# THE CAMBRIDGE YEARBOOK of European Legal Studies



VOLUME THREE 2000

Edited by Alan Dashwood, John Spencer, Angela Ward & Christophe Hillion

THE CENTRE FOR EUROPEAN LEGAL STUDIES, CAMBRIDGE

The Cambridge Yearbook of European Legal Studies provides a forum for the scrutiny of significant issues in European Union Law, the Law of the Council of Europe, and Comparative Law with a "European" dimension, and particularly those which have come to the fore during the year preceding publication. The contributions appearing in the collection are commissioned by the Centre for European Legal Studies (CELS) Cambridge, which is the research centre of Cambridge University Law Faculty specialising in European legal issues.

The papers presented are all at the cutting edge of the fields which they address, and reflect the views of recognised experts drawn from the University world, legal practice, and the civil services of both the EU and its Member States. Inclusion of the comparative dimension brings a fresh perspective to the study of European law, and highlights the effects of globalisation of the law more generally, and the resulting cross fertilisation of norms and ideas that has occurred among previously sovereign and separate legal orders.

The Cambridge Yearbook of European Legal Studies is an invaluable resource for those wishing to keep pace with legal developments in the fast moving world of European integration.

### THE CAMBRIDGE YEARBOOK OF EUROPEAN LEGAL STUDIES

### Volume 3, 2000

The Cambridge Yearbook of European Legal Studies provides a forum for the scrutiny of significant issues in European law, the law of the Council of Europe and comparative law with a "European" dimension, and particularly those which have come to the fore during the year preceding publication. The contributions appearing in the collection are commissioned by the Centre for European Legal Studies (CELS) Cambridge, which is the research Centre of Cambridge University Law Faculty specialising in European issues.

The papers presented are all at the cutting edge of the fields which they address, and reflect the views of recognised experts drawn from the university world, legal practice and the civil services of both the European Union and its Member States. Inclusion of the comparative dimension brings a fresh perspective to the study of European law and highlights the effects of globalisation of the law more generally, and the resulting cross fertilisation of norms and ideas that has occurred among previously sovereign and separate legal orders.

Each Volume commences with the Mackenzie-Stuart Lecture, established in honour of Lord Mackenzie-Stuart, formerly President of the European Court of Justice and given each year in the Cambridge Law Faculty. Chapter 1 of the present volume contains the Mackenzie-Stuart Lecture for the year 2000 which was given by Lord Slynn of Hadley and Chapter 2, the Lecture for 2001, which was given by Mr Jean Claude Piris, Director-General of the Legal Service of the Council of the European Union.

This volume can be cited as 3 (2000) CYELS.

#### **Editorial Advisory Board**

PROFESSOR PHILIP ALLOTT, Trinity College Cambridge PROFESSOR TONY ARNULL, University of Birmingham CATHERINE BARNARD, Trinity College Cambridge MR DAN GOYDER CBE, Consultant Solicitor, Linklaters and Alliance, Visiting Professor of Law, King's College London PROFESSOR ROSA GREAVES, Durham University PROFESSOR BOB HEPPLE, Clare College Cambridge PROFESSOR DAVID O'KEEFFE, University College London LORD LESTER OF HERNE-HILL DR STEPHANIE PALMER, Girton College Cambridge DAVID VAUGHAN QC, Brick Court Chambers PROFESSOR SIR DAVID WILLIAMS Q.C., Emmanuel College, Cambridge PROFESSOR D.A. WYATT Q.C., St Edmund Hall, Oxford CENTRE FOR EUROPEAN LEGAL STUDIES (CELS) CAMBRIDGE

## The Cambridge Yearbook of European Legal Studies

VOLUME 3, 2000

EDITED BY

Alan Dashwood John Spencer Angela Ward Christophe Hillion



Hart Publishing Oxford and Portland, Oregon

Published in North America (US and Canada) by Hart Publishing c/o International Specialized Book Services 5804 NE Hassalo Street Portland, Oregon 97213-3644 USA

