A Textbook on European Union Law by **Andrew Evans** [1998, Hart Publishing, Oxford, lxix + 631 pages, ISBN 1-901 362 36 1]

The Treaty on European Union, known as the Maastricht Treaty, came into force on 1 November 1993. It is the foundation for the continuing and dynamic processes leading effectively to the federation of the states of Europe. Article 2 establishes the fundamental objective of economic and monetary union by the implementation of common policies (set out in Article 3), which includes the strengthening of social cohesion and the establishment and development of trans-European networks.

The European Union ("EU") was founded on the earlier treaties of Europe, establishing the three Communities.[1] The first is the European Coal and Steel Community ("ECSC") established in 1952. The other two are the European Atomic Energy Community ("EURATOM") and the European Economic Community ("EEC"), both created in 1958. The Communities are administered by four principal Institutions: the Commission, Council of the Union, European Parliament and the European Courts.[2] In addition, other bodies are established to advise and supervise these Institutions.[3]

Those living outside Europe do not often appreciate the EU's extremely comprehensive and extensive nature of the processes. This federation extends beyond the deregulation of national economic controls and the active encouragement of open markets and pro-competition policies within the member states. It has social and political dimensions by virtue of the interaction of the four main Institutions and the Advisory Bodies.

The structure of this book, in three Parts, enables the reader to better understand these processes in a logical analysis: Part One[4] examines the Law of the Institutions; Part Two[5] reviews the Law of the Common Market and Part Three[6] details the Law of Harmonisation and Common Policies.

---

[1] Referred to as the European Communities ("EC").
[2] The European Court of Justice and the Court of First Instance. For further information on the Courts see 140-142.
[3] The Court of Auditors, the Economic and Social Committee, the Committee of the Regions and other Advisory Bodies.
[4] At 17-205.
[5] At 209-463.
[6] At 467-598.

Professor Andrew Evans sets out the Scope and Fundamental Principles of EU Law in the Introduction. At page 6 he notes the constitutional principles laid down in the Maastricht Treaty including the requirement that each Institution acts within the limits of powers conferred by the EC Treaty.

The Maastricht Treaty states that it is supplemented by the policies on cooperation such as a common foreign and security policy and policies in justice and home affairs.[7] The roles and relations between the four main Institutions have been modified by the 1987 Single European Act. This Treaty extends the influence of these Institutions by providing for a primary objective within the European Communities ("EC"), namely, harmonisation. There were 282 proposals formed to complete the "internal market" in Europe, to enable the free movement of goods, persons, services and capital within the EC by the end of 1992.

These processes of achieving the internal market have encouraged the expansion of membership of the EC from the six original states[8] in 1957 to nine[9] in 1973, ten[10] in 1979, twelve[11] in 1986, and fifteen[12] in 1995. In 1990, the former East Germany was included, pursuant to transitional arrangements. Applications have been received from ten other states, such that a membership of 25 states is expected by 2010.[13]

The EU is now responsible for more than 20% of all world trade and more than 30% of global output.[14] The commencement of the monetary union on 1 January 1999 has further enhanced and consolidated the growth of the region. There are several complex processes in this, including the introduction of the Euro as a common currency with parallel status in eleven states until 2002, the maintenance of price stability and compatible national fiscal and monetary policies. The Council of Economic and

---

[7] Articles J.1-18, Articles K.1-17 TEU.
[8] Belgium, France, Germany, Italy, Luxembourg and the Netherlands.
[9] To include Denmark, Eire and the United Kingdom.
[10] To include Greece.
[11] To include Portugal and Spain.
[12] To include Austria, Finland and Sweden.
[13] For background information see Chapter 1.
[14] See Steiner J and anor, Textbook on EC Law (6th edition, 1998, Blackstone Press Limited, London) 12.

Finance Ministers[15] oversees these economic changes and the creation of the European Central Bank has substantially reduced the policy roles formerly played by the equivalent national institutions.

Part One of this Textbook has six chapters, namely, Chapters 2-7. It considers in detail the Law of the European Institutions, including the Commission, the Parliament, the Council and the Courts. It provides a good balance between giving the reader an understanding of the practical aspects, the constitutional and legislative framework and the case law.

Chapters 2-5 examine the procedures and composition of the European Institutions. In addition, the functions and jurisdiction of these bodies are revealed. A consideration is the interaction between these bodies and what the author refers to as "'Third States': Nations outside the EU". The importance of this relationship is underlined by the establishment of Directorate-General I ("DGI") within the Commission administration, responsible for trade relations between the EU and Third States. Chapter 6 is concerned with the Other Advisory Bodies. And Chapter 7 deals with the relationship between EU Law and National Laws.

