Mr Dean, Colleagues, Ladies and Gentlemen

It is a very great privilege to be asked to come and speak to you today and I am very happy to see again so many old friends from the Dutch Bar. I hope I will not offend them, if I mention by name only one of them - Pieter de Brauw, a former Dean of your Bar and a former President of the CCBE, who was very kind to me when I was a young and nervous newcomer to that rather intimidating institution. It was he who asked me to prepare a report on "Le Secret Professionel" and as that is, in some measure, the reason for me being where I now am, it was he who set me on that path.

Although I work in Luxembourg, I come from Scotland. The legal links between Scotland and the Netherlands are very strong. Our civil law is based on the Roman Dutch law and until our Universities had their own Law Faculties, our advocates received their education here in your Universities. The greatest work on the law of Scotland, a book we still use, was written 300 years ago by a Scottish lawyer in exile in Leiden.
So, for any Scottish lawyer, an invitation to speak at a legal gathering in the Netherlands is genuinely an invitation to come home. I don't make any apology for not speaking in your language because I am speaking in the language of this district. The English language is, after all, a dialect of Low Friesian.

For most lawyers in Scotland, the European Community and what it does seem very far away. When I went to Edinburgh University five years ago to teach European law, my friends thought I was crazy. They wanted to know why I should abandon an active and relatively profitable career at the Bar in order to teach an obscure and unimportant subject? Well, I have now moved from Edinburgh to Luxembourg and they no longer think I am crazy; but the reason is that the salary of a European judge is better than the salary of a Scottish judge and a great deal better than the salary of a Scottish professor! They still do not understand very clearly what my work in Luxembourg involves. And "Europe" still seems very far away.

By contrast, as we see you from Scotland, the Netherlands are close to the heart of Europe. If you ask a Scottish farmer, he will tell you that the Common Agricultural Policy exists to provide a good life for Dutch farmers (especially in Friesland); and you may be sure that we all know about state aids to Dutch tomato houses! In a recent survey of lawyers in the Netherlands and Scotland, it was found that nearly two-thirds of the Dutch lawyers who were questioned had had a case involving EC law; less than one-quarter of the Scots lawyers had had such a case.
So I must admit that I was rather surprised when I was asked by Dolph Stuyling de Lange to speak to an audience of Dutch lawyers about European Community law. I thought you knew it all and had nothing to learn. I was surprised - but I was also encouraged because it shows that we all have something to learn together. The development of the Community legal system is a common endeavour in which we can all take part, to which we can all contribute, and of which we can all be proud.

But as I understand it, the purpose of today's gathering is especially to address ourselves to Community law as it affects the average practitioner in the average town of any of our countries. Why should the advocate conducting the straightforward practice outside the big cities pay attention to what is happening at the Community level?

I suggest that there are four ways in which Community law may be important to you as practitioners:

first of all, because it introduces some quite new elements of law into our existing legal systems;
secondly, because it alters existing features of our legal systems, sometimes in a fundamental way;
thirdly, because it forces us to think in new ways about the law in general, and its purpose;
and fourth, because it challenges our assumptions about the way in which the legal profession is organised and the way in which lawyers work.

Perhaps I could briefly say something about each of these points, and this may help your discussion this afternoon.

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The most obvious example of a new element which has been introduced into the legal systems of the Member States by Community Law is, I think, the law of competition. When the treaty was signed, only one Member State (the Federal Republic of Germany) had a developed system of competition law or antitrust law. Antitrust law had, of course, been an important feature of the American legal system since the end of the last century. The United States Sherman Act imposed savage penalties on businessmen who fixed prices, or got together to share markets or drive competitors out of business. The American antitrust régime became progressively stricter and more far-reaching during and after the First World War. By contrast, in our countries the tendency was positively to encourage businessmen to share markets, to establish fixed prices and to do other things which would have been illegal in the United States. And it must be admitted that some European businessmen still think that these sorts of behaviour are perfectly acceptable: they are rather surprised to be told that they are illegal under the EEC Treaty. They are even more surprised, and sometimes not a little offended, when they receive massive fines for doing these things.

However, the important point as far as I am concerned today is not simply that formerly accepted business practices have now been declared illegal, although that is something of which all lawyers should be aware. The point I would like to make is that the Community has introduced a comprehensive regulatory system, which is designed to promote free and fair competition, and in so doing imposes obligations, not only on businessmen, but on the governments of the Member States. The Treaty not only seeks to outlaw restrictive business practices by private
companies. It also seeks to ensure that the governments of the Member States do not distort the pattern of competition by subsidising their own industries to the detriment of those of other countries. And the Court of Justice in a series of cases has declared that the competition rules extend to matters which are customarily regulated by public authorities in many countries - airline prices, airline practices, book prices in France and the terms of policies offered by insurance companies in Germany. Jean Monnet, one of the fathers of the Community, said that "The whole treaty is really about competition". And that is true in many ways. It is a new type of law which involves new types of thinking. It is, to put it another way, the fifth wheel on the chariot of free movement created by the fundamental freedoms under the Treaty. Free movement itself is a new dimension to existing rights and obligations recognised by our national laws.

