CONTENTS

For	ewor	d	V
Pre	face		ix
		commentaries, collections of source materials, tions and periodicals	xxviii
Tal and	ole of l Cou	Cases (Court of Justice of the European Communities art of First Instance of the European Communities)	xxxiv
Tal	ole of	Cases (other jurisdictions)	xc
Tal	ole of	Treaties	xciv
Tal	ole of	Equivalences (renumbering by the Treaty of Amsterdam)	cxxxv
The		R I esis of the European Communities and the accession of propean countries	1
1.	Back	aground to the Schuman Plan	1
	1.1 1.2	The power vacuum in Europe and the tendency towards European integration The problem of Franco-German relations and the	2
	1.3	commitment of the German Federal Republic to Western Europe Economic considerations	4
2.	The	ECSC Treaty of 18 April 1951	7
3.	The (ED	failure of plans for a European Defence Community C) and a European Political Community (EPC)	9
	3.1 3.2	Background and contents of these plans Failure of these plans and 'relance européenne'	9 12

4.	the	E Spaak Report and the conclusion of the Treaties establishing European Economic Community (EEC) and the European omic Energy Community (Euratom)	14
	4.1 4.2	The contents of the Spaak Report The conclusion of the EEC and Euratom Treaties	14 16
5.	The incl	Communities, the United Kingdom, and enlargement to ude other democratic European countries	17
6.	and	opean Political Cooperation (EPC); the European Council European Union, the Single European Act and the Treaty European Union and beyond to the Treaty of Amsterdam	27
	6.1	EPC and the European Council The Single European Act (1986)	27 33 35 40
Ge	APTE neral	ER II aspects of the European Communities and the European	45
1.	The	European Union	45
	1.1 1.2	Introduction and background A hitchhiker's guide to the European union under the	45
	1 2	TEU 1.2.1 The structure of the Union 1.2.2 The 'constitution' of the Union 1.2.3 Protection of the Communities 1.2.4 The Union as an interim phase	46 46 48 53 54
	1.3	The supplementary policies and forms of cooperation: CFSP and JHA 1.3.1 Common Foreign and Security Policy 1.3.2 Justice and home affairs Concluding observations	55 55 62 68
2.	Dive	ersity and unity of the Communities and Community Law	68
	2.1 2.2	Diversity in structure between the three Treaties Common features of the three Treaties	68 73
3.	Nat	ure and effect of Community law	77
	3.1 3.2 3.3	Nature of Community law The Community legal order Effect of Community law in the internal legal sphere	77 80 82

		Contents	xiii
4.	Scop	be and revision of the Treaties	89
	4.1	Territorial scope of application, the Association system of Part IV of the EC Treaty, and Accession to the European Union Scope of application <i>ratione temporis</i> , revision	89 95
5.	Insti	al personality, privileges and immunities, seat of the litutions and linguistic regime of the Union and the munities	97
		Legal personality Privileges and immunities Seat of the institutions Linguistic régime	97 101 103 105
Th		R III ic principles of the European Community, and citizenship buropean Union	109
1.	The	structure of substantive Community law	109
	1.1 1.2	Content and structure The new Articles 2, 3 and 3a EC and their inter-relationship 1.2.1 The objectives of the European Community 1.2.2 The means of achieving these objectives	109 113 113 114
2.		link between the principal means specified in Article 2 EC Articles 3 and 3a EC	117
	2.1 2.2	The link between Articles 2 and 3 EC The link between Articles 2 and 3a EC	117 118
3.	The	means for achieving the objectives of Article 2 EC	121
	3.1	The means	121
	3.23.3	The first principal means: the establishment of a common market The second principal means: the establishment of an	122
	3.3	economic and monetary union	124
	3.4 3.5	Policy regulation (steering mechanisms) in Article 3 EC The relationship between the establishment of a common market, the establishment of an economic and monetary union, and the policy regulation mechanisms set out in	125
		Article 3 EC	126
		3.5.1 The nature of the policy areas3.5.2 The far-reaching economic neutrality of the Treaty	126
		3.5.2 The far-reaching economic neutrality of the Treaty as regards its economic system	129