In this Part, it is noteworthy that Chapters 5 and 7 deal with important topics such as the resolution of disputes by arbitration, Article 177 Applications to the ECJ, the *locus standi* of Third State nationals in EU Courts and in dealings with the Institutions. Other topics include the doctrine of direct effectiveness, the principle of subsidiarity and considerations of fundamental rights structuring the relationship between EU law and national law, all of which are necessary for the study of European law.

Part Two deals with the Law of the Common Market. It contains all the fundamental legal principles and much of the case determination, which led to the establishment of the four freedoms within Europe. These are the Free Movement of Goods (Chapter 8), Free Movement of Workers (Chapter 9), Free Movement of Services (Chapter 11), and Free Movement of Capital (Chapter 12). Thus, this Part provides the reader with a concise introduction to the principles of European competition law and includes the application of taxation law.

---

[15] Commonly referred to as ECOFIN.

In relation to the dynamic cooperation between the EU and the European Free Trade Association ("EFTA") outside the "Four Freedoms", Evans states:[16]

> Articles 78-88 of the EEA Agreement[17] provide for "co-operation outside the four freedoms". To this end Article 79 of the Agreement requires that the Parties shall strengthen the dialogue between them by all appropriate means, in particular, through the procedures provided for in Part VII. They are thus to identify areas and activities where closer co-operation outside the four freedoms can contribute to the attainment of their common objectives in the fields referred to in Article 78. These fields are: research and technological development, information services, the environment, education, training and youth, social policy, consumer protection, small and medium-sized enterprises, tourism, the audiovisual sector, and civil protection.

In Part Three, the text clearly distinguishes itself from other established textbooks on EC law, such as that by Josephine Steiner and Lorna Woods, *Textbook on EC Law.*[18] Whereas most textbooks focus on the domestic view of the Institutions and the case law, few have consciously referred to the processes of globalisation in the European context. Professor Evans does this well in this Part.

In a refreshing manner, Professor Evans maintains that both EU practice and the realities of globalisation make it imperative in any European law study to consider both intra-EU relationships and the relationships between the EU Institutions and Third States. This is especially relevant for the implementation of common economic and social policies through legislative harmonisation. The concept of the extraterritorial jurisdiction of European Courts and the enormous potential for a comparative analysis of European competition law with United States anti-trust law has long been an intriguing topic.[19]

---

[16] At 598.
[17] Namely, the 1994 European Economic Area Agreement, OJ 1994 L1/3.
[18] See note 14 above.
[19] For the Australian position see note 22 below.

In 1969 *Re Cartel in Aniline Dyes*[20], a decision of the Commission on restrictive practices, it was held that so long as the object or effect of commercial practices is to affect competition within the common market they may be governed by Article 85 of the EEC Treaty notwithstanding the fact that they are engaged in by Undertakings established wholly outside the Community. A non-Community firm may accordingly be fined by the EC Commission for engaging in such practices. Even subsidiaries with separate legal personalities may be fined by imputing conduct to the parent company. The European Courts have since affirmed this principle consistently.[21]

Similarly, as early as 1945 the United States courts had declared its Sherman Act was applicable to acts by undertakings outside the United States if the effects were felt in the United States, and such effects were wilfully sought.[22] Other US cases since then have attempted to refine the balance of the respective interests of the domestic legal system and those of the external undertaking's economic operations.[23]

However, Professor Evans makes only one reference to a United States case. This is the significant matter of *Continental TV Inc v GTE Sylvania Inc*[24] appearing as footnote 58 at 346. The case concerned restrictive trade practices in intra-brand and inter-brand competition. Market unification and harmonisation are also occurring in other parts of the world, NAFTA and APEC being notable examples. A significant part of these processes is the continuing development of the jurisdiction of Competition Commissions and other regulatory authorities such as the Australia Competition and Consumer Commission ("ACCC").

---

[20] OJ L/95, 7 August 1969 at 11; CMLR (RP Supplement) [1969] Issue No 3, affirmed by ECJ Case 48/69, ICT v Commission, 14 July 1972.

[21] For example Hoffman La Roche AG v Centrafarm mbH 1978 ECR 1139; Johnson & Johnson OJ L377/16, 31 December 1980.

[22] United States v Aluminium Co of America 148 F 2d 416 (2d Cir) 1945. For further information see Re Uranium Antitrust Litigation; Westinghouse Electric Corporation v Rio Algom Limited (1979) 480 Fed Supp 1138 (USDC Illinois), (1980) 617 Fed Rep 2d 1248 (USCA 7th Cir). See also the discussion in the Australian Parliament on "United States Anti-trust Litigation", Hansard, Senate, 1979, No 83 at 224; (1979) Foreign Anti-trust Judgments (Restriction of Enforcement) Act (Cth); and the Order of the Attorney-General, Peter Durack, Commonwealth of Australia Gazette No S105, 8 June 1979.

