biological Diversity or any other environmental agreement. The dynamic development under the application of modern biotechnology in various fields and the international trade requires relevant negotiations to ensure that multilateral regimes remain coherent and to further enhance their mutual supportiveness.

In order to make trade, environment and development mutually supportive, appropriate measures should be taken to ensure transparency in the use of trade measures related to the environment, and to address the root causes of environmental degradation so as not to result in disguised barriers to trade. Account should be taken of the fact that environmental standards valid for developed countries may have unwarranted social and economic costs in other countries, in particular developing countries. According to the author, international cooperation is needed and unilateralism should be avoided (ch. V).

The second part of the book (chs. VI-X) develops two important themes: how international and European systems are organized in order to grant the correct use of biotechnologies. Chapter VI contains an analysis of the Cartagena Protocol on Biosafety; this is a protocol of the Convention on Biological Diversity, whose major issue is to define the precautionary principle, the relationship to other agreement, and the profiles of liability. The CPB regulates the transboundary movement of specific categories of GMOs.

In European perspective, it is worth mentioning the importance of ECJ case law, particularly three cases in which it is possible to find out the principles of mutual recognition,

sustainable development, and precaution: *Rewe –Zentral AG* v. *Bundesmonopolverwaltung für Branntwein*, (better known as "Cassis de Dijon"); *Greenpeace France and others* v. *Ministère de l'Agriculture et de la Pêche*, C-6/99; *Monsanto Agricoltura Italia Spa* v. *Presidenza del Consiglio dei Ministri*, C-236/01. In the *Rewe* judgment, the Court indicates the scope of mutual recognition as it applies to technical and commercial rules. Any product lawfully produced and marketed in one Member State must, in principle, be admitted to the market of any other Member State. Technical and commercial rules, even those equally applicable to national and imported products, may create barriers to trade only when those rules are necessary to satisfy mandatory requirements and to serve a purpose which is in the general interest and for which they are an essential guarantee. *Greenpeace France* and *Monsanto Italia* are also very important because they introduce concepts now developed in several directives and regulations, such as Directive 2001/18/EC and Regulation 2003/1830, concerning the traceability and labelling of genetically modified organism of food and feed products produced from genetically modified organisms. According to Reg. 1830/2003, Directive 2001/18 required Member States to take measures to ensure traceability and labelling of authorized GMOs at all stages of their placing on the market, in order to facilitate the implementation of risk management measures in accordance with precautionary principle.

In the last part of the book, the author underlines the difficulty in finding synergies among the International, European and National systems, also considering that there are many connections between GMOs regulation and human rights: one of the most relevant matters that emerges from Pavoni's analysis is that a system still almost entirely based on soft law can't often offer effective solutions to environmental, healthy and also ethical matters.

The aim of the book is to illustrate how difficult it is to find a precise line of conduct to follow in finding effective solutions, considering both the necessity to improve gradual negotiations (in this precise sense the author underlines the importance of effective multilateral cooperation to protect the environment and also of preserving and enhancing the ability of countries to achieve and maintain high levels of environmental protection while pursuing an open, non-discriminatory, multilateral trade system) and the importance, on the other hand, of respecting principles such as those of precaution and mutual supportiveness. In the present multilevel system of governance, acceptance of the principles of precaution and mutual supportiveness has a pervasive effect on the lower – national – levels, leading to the dissemination of the above-mentioned principles in the national legal orders.

The attractiveness of the publication lies essentially in the conceptualization of mutual supportiveness between trade and environmental needs. Trade and environmental too often follow different sets of rules which are badly – if at all – coordinated; the principle of mutual supportiveness calls for rules on these subjects to be brought into line. In other terms, mutual supportiveness plays a fundamental role in unveiling the need of mutual cooperation, creating a common pattern on which the international community can find solutions to economic and environmental conflicts.

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Ute Seibold, *Die Kontrolle der Europäischen Kommission durch das Europäische Parlament*. Frankfurt: Peter Lang, 2004. 270 pages. ISBN 3-631-52818-3. EUR 48,10.

This study examines the supervisory power of the European Parliament with regard to the European Commission.

