1 Studying European Community Law

1.1 Beginning European Community Law

The purpose of this introductory chapter is to equip you, the reader, with the basic tools you need to embark upon the study of European Community law, a subject which has something of a reputation for being impenetrable. It assumes that you have some knowledge of the basic components of a legal system, but very little knowledge of what the European Community can do, what it cannot do, and why it is important in a specifically legal sense. It offers in 1.5 a brief overview of the Community legal system, containing basic pointers on to which more detailed study can be grafted, which highlights the pivotal role of the Court of Justice in the system of integration as set up by the Treaties of Rome and Paris in the 1950s and as evolved through the Single European Act (SEA) and the Treaty of Maastricht or Treaty of European Union (TEU) in the 1980s and 1990s.

The Community is not just a new type of legal order – one which can only be understood if certain basic precepts of the study of national law are set aside; it is also a legal order in which a very specific and clear purpose is dominant. This is the promotion of a process of integration, leading towards the union of European states. This purpose operates at a number of different levels, including the economic (breaking down the barriers to trade between states) and the political (creating a common political identity for the Community), but it is ever present. The Court of Justice never loses sight of the aim of integration when it is interpreting Community law, and nor should those who study it. 1.3 contains an outline sketch of this aim, and the concept of ‘integration’ is one of those which receives attention in 1.4, which attempts to demystify certain aspects of the language of the European Community.

In comparison to most national legal systems, and certainly in comparison to the legal systems of the states which form its constituent members, the legal system of the European Community is particularly unstable and in a state of constant flux and change. Changes come about either because of a dynamic intervention on the part of the Court of Justice in the interpretation of Community law, or because the Member States have negotiated further amendments to the Community’s constitution – its basic Treaties. Since the reasons for these changes lie more frequently in the field of politics than law, it will be apparent that Community law can only properly be understood in its wider political and economic context, and that the successful study of Community law presupposes the acquisition of a substantial body of contextual knowledge. Some guidance on acquiring that knowledge is offered in 1.7.
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offers assistance in locating the Community treaties, legislation and official documentation, and in making a basic selection from amongst the voluminous legal literature available. We begin, however, with some basic facts about the European Community.

1.2 The European Community: The Basic Facts

The European Community started out as a Community of six: France, the Federal Republic of Germany, Italy, Belgium, Luxembourg and the Netherlands. In 1973 Denmark, Ireland and the UK acceded; Norway signed a Treaty of Accession, but did not join when membership was rejected by popular vote in a referendum. Further expansion occurred in 1980 with the accession of Greece, and in 1986 with the accession of Spain and Portugal, creating a Community of twelve. De facto expansion occurred once again in 1990, with the unification of Germany having the effect of bringing the former German Democratic Republic into the Community although not as a separate member. Following the collapse of Communism in central and eastern Europe, and with the ever closer trading links between the various European countries, membership of the European Community has become an increasingly coveted prize. Candidates for membership at present include countries as varied as Austria, Sweden, Turkey, Malta and Morocco (the last is probably ruled out because it is not a European country).

The 'European Community' has in fact been the commonly used designation for a political entity, composed of a number of distinct legal entities with separate international legal personality, which are generally identified as a single unit. These are the three Communities, of which two are confined in their application to particular sectors of the economy: the European Coal and Steel Community (ECSC), formed by the Treaty of Paris concluded in 1951 which came into force on July 25 1952, and the European Atomic Energy Community (Euratom), formed by the Treaty of Rome concluded in 1957 which came into force on January 1 1958. Also created in 1958 by a second Treaty of Rome 1957 was the European Economic Community (EEC), the 'everything else' Community, which has acquired a hegemonic position within the political and legal framework of the Community. Confusingly, Article G of the Treaty on European Union redesignates the European Economic Community as the 'European Community', leaving the other two sectoral Communities with their existing titles. The Articles of what must now be termed the 'EC Treaty' are referred to in this book as Article 1 EC, etc. Articles of the "old" EEC Treaty are designated Article 2 EEC, etc. Most of the discussion in this book will be concerned with the provisions of the Treaties establishing and amending this 'general' Community and with legislation adopted under the enabling powers of those Treaties, in particular those governing the creation of the single market. Legally, the three Communities remain distinct, although they have common institutions, formed in 1967 by the Merger Treaty. However, the powers