xiv Contents

4.	The	timeta	ble for the establishment of the common market	132
5.	The	fundar	mental principles of Articles 3b, 5 and 6 EC	135
	5.15.2	5.1.1 5.1.2 5.1.3	rinciples of solidarity and proportionality The principle of subsidiarity The principle of proportionality, or reasonableness Concluding observations on these principles rinciple of Community loyalty (or solidarity) General observations	135 135 144 148 148
		5.2.2 5.2.3	The first positive obligation in Article 5 EC The negative obligation on the Member States to abstain from any measure that could jeopardize the attainment of the objectives of the Treaty	150
		5.2.4	Article 5 EC as an expression of the general principle of mutual cooperation	158
		5.2.5	The now repealed Article 6 EEC	162
	5.3	5.2.6 The pr	Concluding observations on Article 5 EC rohibition of discrimination on grounds of	162
			ality: Article 6 EC	163
		5.3.1 5.3.2	The concept of discrimination in general The concept of discrimination more closely	163
		5.3.3	examined The addressees of Article 6 EC	168 172
6.	Citi	zenship	of the Union: the new Part Two of the EC Treaty	174
	6.1 6.2		oncept of 'citizenship of the Union' our special rights conferred by citizenship of the	174
	6.3	Union	ossibility of expanding the rights conferred by	176
	0.5	Article	es 8a–8d EC	179
CH.	APTE	R IV		
		onal str	ructure	181
1.	Intr	oduction	n e e e e e e e e e e e e e e e e e e e	181
2.	Euro	opean C	Council	182
	2.1	Establi	ishment and composition	182
	2.2	Tasks	and powers	183
3.	The	Counci	l of the European Union	186
	3.1 3.2	Name, Tasks	composition and character	186 190

Contents	XV
Contents	AV

	3.3 3.4	Voting requirements The Committee of Permanent Representatives (Coreper)	191 193		
4.	The Commission of the European Communities				
	4.1 4.2 4.3	Composition and character of the Commission Internal organization The Commission's tasks 4.3.1 Participation in policy formation by the Council 4.3.2 The Commission's administrative function 4.3.3 The Commission's supervisory function	195 201 202 202 204 206		
5.	Eur	opean Parliament	209		
	5.1 5.2	Composition and character of the Parliament Powers and duties 5.2.1 The Parliament's role in the decision-making process 5.2.2 Political control by the Parliament 5.2.3 Adopting the budget 5.2.4 The Parliament's other powers The Parliament and the Court of Justice	209 217 217 222 227 227 229		
6.					
0.	6.1 6.2 6.3 6.4	Principle of attributed powers Filling in the <i>lacunae</i> in the system of powers: Article 235 EC Application of the theory of implied powers Delegation of powers 6.4.1 Delegation by the Council to the Commission 6.4.2 Delegation to third parties 6.4.3 Internal delegation 6.4.4 'Delegation' to Member States 6.4.5 Delegation to new international organs	233 235 240 242 244 244 246 247 248		
7.	The Court of Justice				
	7.1 7.2	One Institution, two bodies The Court of Justice 7.2.1 Composition, structure and procedure 7.2.2 Duties and powers of the Court of Justice	249 249 249 257		
	7.3	The Court of First Instance 7.3.1 Composition, structure and procedure 7.3.2 Tasks and powers	265 265 268		
		Interim measures Application of the law 7.5.1 Unwritten law 7.5.2 Public international law	271 275 275 278		

	7.6	7.5.4 Fundamental rights	280 282 288
8.	The	Court of Auditors	292
9.	Inde	pendent Community organs	294
	9.2	The European Monetary Institute, European Central Bank, and European System of Central Banks	294 296
	9.3	Other independent Community bodies	299
10.	Sub	idiary bodies	300
	10.2 10.3	The Committee of the Regions Other Committees	300 302 303 305
11.	Con	eluding observations	310
	11.1 11.2		310 311
СН	APTE	Z V	
Pol	icy-m	aking and administration 3	315
1.	Lega	instruments	315
	1.1 1.2 1.3 1.4 1.5	Regulations 3 Directives 3	320 324 326 32
		Acts of the representatives of the governments of the	35
2.	Fina		40
		J.	44
	2.1	2.1.1 Historical development prior to the Delors I	44
		2.1.2 The Delors I package (1988–1992) 2.1.3 After Maastricht and Edinburgh (1992–1994) and	44 53
			59