The first chapter recalls the historical evolution of the role of the European Parliament and gives an introduction to the relation between the European Commission and the Parliament, a definition of parliamentary control, the structure and aim of the study. Seibold describes in Chapter 2 and 3 the parliamentary control and supervision with regard to the Treaties and general law. She outlines the following facts: the European Parliament plays a central role in appointing the Commission. It approves or rejects the appointment of the Commission President, holds confirmation hearings of the nominee Commissioners and then decides whether or not to appoint the Commission, as a whole, by a vote of confidence. Parliament also has the right to censure the Commission: a "motion of censure" against the Commission adopted by an absolute majority of MEPs and two-thirds of the votes cast would force the Commission to resign. To date Parliament has never adopted a motion of censure, but its power to do so acts as a powerful deterrent. Parliament routinely exercises its supervisory powers over the running of the Commission by examining a large number of reports that the Commission submits to it on the implementation of policies, legislation and the budget The agenda of the EP may include oral questions to the Council and Commission, debates on urgent cases of violations of human rights, democracy and the rule of law, as well as "extraordinary" debates on topics of major importance relating to European Union policy. In both cases the debate is usually followed by the adoption of a resolution. Furthermore, during plenary sessions, "Question Time" with the Council and Commission provides a forum for a series of questions and answers on topical issues. Individual Members can address written questions to the Council and Commission; these receive written replies.

In Chapter 4 Seibold examines the control of the European Commission through the parliament with regard to the budget control procedure for the year 1996. In March 1998 the European Parliament took the decision to postpone the discharge of the Commission's draft budget, and at the end of 1998 it decided not to discharge the Commission for the budget of 1996.

In 1999 the European Parliament installed a Committee of 5 Independent Experts to examine the way in which the Commission detects and deals with fraud, mismanagement and nepotism. As part of their remit they have been asked to make a fundamental review of Commission practices in the awarding of all financial contracts. The report of the Committee aimed to establish to what extent the Commission, as a body, or Commissioners individually, bore responsibility for problems like fraud, nepotism and mismanagement. Seibold examines in great detail the status and the mandate of the Committee. The Committee was not constituted under the Treaties or any other regulation governing the European institutions and was thus neither a Community institution nor a Community agency. It was certainly not a Community court and has had no formal investigative power. Further, its authority was vested by virtue solely of an agreement between the Commission and Parliament. All relevant documentation that the Committee wished to look at had to be made available and the staff of the institutions would be exempted from all secrecy obligations imposed on them by Staff Regulations. The Committee therefore regarded itself as a temporary advisory committee operating by consent and drawing its authority from the resolution of Parliament, and the commitment of both Parliament and the Commission to support its work and to recognize its findings. Seibold underlines that throughout its mandate the Committee was completely independent. Though established "under the auspices" of the European Parliament and the Commission, it was guided by the principle of impartiality *vis-à-vis* these two institutions and saw itself as answerable only for the exercise of its mandate and accountable to no party other than the general public. Seibold argues that for the installation of the committee there was no legal basis, neither in the Treaties nor in the Rules of the EP and that therefore it was illegal. In her opinion the creation of the Committee was against the Treaties, and the Committee was an obstacle to the EP using their power of motion of censure.

To sum up: this book provides an interesting angle on the debate about the supervising power of the European Parliament over the European Commission.

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Tobias Jaag, *Europarecht*, *Die europäischen Institutionen aus schweizerischer Sicht.* Zürich: Schulthess, 2003. ISBN 3725546509. CHF 87.

After a second package of sectoral treaties and agreements between the European Community and – with regard to Schengen – the European Union on the one hand, and Switzerland on the other, was signed on 26 October 2004 in nine more areas (Schengen/Dublin; combat of fraud; taxation of savings income; double taxation of retired EU-civil servants pensions; liberalization of trade in processed agricultural products; environment; statistics; media; education, occupational training, youth), it is worth mentioning a recent publication on European Law by a Swiss author: *Europarecht* by Jaag is not an ordinary law book on the European Union and the European Communities. As its subtitle implies ("The European institutions from a Swiss point of view") and its cover shows (a Swiss cross beside the European stars) the structure of this book is very original in comparison with most of the books on European law. Indeed, the aim of Jaag is to explain to Swiss students the position and perspectives of Switzerland in the process of European integration in and outside the European Union. As a consequence, this introduction into the general history and institutional framework of the European process of integration describes in short chapters all the European organizations. A priority is given to the European Union and the European Communities including their bilateral relations and sectoral treaties with Switzerland.

Since Switzerland is not yet a Member State of the European Union, its relationship with the European Communities is based on traditional public international law. An exception is the bilateral treaty on air of 1999, according to which Switzerland accepts in this specific field the direct application and impact of European competition law. Taking into account the relevance of public international law Jaag begins his overview with some introductory remarks on the treaty making process and the relationship between international law and municipal law in Switzerland.