Distributed in the Netherlands, Belgium and Luxembourg by Intersentia, Churchillaan 108 B2900 Schoten Antwerpen Belgium

© The Contributors jointly and severally 2001

The contributors jointly and severally have asserted their right under the Copyright, Designs and Patents Act 1988, to be identified as the authors of this work

Hart Publishing is a specialist legal publisher based in Oxford, England. To order further copies of this book or to request a list of other publications please write to:

Hart Publishing, Salter's Boatyard, Folly Bridge, Abingdon Road, Oxford OX1 4LB Telephone: +44 (0)1865 245533 or Fax: +44 (0)1865 794882 e-mail: mail@hartpub.co.uk WEBSITE: http//www.hartpub.co.uk

British Library Cataloguing in Publication Data Data Available ISBN 1–84113–240–3 (hardback)

Typeset by Hope Services (Abingdon) Ltd. Printed and bound in Great Britain on acid-free paper by Biddles Ltd, www.biddles.co.uk

## CONTENTS

List	t of Contributors	vii
Tał	ple of Cases	xi
	ple of Legislation	xxiv
Table of Conventions and Treaties		xxxvi
1.	<i>The Mackenzie Stuart Lecture 2000</i> —The Future Judicial Architecture of the European Union Lord Slynn of Hadley	1
2.	<i>The Mackenzie Stuart Lecture 2001</i> —The Treaty of Nice: an Imperfect Treaty but a Decisive Step towards Enlargement <i>Jean-Claude Piris</i>	15
3.	Modernising the Community Courts Anthony Arnull	37
4.	The Criminal Liability of Politicians in France John Bell	65
5.	Decision-Making at the Summit Alan Dashwood	79
6.	Ousting Jurisdiction and the European Conventions <i>Richard Fentiman</i>	107
7.	The Evolving Role of the Court of First Instance of the European Communities—Some comments on the changes agreed at Nice as they affect the judicial architecture of the Community Court Judge Nicholas Forwood	139
8.	The Future of the EC Merger Regulation <i>Dan Goyder</i>	151
9.	Between Persecution and Protection—Refugees and the New European Asylum Policy Elspeth Guild	169
10.	When Europeans Complain—The Work of the European Ombudsman <i>Ian Harden</i>	1 <b>99</b>

vi	Contents	
11.	Will the Sparks fly? The Role of the European Union in the Liberalisation of the Electricity Industry Angus Johnston	239
12.	EC Legislation Prohibiting Age Discrimination—"Towards a Europe for All Ages"? <i>Clare McGlynn</i>	279
13.	Enlarging the Area of Freedom, Security and Justice—Problems of Diversity and EU Instruments and Strategies Jörg Monar	301
14.	The EC and WTO Trade and Environment Case Law—Procedural Aspects, Legal Principles and Institutional Matters <i>Nicola Notaro</i>	327
15.	The Implementation of Community Environmental Legislation— Between Comitology Procedures and Standardisation Bodies Sara Poli	351
16.	Plus ça Change? Article 5(1) of the Regulation on Jurisdiction and the Recognition and Enforcement of Judgments <i>Pippa Rogerson</i>	383
17.	A German View on the EU Charter of Fundamental Rights— Effect on the Bundesverfassungsgericht Jürgen Schwarze	407
18.	Improving the Position of Lesbians and Gay Men at Work in the Light of the Framework Directive for Equal Treatment in Employment: A German Case-Study <i>Paul Skidmore</i>	425
19.	On Discrimination and the Theory of Mandatory Requirements <i>Eleanor Spaventa</i>	457
20.	Flexibility—The Experience so far John A. Usher	479
21.	"Collective Amnesia" of Europe v. Engagement with Asia— Forging a Middle Path for Australia in the Age of Regionalism <i>Angela Ward</i>	499
22.	The Vertical Agreements Regulation—A Critical Appraisal <i>Paul M. Taylor</i>	525
Index		