[23] For example see Re Uranium Antitrust Litigation case ibid.

[24] (1977) 433 United States 36.

The origins of competition law lie in the legislative framework of the United States. For Americans, Australians and Canadians free trade and freedom of movement within a federation of states is a familiar area regulated by the legal system. There is much case law in the United States and Australia on monopolistic and dominance of market practices and anti-trust legislation. By failing to draw more parallels with the experience in the United States and other nations, Professor Evans' analysis on the role of the Third State nationals loses some impact.

The "new approach" to limiting harmonisation to that which is only strictly necessary for removing obstacles to economic activity in order for the EU to compete with the United States, Japan and the newly industrialised APEC members is well discussed in Chapter 19.[25] The changes in the legislative framework include Outline Legislation, Mutual Recognition and considerations of Directives concerning health, safety, environmental protection, employee rights and consumer protection in the application of the requirements of trade liberalisation.[26]

Part Three also examines multilateral harmonisation with Third States.[27] This includes information exchanges, consultations and even judicial decision-making. Such considerations will be of particular interest to corporations seeking advice in relation to their dealings with European Undertakings since compliance with European competition law is a substantive component of any such advice.[28]

Professor Evans argues that the prospect of the emerging Eastern European states achieving EU membership is further enhanced by their collaboration in voluntary harmonisation with EU law.[29] Corporations in the United States and APEC members would do well to consider these changes in the economic and legal landscape. There are growing opportunities for collaborative research and technological development, information services, environmental studies and the provision of education services. Legal advice relating to company law, accounting and auditing standards, competition law and consumer protection is integral to dealings with Undertakings resident or operating in the EU.

---

[25] At 475-479.
[26] Ibid.
[27] Part Three.
[28] At 479-481.
[29] At 481-482.

The pursuit of globalisation is nowhere more pronounced than trade in financial instruments and services. Professor Evans devotes a chapter (Chapter 20)[30] to the harmonisation that may be achieved through the usage of such instruments and services in regional and sectorial aid programs, the establishment and development of trans-European networks in the areas of transport, telecommunications and energy infrastructures.

This Chapter discusses the active promotion of inter-connections and inter-operability of national networks, including regional access to such networks as envisaged in the Maastricht Treaty. The need to link island, landlocked and peripheral regions with the central area of the EU requires considerable financial and legal sophistication as recently shown in the development and construction of the Channel Tunnel and the associated integration of the British Rail Networks with the French and Belgian TGV systems.

The establishment of the European Investment Bank is also discussed in Chapter 20 and shows that it has facilitated the economic expansion of the EU by releasing fresh resources. Its purpose is to grant loans and provide guarantees enabling the financing of projects for assisting the modernisation or conversion of Undertakings for the development of regions as required by the needs of the common market and integration of the economies of member states. The significant growth in sophisticated legal and financial advice being sought in cities such as Dublin servicing this regional development are a reflection of this trend.

In addition, Professor Evans explains clearly the nature of the EU Framework Program, with the Fifth Framework being current since 1998. Each Application for assistance has to define detailed guidelines for its implementation and provide the duration and financial estimates within given parameters. Detailed legal advice is obviously required for such Applications. Other financial programs are designed to benefit small and medium-sized businesses so as to assist member states tackling balance of payment problems and support the development of the outermost regions.

Special considerations are applied in the objectives of both the EC Treaties and the Maastricht Treaty in relation to research and development in particular sectors such as data processing, aerospace and ceramics in order

---

[30] Entitled Harmonisation Through Financial Instruments.

to encourage more competitive activities. Undertakings, research centres and universities are eligible to apply for financial assistance or research grants.

Finally, in Chapter 21 Professor Evans examines in detail the common macro-policies within which legislative harmonisation and the provision of financial services has to be considered. These are detailed in the Maastricht Treaty, the main ones being Agricultural Policy, Transport Policy, Environmental Policy, Social Policy, Education and Vocational Training, Economic and Monetary policy and the Common Commercial policy. The analysis of each of these areas provides the reader with an extensive list of the relevant legislation and judicial interpretation.

Although this book has been labelled a "textbook" and meant for use by students the amount of technical information that is presented makes it more of a practitioner's book. As a consequence, this text would substantially enhance the knowledge and understanding of a commercial lawyer with a global perspective. And advanced students who use the book as a reference will benefit more from it if they have some prior understanding of the inter-relationship between law and economics.

John McGrath