The first part deals with European cooperation outside the European Union and describes the legal structure and significance of the Council of Europe with the European Convention on Human Rights, the European organizations of security (OSCE, NATO, WEU) and the European organizations with economic goals (OECD, EFTA, EEA). Because of their importance in European trade law the institutional framework of WTO and GATT is also explained in this first part.

The second part explains in 250 pages the development and the institutional aspects of the European Union and the European Communities up until the post-Nice process. The substantive law of the European Union and the European Communities, i.e. the common market and fundamental rights and freedoms, as well as some remarks on some policies are summarized in order to give a short impression of the aims and duties of the legal institutions and proceedings.

In the third part, Jaag describes the Swiss participation in the process of European cooperation and integration. He concludes, that Switzerland, on the one hand, joined several European organizations, such as the Council of Europe and the European Convention on Human Rights, only after a long period of observation. On the other hand, Switzerland was from the beginning an active Member State in the European Free Trade Association (EFTA) as well as in the Conference and Organization of Security and Cooperation in Europe (CSCE/OSCE). This was also the case with regard to the European Economic Area (EEA) – until the refusal in a constitutional referendum in December 1992.

According to Jaag, an accession of Switzerland to the European Union "seems to be still in a considerable distance". However, such books and observations written and seen through Swiss glasses, give the opportunity to Swiss people to keep in touch with the European integration and even to follow, from a certain distance, its fast track. In this light, the new sectoral treaties may be seen as a further pragmatic step on the Swiss way of a differentiated integration into Europe.

Stephan Breitenmoser
Basel

Philippe de Bruycker (Ed.), *The Emergence of a European Immigration Policy/L'émergence d'une politique européenne d'immigration*. Brussels : Bruylant, 2003. 463 pages. ISBN 2-8027-1783-9. EUR 85.

This is the third volume published by the Odysseus academic network. It consists of updated and extended contributions to a congress organized by the network in December 2000 in Brussels. Inevitably some of the contributions, expressing wishes about – at the time – future European legislation, have been caught up by later developments. Other contributionss are still of current importance. Taken as a whole, the book is a rich source of relevant views and documentation.

In an introductory essay, de Bruycker sketches the institutional debate accompanying the gradual introduction of Community competences on immigration and asylum after the intergovernmental first phase of "Schengen". De Bruycker considers the importance of the Treaty of Amsterdam as "absolutely fundamental", even where it provides for a transitory unanimity voting system for the first five years. He stresses however that Title IV does not give full competence to regulate all conceivable matters of immigration and asylum. Community competence is limited to the subjects enumerated in Articles 62 and 63 EC. This led, for instance, to discussion within the Council with regard to disputed competence on access of migrating workers to the labour force. (In the meantime, the Council chose for the extensive interpretation in its measures on temporary protection (Dir. 2001/55/EC, Article 12), asylum (Dir. 2004/83/EC, Article 26), family reunification (Dir. 2003/86/EC, Article 14) and long-term residents (Dir. 2003/109/EC, Article 11).) De Bruycker further notes that precise objectives are lacking in the Fourth Title – in contrast with the ambition expressed in Tampere to create a common policy on immigration and asylum (and the four objectives formulated in Tampere: partnership with countries of origin, equal treatment for third country nationals, control of migration flows and a common European asylum regime). In a second part of his essay he describes the "delicate adoption" of a legislative framework on two subjects of legal immigration: family reunification and equal treatment of Union citizens and third country nationals. Finally, in part three, de Bruycker elaborates on what he calls the refusal to use the method of open co-ordination in matters of legal immigration, on the progress in the co-ordination of activities of the Member States in combating illegal immigration and on integration of immigration policies and external relations. He concludes that the progress accomplished is enormous from an institutional point of view, but less satisfactory in the material sense. He warns against the risk that Community measures, based on the lowest common denominator and containing too many exceptions on common principles, may lead to a situation in which Member States stick to their own policies without wishing any coherence on the level of the EU. His other main point of concern is the equilibrium between legal immigration policies and combating illegal immigration. He hopes that a better control of illegal immigration may provide enough lucidity for admitting that it is at the same time necessary to accept certain necessary migration flows and the will to manage these flows in a common policy permitting a better response to the challenges of mobility of human beings.