			Contents	xvii
	2.2	2.2.1	, .	365 365
		2.2.2	and 201a EC	366
		2.2.3	The implementation of the budget: Articles 202, 205 and 205a EC	367
		2.2.4 2.2.5	The budgetary procedure: Articles 203 and 204 EC Control and accountability: Articles 205a and	374
		226	206 EC	386 388
		2.2.6	Prevention of fraud	300
3.	Dec	ision-m	aking procedure	389
	3.1	Decisi	ons of the Commission and 'comitology'	390
	3.2 3.3	Decisi	ons of the Council: voting requirements on-making in the Council; the function of the hission; the Committee of Permanent	399
		Repre	sentatives (Coreper)	408
			The Commission's function	408
			The decision-making process The Committee of Romanant Romasantatives	413
		3.3.3	(Coreper)	417
	3.4		ons of the Council: the influence of the European	418
		Parlia 3.4.1		419
		3.4.2	Special procedures: conciliation (concertation),	717
			cooperation, co-decision and assent	424
		3.4.3	The Commission's parliamentary accountability	440
		3.4.4	Summarizing remarks	442
	APTE		a of Justice	447
1.	The	Court	of Justice	447
	1.1	1	vision of the acts of Member States: actions for	110
	1.2	•	gement of the Treaty vision of the acts of the Institutions: action for	448
	1.2		ment; action against failure to act	460
		1.2.1		460
	1.3	1.2.2 Super	Action against failure to act vision of the acts of the Institutions: the restricted of action by private parties; the plea of illegality	466
			ctions for damages	471
		1.3.1 1.3.2	The restricted right of action by private parties The plea of illegality	471 489

xviii Contents

		1.3.3	Actions for damages on the ground of the Community's non-contractual liability	491
2.	The	Court	of Justice and national courts	498
	2.1	_	ration between the Court of Justice and national preliminary rulings Powers of the Court and national courts, division	499
		2.1.2	and coordination National courts and tribunals: power and	499
		2.1.3	obligation to refer Relevance, <i>acte éclairé</i> and <i>acte clair</i>	517 521
	2.2		al courts and Community law	525
		2.2.1	Specific conditions for direct effect	529
		2.2.2	Reliance before national courts on secondary Community law and on international agreements	5 2 5
		2.2.3	binding on the Community Reliance before national courts on agreements	533
		2.2.4	binding the Community The so-called horizontal effect of provisions of	543
	2.2		Community law	546
	2.3	Nation 2.3.1	al courts: Community law and national law Priority of provisions of Community law;	551
		2.3.2	Community law and national constitutional law National courts and the application of Community	551
			law	558
	APTE:			
The	e esta	blishme	ent of the internal market: the freedoms	575
1.		duction		575
	1.1		hievement of the internal market	576
			complete internal market ncept of freedom	581
	1.4		of barriers to free movement	584 586
			al aspects of the internal market	586
			hemes of this Chapter	587
	1.7		this Chapter and its place in the scheme of this	307
	1,	work	one of the seneme of this	589
2.	Free	movem	ent of goods: tariff barriers and fiscal barriers	590
	2.1	The con	ncept of goods	590
			stoms union as the foundation of the Community	592
			igin of goods	593
		Intra-C	Community customs duties and charges having ent effect	594