Schmitter (in cooperation with Julien-Laferrière and Carlier) analyses the development of a Community visa policy from the intergovernmental co-operation on "Schengen" up to the incorporation of the Schengen acquis in the TEU. She is of the opinion that the mutual confidence between the Member States in this delicate domain of visas, which is linked to controlling migratory flows, protection of public order and public security and international relations, can only exist by far-reaching harmonization of national legislation and practices. Though visa policies directly affect the position of the individual and though protection of fundamental rights has progressively been developed in the EU, Schmitter notes a strong predominance of the objectives of public order and combating illegal immigration in the texts adopted so far. The protection of the individual is left to the domestic legislation and remains highly unsatisfactory. There are no rules laying down the reasons for refusing visas, or when they exist they are kept secret. In national laws of only half of the Member States is it required that reasons for the refusal of a visa be given. There is no obligation in Community law for the Member States to secure an effective judicial remedy against refusal of visas. Stating that the time has arrived to recognize a right to travel, the author launches the suggestion that a new EU policy should aim at radical abolishment of short-stay entry visas. She founds her proposal on both theoretical and practical arguments.

Guild and Staples analyse labour migration in the last 50 years inside and outside the Community. In Part I they describe the development from the ILO framework in 1949-1973, via what they call the "interregnum" (1973–1994) in which domestic labour was more and more protected against access by third country nationals, to the corporate regulation of labour migration (GATS) in the WTO framework (1994-2000). The ILO model is based on inter-State agreement on making available the deployment of workers. The GATS model is a company-based model. The company which is based in the home State seeking to send workers to another State is priviliged. In Part II Guild and Staples deal with the EC/EU Treaty framework for labour migration. They focus on how the Community model developed for intra-Member State labour migration was used to gradually facilitate migration by third country nationals through the settlement of agreements with States of origin. Finally, they consider the new powers of the Community after the entry into force of the Amsterdam Treaty. Guild and Staples are of the opinion that the Community model seems best adapted for use by the Community legislature in exercising its new powers under Article 63(3)(a) EC.

The Australian quota system concerning family reunification is critically described by Feik. He states that this quota system is determined more by political considerations, using xenophobia as a tool in an election campaign, than by labour market related or human rights related considerations. The new Greek immigration law of 2001 is discussed by Sitaropoulos. He welcomes the new provisions safeguarding fundamental human rights of immigrants, but he regrets that visa applications may be rejected without any reasons, the "cumbersome" new procedures for entry of foreign workers and self-employed persons and the "restrictive, partly discriminatory" provisions on family reunification. The Swedish immigration law is described by Örjan Edström.

John Handoll extensively elaborates on the status of third country nationals residing on a long-term basis in EU Member States. He describes what has been achieved under the third pillar of the TEU before "Amsterdam", and some developments from 1 May 1999 to Spring 2001, including the Commission's proposal for a directive concerning the status of long term residents – which has in the meantime been adopted as Directive 2003/109. In his concluding remarks, Handoll discusses the link between the status of long-term-residence and citizenship. He notes that the introduction of EU-citizenship has created a greater distance between EU-nationals and long-term residents having the nationality of a third counry. He cites Withol de Wenden who once said that "European citizenship is a regression, juridically and politically speaking, because it undermines years of mobilisation around the legimacy of stay based on work and residence" (see de Wenden in "Migration Policy and European Citizenship", (1999) EJML, at 96). Handoll suggests, that there may

be a potential for the concept of "civic citizenship", as a status conferred in the State of residence of the third country national, completed with a Community civic citizenship containing a common core of Community based rights and obligations.

Combating illegal immigration is the the subject of an extensive contribution by Labayle, Bouteillet-Paquet and Weyembergh. They analyse the state of affairs before and after "Amsterdam" concerning the exterior activities of the EU on unlawful immigration and the organization of returning illegal immigrants to their country of origin or country of transit. Important legal instruments are association treaties and readmission treaties. Further, the authors inventorise the measures taken so far on repression of unlawful immigration, amongst which the Schengen Agreements play the leading part. They note that the political will to combat illegal immigration tends to occupy such a central place that European migration policies risk being reduced to this single dimension. They urge that the effectiveness of the advocated measures be evaluated.

In a short, yet challenging contribution, Spijkerboer points at two ambiguous aspects of the fight against illegal immigration. Firstly, he underlines that there is a difference between smuggling willing individuals and trafficking unwilling victims. When the two forms of smuggling are not distinguished in the combat against trafficking, the risks for willing migrants may increase. Successful policies against smuggling may force smuggling networks to go deeper underground and to increase their prices. Spijkerboer expects negative effects in terms of human rights. The other ambiguity is embodied in policies of Member States excluding illegal entrants from the adminitrative systems of their welfare states. Increasing exclusion from the welfare state in the absence of increasing physical removal from the territory may contribute to a next wave of regularisation – thus rewarding those who were best able to stay irregularly in the country.

Groenendijk describes and criticizes the Directive on mutual recognition of expulsion decisions. He has four comments. Firstly, he deems it doubtful whether it will be an effective instrument for the realization of its goal. Secondly, the situation of third country nationals may be unduly and unnecessarily harmed. Thirdly, the preconditions for the use of the instrument of mutual recognition in the field of expulsion are not yet present. Finally, the instrument of a Community law directive is used in a way that is not in accordance with its nature.

Of course these summaries cannot do justice to the informative and argumentative content of the contributions described. They can only serve to draw the attention of potential readers.

Pieter Boeles
Leiden

Galina Žukova, *Legal Aspects of Trade in Goods between the EU and its Candidate States: The Case of Latvia*. Riga: VSIA, 2004. 341 pages. ISBN 9984-731-42-1. EUR 16.

The book under review is based on Ms Zukova's doctoral thesis, which was defended at the European University Institute in Florence in 2003. The book is divided into three parts, the first dealing with the substantive provisions of the trade relationship between the EU and the candidate States, while the second one concerns the institutional forms and relationships of the said parties. The last part puts the relationship at stake in a bigger, global context.

In her introduction the author states as being the key aim of her work to show the path of trade integration between the EU and its future new States prior to their actual accession to the Union, by choosing the case of Latvia as an example. The analysis is limited to trade in goods. In so doing, Ms Zukova argues that notwithstanding the requirement on candidate countries to approximate their legislation and economy, there are substantial limits to the

EU's will to integrate fully central and eastern European countries (CEECs) into its system and several tools for achieving the goal of full integration are not without obstacles. Additionally, the author tries to dispel the myth that only the accession States are gaining in the process and not the EU.

In the first chapter of Part A (pp. 25–57) she undertakes to provide the reader with a comparative analysis in respect of the economic integration between the EU and third States based on the Europe Association Agreements. In so doing, she distinguishes four forms of economic integration, a free trade area, a customs union, a common market and an economic and monetary union. The conclusion is that the EU is using the first three models in its trade relations with other countries. The means of scrutiny, the analysis of the available literature in English, shows one of the great deficiencies of the academic approach in Europe. In so doing, the author misses the opportunity of taking into account academic articles in other languages than English, which for instance leads to the puzzling result that the analysis of chapter one is well known in Germany and seems rather obvious to the reviewer. In the short second chapter the author gives an overview of the trade relations between the Latvia and the EU.

The last and by far the most extensive (pp. 68–138) chapter of Part A deals with the free movement of goods under the Europe agreement by looking largely at special regimes covered by the said agreements. One of the main goals of the scrutiny is to find out if the identically worded provisions of the EC and EA agreements have to be interpreted in an identical manner. Referring to the case law of the ECJ, she rightly states that identically worded provisions must enjoy the same interpretation. Decisive, at the very end of the day, is still the intention of the parties to the agreements which might, despite the same wording, be different in different treaties. The chapter entails an in-depth analysis of the trade in agricultural products, because in processed agricultural products Latvia enjoys a competitive advantage over the EC. Hence, the usual pattern of trade liberalization, the asymmetry, i.e. the EC undertakes to dismantle trade barriers before Latvia does so, is not applicable in the given field. Due to the specific relevance for Latvia, also the CAP and its reform are dealt with extensively. After enlargement we face a two-tier CAP, one for the "old" Member states and one for the "new". Further the author also ascertains the issues of safeguard measures and trade protection (anti-dumping and anti-subsidies) in the EAs. The ultimate objective of the agreements was the establishment of a free trade area between the partners, based on the principles of reciprocity and non-discrimination, yet leaving out highly controversial subjects like the free movement of workers, which even after the accession of the Middle and Eastern European Countries to the Community has not been fulfilled. She rightly criticizes the hub-and-spoke approach of the EC in concluding these agreements. While EC companies have access to all partners' markets, the relevant partner companies have only free access to the EC and not to all the other partner markets. The economically unfortunate result is a logical conclusion of the bilateral nature of the EAs.