~	•
Contents	X1X
Contents	AIA

		2.4.1	Charges having equivalent effect to customs duties: definition	595
		2.4.2		597
	2.5		barriers: national taxation and harmonization	600
		2.3.1	95 EC	601
		2.5.2		607
		2.5.3	Harmonization of taxation	610
	2.6		ms duties and charges having equivalent effect in	
	2.0		n to third countries	615
	2.7	Comm	nunity customs legislation	618
3.	Free	moven	ment of goods: non-tariff aspects	620
	3.1	Quant	itative restrictions	623
	3.2	-	res having equivalent effect	624
		3.2.1	Searches for conceptual clarity? From Dassonville	
			through Keck and Mithouard and beyond	624
		3.2.2	The prohibition of measures having an equivalent	
			effect to quantitative restrictions on imports:	
			Article 30 EC	637
		3.2.3	1	
			effect to quantitative restrictions on exports:	640
		2 2 4	Article 34 EC	648
		3.2.4	Articles 30 and 34 EC and other provisions of the	(51
	2.2	N I	EC Treaty	651
	3.3		ares having equivalent effect: the exceptions	651
		3.3.1	Conditions applicable to exceptions to Articles 30 and 34 EC	652
		3.3.2		658
		3.3.3		674
		3.3.4	Articles 100a and 100b EC	679
			Other exceptions	681
	3.4		trading monopolies	684
	3.5		countries	688
	3.6		non regulatory measures	689
4.	Free	e mover	ment of persons and citizenship of the Union	691
	4.1	From	the exercise of economic activities to a general	
			of residence	693
	4.2		novement of persons within the internal market	695
	4.3		novement of persons and the Schengen Agreement	696
	4.4		ment of persons at the Community's external	
		frontie		698
	4.5	Rights	s and obligations of persons	699

5.	Free	e Movement of workers	701
	5.1 5.2 5.3	The concept of a worker and Articles 48–51 EC Migration rights (exit, entry and residence) Rights of market access 5.3.1 The prohibition of discrimination, and other	701 705 715
	5.4	measures 5.3.2 Exceptions to market access The scheme of social security	715 722 725
		The Market and Control of the Contro	
6.	The	right of establishment	730
	6.3 6.4	The concept of establishment Beneficiaries of the right of establishment The scope of the right of establishment Migration rights (exit, entry and residence)	731 732 735 735
	6.5	The primary scope of the right of establishment	736
		6.5.1 The prohibition of discriminatory and other measures	736
		6.5.2 Exceptions to the prohibition of Article 52 EC	739
	6.6	Secondary scope of the right of establishment	742
	6.7	Harmonization of company law	745
7.	Free	edom to provide services	748
, .			
		The concept of a service	749 751
	7.2 7.3	Beneficiaries of the freedom to provide services Migration rights (exit, entry and residence)	753
	7.4	Market access rules	753
	/.4	7.4.1 The prohibition	754
		7.4.2 The exceptions to the freedom to provide services	757
	7.5	•	761
		Harmonization and freedom to provide services	762
8.	Free	e movement of payments and capital	765
		The beneficiaries	766
	8.1		767
	8.3	The rule: prohibition of restrictions on movement The exceptions to the prohibition	768
		R VIII Appetition policy of the European Community	773
		- 15-15-15-15-15-15-15-15-15-15-15-15-15-1	
1.	intr	oduction	773
2.	Har	monization of laws	774
	2 1	Functions of harmonization	774

Contents	xxi

	2.2 2.3 2.4 2.5	Specifi Article	es 100, 100a and 100b EC ic harmonization provisions e 100a and the other harmonization provisions otter and contents of harmonization under Articles	779 783 784
	2.6 2.7	100 an Metho	nd 100a EC ods of harmonization and scope of directives resent state of harmonization of laws	787 792 794
3.	Dist	ortion	of conditions of competition	802
	3.1 3.2		.	802 811 811 813 825 833
4.	Con	npetitio	n rules for undertakings	836
	4.1		al observations Function of rules on competition Article 85 FC as an expression of the first concept	836 837
	4.2	4.1.3 4.1.4	of freedom Other forms of distortion of competition The protected minimum of competition	840 842 844 845
	4.2	4.2.1	e 85(1) EC Article 85(2) EC: the nullity of prohibited agreements	858
		4.2.2 4.2.3	Article 85(3): exemptions The general mechanism of the application of Article 85 EC	859 862
	4.3 4.4	_	The application of Article 85 EC in practice gent rules for agriculture and transport as 86 EC	872 891
	4.4	4.4.1 4.4.2 4.4.3	Abuse of a dominant position Aim and scope of the prohibition	892 892 894 896
	4.5	4.4.4 Merge	the application of Article 86 EC in practice r control	897 901
	4.6	provisi 4.6.1	al protection in the application of the competition ions The Commission's discretion	913 914
		4.6.2 4.6.3	Procedural guarantees Judicial protection in relation to fines	914 915 924
		4.6.4 4.6.5	Position of complainants and informants Interim measures	925 927