Part B deals with the institutional forms and mechanisms of the relationship between the EU and candidate States. The first chapter of this part deals with the issue of direct effect of international agreements within the EC legal order. Here, the author does not clearly distinguish between the concepts of objective and subjective direct effect. She focuses on the subjective direct effect, i.e. if natural or legal persons could rely on provisions of international agreements directly in front of national courts. The analysis starts with a restatement of the necessary requirements as stated by the ECJ for direct effect. Then, she looks first at the EEA agreement and the relevant case law of the ECJ in order to find out that several provisions of the agreement are directly effective, while secondly the WTO norms are not. Finally the author applies the concept to the provision to the Europe Agreement and reaches the conclusion that several provisions are directly effective. Thus, only regarding the WTO does the ECJ totally deny the direct effect of international agreements. The fourth chapter of this part concerns the applicability of EC legal concepts in the legal order of the accession States by looking at the concept of primacy and direct effect. In the

opinion of the reviewer this seems to be the wrong question, because both concepts are concepts of international law which are or are not applicable in the national legal system at stake. Yet, the author comes to the interesting conclusion that several courts are applying similar concepts in a way of prior or premature obedience to the EC acquis. The last chapter regards the problem of uniform interpretation and application of international agreements in the European Union. The wording of the classic EU free trade agreement on uniform interpretation is rather vague. Generally speaking, uniform interpretation, as is rightly stated by the author is a necessary precondition and a guarantee for the certainty about the rule of law and for the coherent application of an agreement throughout all States-signatories. A brilliant example where this is not working as perfectly as it should is the CISG. In the EC legal order the uniform application is secured by Art. 234 EC, the provision on preliminary rulings of the ECJ. Such a norm is missing in the free trade agreements, because according to the Court's ruling in EEA this would hamper the autonomy of the EC legal order and the competence of the Court.

Part C is about the relationship between the EU and candidate States in a global context. The author describes the trade relations of Latvia with other States, especially countries from the former Soviet Union. In so doing, concluding trade agreements with other countries, Latvia gradually adjusted to the EC trade rules. The largest chapter deals with Latvia and the WTO in light of Latvia's (then) upcoming EU membership. The cited fundamental principles of the WTO seem to be rather uncommon to the reviewer. Especially the task of reaching transparency can hardly be mentioned as being one of the central aims of the WTO Agreements. Interestingly, she shows that at least one Latvian court applied a GATT rule directly. Further, she examines the implications and necessary adjustments of the WTO membership for Latvia and its national legal order on the accession talks with the EU. She reaches the conclusion that the EAs are WTO-plus agreements, in the sense that the commitments undertaken go beyond those under the WTO-Agreements. So, the accession of Latvia to the WTO agreements were extremely beneficial for Latvia.

In her concluding remarks Ms Zukova rightly states that the effects of accession to the EU for Latvia in respect of the trade in goods will be beneficial in the long run. In the short term, the Latvian economy might face difficult times. Sometimes the reviewer is puzzled about the rather prosaic, and as such not very academic, style of the volume, see e.g. p. 301 ("But this is another story").

Yet, despite the mentioned, rather small criticisms, as Grainne de Búrca in her preface rightly stated, the book contains a wealth of information on the detailed provisions of trade relations between Latvia and the EU. Further, the work is thorough, well-researched and systematic.

Stefan Lorenzmeier
Augsburg

Malek Radeideh, *Fair Trading in EC Law – Information and Consumer Choice in the Internal Market*. Groningen: Europa Law Publishing, 2005. 339 pages. ISBN 907687104X. EUR 72.

Consumer protection policy has been on the E(E)C agenda since the 1970s, but there has always been a critique on whether there is really jurisdiction for Community action. The author of this book – in his thesis submitted to the University of Groningen – is correct in not continuing this rather circular debate, but in analysing primary and secondary EU law for a genuine and autonomous Community concept of consumer protection. His efforts are methodologically well done and successful in their legal-political impact. In this short review it is impossible to do justice to the careful and thorough research the author has carried out. Let me just highlight some of his conclusions.

The first part of the book is devoted to an analysis of the existing acquis. The author first looks at the overflowing case law concerning Member State restrictions on the free movement of goods and services which are justified by consumer concerns. The reasoning of the ECJ – despite a restrictive reading of the sphere of application of the free movement rules of goods under the well known *Keck*-doctrine (pp. 27, 68 et seq.) – has favoured an information approach, based on the principle of market transparency (p. 43 et seq.) For the German reader this is particularly important because the concept of the "informed consumer" has given rise to a continuing debate on the standard of deception in unfair marketing laws, but has finally been accepted in the case law of the German *Bundesgerichtshof*. There may be doubts on the usefulness of this concept to vulnerable consumer groups and to different levels of sophistication which may become more important after the accession of new Member States with their substantially lower GDP.

The second chapter looks at the somewhat confusing and highly selective secondary legislation which despite its piecemeal approach places great emphasis on consumer information and choice as leading principles of fair trading. The author has done a remarkable job in analysing "horizontally" the incoherent Community legislation which only lately will be consolidated in the "Unfair Commercial Practices Directive" (the text of the political agreement of November 2004 is printed in the Annex, p. 290). Obviously other public interests play also a role in this context, even if they resist generalization.

The third chapter summarizes the analysis of primary and secondary Community law in proposing the principle of fair trading as reading that "consumers must be able to make their choice in full knowledge of the facts" (p. 184). This principle of "full knowledge" is then developed with regard to access to information, disclosure, comprehensiveness, duty not to mislead, and enabling true choice by granting a cooling-off period in circumstances of reduced decision-making. The author concludes that this principle is the "conceptual foundation of Community fair trading law as whole" (p. 219).

How can the author justify the existence of such a far-reaching principle if the case law of the ECJ is mostly concerned with Member State restrictions, and the secondary law works only haphazardly? The author proposes an interesting new idea which in my opinion is convincing: by applying the proportionality standard for justifications of Member State restrictions to free movement in the name of consumer protection, the ECJ has developed Community specific criteria of fair trading: "Proportionality can thus be understood to serve as a catalyst by the help of which the concept of fair trading is elevated from the national to the Community level" (p. 230). The seemingly "negative" approach of the ECJ in its free movement case law turns out to be a positive approach towards judge-made harmonization of trade practices law – a concept which the former A.G. van Gerven has convincingly developed with regard to Community private law, especially on compensation ("Of rights, remedies, and procedures", 37 CML Rev. 501; see my attempt in "The 'Courage' Doctrine: Encouraging or discouraging compensation for antitrust injuries?" 42 CML Rev., 35). This concept of fair trading is inherent in the very functioning of the internal market. It is not a restriction of market freedoms but a condition for their effective working (p. 237). EC law opts for an active "consumer oriented market policy", not for a "purely liberal understanding of the market" (p. 240).

Chapter 5 looks at a general legislative framework for fair trading as it is undertaken in the recent legislation on "unfair commercial practices". The author in particular welcomes rules on "misleading omissions" which are a result of the concept of informed consumer (p. 271). It must be seen how this concept is applied in practice by national courts. In order to make the information principle effective, the author pleads for a re-conceptualization of the (German) *invitatio ad offerendum* principle which indeed allows the trader an easy opting-out of pre-contractual promises (pp. 273 f.). Will German civil lawyers, well known for their conservative attitude towards consumer protection, be willing to change well-established doctrines of contract law? The author also shows no respect to critics concerning the legal basis of the Unfair Trade Practices Directive which refer to the famous Tobacco case

of the ECJ: "By harmonising the law of fair trading, which is known to all Member States, but regulated differently, the barriers for cross-border fair trade faced by businesses are certainly reduced" (p. 282). Unfortunately the author doesn't tell us whether this approach requires total harmonization, combined with the "country of origin-principle", or minimum harmonization under the old approach still favoured by the Scandinavian countries (Reich and Micklitz, *Europäisches Verbraucherrecht*, 4th ed. (2003), paras 1.32, 11.6). He seems to favour a combination of the country of origin-principle with a high level of harmonization (p. 107) without telling us what happens if there is no agreement on such "high level" within the Community.

To sum up: the author has greatly contributed to the development of a genuine Community concept of fair trading. The work is well documented, his analysis of the case law of the ECJ offers many new insights into legal doctrine and argument, and the abounding comparative literature is excellently researched. His work will survive short term legislation and discussion because it points to the very fundamental requirements of a functioning internal market.

Norbert Reich
Hamburg

Paul Magnette, *La Grand Europe*. Brussels: Éditions de L'Université de Bruxelles, 2004. ISBN 9-782800-413327. EUR 30.