xxii Contents

	4.7	Public	undertakings: Article 90 EC	928
			Article 90(1) EC Article 90(2) EC Article 90(3) EC	929 932 935
СН	APTE	D IV		
			netary and social policy	941
1.	Intr	oductio	n	941
	1.4	Marke Marke Marke Forms	ak between negative and positive integration et integration and monetary policy integration et integration and economic policy integration et integration and social policy integration of coordination in monetary, economic and policy integration	941 943 944 946
2.	The	history	of Economic and Monetary Union	951
3.	Eco	nomic a	and Monetary Union (EMU)	960
		Econo Monet 3.3.1 3.3.2	as structured after the TEU mic union: Articles 102a–104c EC cary union In general The transitional stage The third stage: the simple currency	960 963 984 984 985 999
4.	Emp	oloymer	nt: Title VIa	1015
	4.1 4.2		en Maastricht and Amsterdam ination of employment policy	1015 1017
5.	Eco	Economic and social cohesion		1021
	5.1 5.2 5.3 5.4	The development of economic and social cohesion		1021 1025 1032 1041
6.	Soci	al polic	у	1044
	6.1 6.2	The ne	ation and history ew Articles 117–120 EC; Articles 121–122 and	1044
	6.3	126–12 The fu	27 EC ature of social policy integration	1055 1080

		Contents	xxiii
	APTE	R X tal and flanking policies	1083
1.		place of horizontal and flanking policies in the EC Treaty	1083
1.	THE	place of nonzontal and flanking policies in the Le Treaty	
2.	Con	nmon characteristics of the horizontal and flanking policies	1084
3.	Env	ironmental policy	1086
	3.1	Legal basis of EC environmental policy 3.1.1 Objectives 3.1.2 Principles 3.1.3 International cooperation 3.1.4 Decision-making and legal bases 3.1.5 Financing, implementation and enforcement 3.1.6 More stringent national provisions European Community environmental policy: legislation	1086 1087 1088 1091 1092 1093 1094 1095
4.	Con	sumer protection	1103
	4.1 4.2	Treaty bases for consumer policy EC consumer policy	1104 1107
5.	Pub	lic health	1109
6.	Cult	ture	1112
7.	Edu	cation	1114
8.	Oth	er horizontal and flanking policies	1117
	8.1 8.2 8.3 8.4 8.5 8.6	Tourism Civil protection Sport Youth and senior citizens Town and country planning Media policy	1117 1118 1118 1119 1119 1120
	APTE toral	R XI policies	1123
1.	Gen	eral observations	1123
2.	Agr	iculture and fisheries	1128
	2.1 2.2 2.3	The nature of the agricultural problems The Agriculture Title in the EC Treaty Market and price policy	1128 1131 1143

xxiv Contents

	2.4 2.5	Fisheries 2.5.1 Introduction 2.5.2 Fisheries policy 2.5.3 The common organization of the market for fish	1157 1159 1159 1162 1165
	2.6 2.7	The general significance of agricultural law for integration Some characteristics of Community agricultural administrative law	1165 1169
3.	Trai	nsport policy	1172
	3.1 3.2	Introduction The relationship between the general principles of the EC Treaty and the special provisions of the transport Title	1172 1176
	3.3	External relations in the transport field: general observations	1178
	3.4		1178
	3.5	Competition in the transport sector: general observations The Treaty provisions on transport	1180
	3.6	Inland transport: general observations	1184
		Road transport	1187
	3.8	Carriage of passengers by road	1192
		Rail transport	1192
		Inland waterway transport	1193
	3.10	Maritime transport	1194
		Air transport	1202
		Infrastructure and combined transport	1202
4.	The	European Coal and Steel Community	1207
	4.1	Objectives and the system of coordination	1207
	4.2 4.3	The principles of market economy The powers of intervention	1208 1213
5.	The	European Atomic Energy Community	1217
٥.		•	
	5.1	Aims and means	1217
		Research	1220
		Dissemination of knowledge	1222
		Health protection	1223
		Safety control	1223
		Investments	1224
			1225
	5.8	Supply of ores, source materials and special fissile materials	1226
	5.9	The regulation of the right of ownership of special fissile	
		materials	1227
	5.10	The common market in the field of nuclear energy	1228