This book, edited by the political scientist Paul Magnette, is the fruit of an interdisciplinary project conducted under the auspices of the *Institut d'Etudes européenes* of the Free University in Brussels and published shortly after the failure of the Brussels summit in December 2003 on the Draft Constitution for Europe. The editor starts off in his introductory piece by laying out the streams of research covered in this collection of contributions, which can be divided into the institutional and political structure, the regulation of the internal market, the area of judicial and police cooperation and external relations of the Union.

It is difficult to do justice to 21 different contributions in a short book review. These contributions are not only diverse as to the subjects they address and the authors' backgrounds in sociology, law and political science. They also are characterized by differing quality and even languages, while most of the contributions are in French, some are written in English. From a general perspective the selection and presentation of articles suffer from a lack of overall structure and common stream. It has to be admitted that Magnette tries to pull these different streams together, with ten theses. But again, these theses are diverse, ranging from the conclusion that social policies fall in principal into the responsibility of the Member States, and the Union continues to experiment with new forms of cooperation, to the conclusion that the problem of the democratic deficit is not resolved.

The institutional and political part mainly concentrates on political parties and the European Parliament, and the second section, devoted to the regulations involving the internal market, discusses trends of deregulation together with regions of Europe. In his own contribution, Magnette highlights the context of the process of the Convention and the complex bargaining process of a Convention which prepared the work of the IGC. The most interesting contributions can be found in the third and fourth part. The third part discusses different aspects of the area of security, justice and liberty (in the words of the European Commission) such as the integration of a written human rights catalogue into the Constitution (Bribosia), the rights of applicants in front of the Community courts (Waelbroeck) and the future of the ECJ (Vandersanden), the cooperation in the area of criminal law (Weyembergh) and the policy on asylum and migration (Duez).

In the last part, a selection of aspects are analysed in regard to relations with third coun-

tries. Telo discusses the consequences for the European Union after September 11th and stresses the results of the Convention on the Future of Europe as the best possible outcome to reform external relations policies; and Delcourt writes about the new CFSP provisions introduced in the Draft Constitution such as introduction of Union Minister of Foreign Affairs and an External Service. Remacle further elaborates the limits and possibilities of integration of a common European defence policy and discusses the two military missions Concordia and Artemis to Macedonia and Congo in 2003. In their interesting contribution about the "quiet European" Norway, Eliassen and Sutter provide the picture of an outsider participation in European integration which results in a differentiated integration to a certain degree because the European Union is determined to be less flexible towards tailor-made solutions towards outsiders in the context of the ongoing enlargement process in combination of keeping the momentum of deepening integration.

In conclusion, this collection of contributions highlights the complex challenges of a new Union between enlargement and a new Constitution and provides the reader with a diverse picture involving different disciplines and aspects.

Andrea Ott
Maastricht

Hans von der Groeben and Jüregen Schwarze, *Kommentar zum Vertrag über die Europäische Union und Vertrag zur Gründung der Europäischen Gemeinschaft*. Baden-Baden: Nomos, 2004. ISBN 3-7890-8292-9. EUR 698

The sixth edition of this commentary on the law of the European Union and the European Community covers 6981 pages including a 78 page index. It has been edited by Angela Bardenhewer-Rating, EC Commission, Gerhard Grill, EP, Thinam Jakob, EC Commission and Ulrich Wölker, EC Commission. All in all, 109 authors have contributed making the editorial co-ordination an impressive task. The number of authors also shows that Community law has come of age.

It is undoubtedly the most comprehensive text on Community law. This edition is a combination of the Von der Groeben/Thiessing/Ehlermann and the Schwarze commentaries. The text follows the typical German approach of commentaries on legal texts. But even in the German legal culture which is known for its tradition of commentaries it is *sui generis*. There is certainly no equivalent in the Anglo-Saxon world.

The text is structured according to the articles of the two Treaties. Chapters in the Treaties, such as the rules on competition or State aid are preceded by preliminary comments that discuss the background of the relevant provisions as well as horizontal questions. They also contain extensive references to literature, mostly German and but also English and French.

This is a very impressive text providing comprehensive if not to say almost exhaustive coverage of the different subject matters. Thus the part on competition law covers 980 pages and the part on the EMU 618 pages.

It is an important research tool for all Community lawyers conversant in German. The rest of Community lawyers will unfortunately have to do without it.

Piet Jan Slot
Leiden