		Contents	XXV
	5.11	External relations under the Euratom Treaty	1229
6.	Enei	rgy policy	1230
	6.3	Introduction Energy policy prior to 1988: a brief overview Energy policy since 1988 State aids	1230 1231 1232 1239
7.		strial policy, research and technological development, trans-European networks	1240
	7.2 7.3	Introduction Industrial policy Research and technological development Trans-European networks	1240 1241 1245 1250
		R XII I relations	1253
1.		oduction	1253
2.	Exte	ernal competence of the European Union	1256
	2.1 2.2 2.3 2.4 2.5	Express and implied competence of the European Community When is external competence exclusive? Mixed agreements Membership of international organizations Exercise of external competence 2.5.1 Treaty-making power 2.5.2 Autonomous external action by the Community Common Foreign and Security Policy	1256 1259 1262 1264 1265 1265 1271 1272
3.	The	common commercial policy	1275
	3.1	The commercial policy competence of the Community 3.1.1 The concept of commercial policy 3.1.2 The exclusivity of Community competence in the field of commercial policy	1275 1275 1280
	3.2	3.1.3 Procedure in the exercise of the commercial policy Principles and development of the common commercial	1282
		policy 3.2.1 GATT/WTO rules and the generalized preferences (GSP)	1284 1284
		3.2.2 The completion of the internal market and the common commercial policy	1290

xxvi Contents

	3.3	Comn	nercial policy agreements	1295
		3.3.1	Autonomous commercial policy; regulation of	
			imports and exports	1295
		3.3.2	Autonomous commercial policy; safeguard	
			measures	1300
		3.3.3	Anti-dumping duties and countervailing duties	1305
		3.3.4	The Trade Barriers Regulation	1316
		3.3.5	Community economic sanctions	1320
		3.3.6	Trade agreements	1322
4.	The	system	of Community agreements	1328
	4.1	The sy	ystem viewed geographically	1328
	4.2		ments based on Article 238 EC	1330
		4.2.1	Article 238 EC	1330
		4.2.2	The EEA Agreement	1331
		4.2.3	The Europe Agreements	1334
		4.2.4	Association as a preliminary to accession	1337
			Development association	1338
	4.3		cooperation agreements	1340
		4.3.1	Partnership agreements	1340
		4.3.2	Diverse cooperation agreements	1342
	4.4	The sy	ystem of agreements viewed by sectors	1345
EDI	TOC	TTE.		1353
	LOG	rizon 20	000	1333
1 11				
1.	Intr	oductio	on	1353
2.	Eco	nomic a	and social cohesion and allied problem areas	1355
3.	The	new ol	bjective of sustainable growth	1356
4.	Economic and Monetary Union			1358
5.	The	extern	al stance of the European Union as regards third	
٥.			nd international organizations	1359
	5.1	Extern	nal aspects of Community policy areas	1359
			external stance of the Community	1360
	5.4	5.2.1	The new challenges for the Community's general	1500
		5.2.1	external policy	1360
		5.5.2		1362
	5.3		ecessary reform of the Second Pillar	1366
	0.5	1110 11	Total of the Sound I mai	1500
6.	Refe	orm of	the Third Pillar	1368

		Contents	xxvii
7.	The	necessary institutional revision	1369
	7.1	The different existing conceptions	1369
	7.2		
		more effective	1374
	7.3	The problem of transparency	1380
	7.4	The preparation of the 1996 IGC	1381
8.	The	perspectives after Amsterdam	1382
		Introduction	1382
		Economic and social cohesion and some allied problem	
		areas	1385
	8.3	The new objective of sustainable growth	1386
		Economic and Monetary Union	1387
		The external stance of the Union as regards third	
		countries and international organizations	1387
		8.5.1 External economic relations	1387
		8.5.2 Problems of enlargement	1388
		8.5.3 The necessary reform of the Second Pillar	1389
	8.6	Reform of the Third Pillar	1392
	8.7	The necessary institutional revision	1396
Inc	lex		1403