All these aspects of Community law are new to our legal systems in some special way. But Community law, as I have said, also alters existing features of our legal systems. And it may do so in unexpected ways. One reason for that is that much of the law that comes from the Community legislator takes the form of Directives which have to be transposed into national law by national statutes and national ordinances. It is not always obvious that these laws have their origin in Community law. Nevertheless, the national law which implements the Community Directive has to be interpreted in the light of the Community Directive.

A clear example is the field of company law. Most of our company law is now coming from the Community but it
appears on your desk largely in the form of national legislation. You must remember that behind the national legislation stands Community legislation which may affect its interpretation.

Let me give you another example from the field of labour law. In our country, and perhaps also in yours, it used to be a basic principle of the law that any contract of employment involves what we call *delectus personae*: namely, the principle that an employee is not a slave or a serf and cannot be transferred from one employer to another like a piece of property. He must be allowed to choose his employer. So, as a logical consequence, it used to be the law in our country that a change in the ownership of the undertaking which employed someone brought about the automatic termination of the contract of employment.

The Community Directive on the Transfer of Undertakings changed our law in a fundamental way - it gave rights to employees when the ownership of the company that employed them changed. But it also took away what had, up to then, been seen as a fundamental right. Each of the Member States could of course have changed its law in that way without the Community doing so. The important point is that the law in each country now depends upon a Community Directive.

Let me tell you a story about that. Earlier this year I was asked to go to a firm of solicitors in a northern part of Scotland to give a talk about "1992". After the Seminar, I was given dinner by the partners and the litigation partner said, "All you have said is very interesting, but what has it got to do with me? I am a
simple litigation solicitor in the North of Scotland." I said, "Well, let me give you an example. Last week I was pleading in the House of Lords [which is our supreme court] and the case was about the rights of employees when ownership of the firm which employs them is transferred from one company to another. At first sight the case involved the interpretation of a British Regulation made by a British Minister. But the crucial point in the case, and the point on which I expect to win, was a point of Community law, the interpretation of a Community Directive." He said: "You don't mean you were in the House of Lords, arguing the case of Litster?" I said, "Yes". He said, "You don't mean that the House of Lords is likely to overturn the decision of the Scottish Court? Surely the decision of the Scottish Court was self evident. The British Regulation could only mean one thing." I said, "Yes, the British Regulation can only mean one thing, but not what you think, and I will win". And he said, "Well, that is sad, because last week I advised a client to conclude a bargain on the basis that the case of Litster was impregnable!"

That is an example - I think a very clear example - of a lawyer faced with an item of national legislation which he interpreted in accordance with ordinary national methods of interpretation which turned out to be wrong. What happened in the case was that the judges of the House of Lords said that the British Regulation was defective and that in order to make it compatible with European law one must read it as if it contained words which were not there. The point is that national law in these fields is subsidiary to Community law and we can no longer take national law at face value.

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Another example of the same point which I am sure you will hear about this afternoon is the field of intellectual property. National lawyers have to accept that certain rights which exist under national law may not be exercisable. The rights will exist, but the right to exercise those rights may be limited by Community law.

The third point I would like to make is that Community law requires us to think in new ways about the law in general and its purpose. I think that, whatever our politics, all lawyers are conservative in some respects and they tend to think of the law as something that is static. Maybe I could compare it to a picture in a picture frame. Some of the details of the picture are still missing and somebody must fill them in. Some parts of the picture have become worn and must be retouched. And some parts are ugly and they have to be cleaned off and painted again. But the overall appearance of the picture remains the same, the frame remains the same and the composition, broadly speaking, remains the same. The purpose of the analogy of the picture is to emphasise that we see the law as a legal system - as a coherent whole.

Moreover, law is a subject that is usually taught in isolation from other subjects of study. It is useful, but not essential, that a lawyer should have a knowledge of the Latin language, that he should know something about philosophy (or at least about logic) and perhaps something about the historical context in which the law was created. Nowadays, it would be a good thing that he should know something about science. But on the whole, the law is a subject that can be taught, and it is studied, as a discipline on its own.
Now I do not believe that Community law can be properly understood - and I certainly don't believe that it can be properly practised - unless the lawyer understands something of the political and economic context in which it operates. The Community was created in order, as the Treaty says, to bring about "an ever closer union among the peoples of Europe". Its intention was clearly and fundamentally political. It seeks to bring about its political aim by economic means, implemented by law and through legal processes. So the law of the Treaty is dynamic law and in order to understand it, we have to know something about European history and geography, we have to know something about economics and we have to know something about contemporary politics.

Now you individually may or may not agree with the political aim of the Community or the economic method which has been chosen to achieve that political aim. But if you are a lawyer advising clients, then you must be aware of the legal implications of what you read and what you find about politics and economics today, in today's newspapers. For example, it is sometimes said that, "All barriers in Europe will be removed by the end of 1992". What does that statement mean and if it is true, how is it going to affect your clients? If they are businessmen, it is bound to affect their contracts and their relationships with their suppliers and their customers. If they are fathers, mothers, children of families - then it will affect their freedom to move about from one country to another, in order to study or to find work.

As your Dean has said, there is more European law in your files than you think and your clients are going to come to you for advice about what is likely to happen before 1992,
In 1992, and after 1992. In order to advise them properly you must have some idea about the political probabilities. Is it likely that the representatives of the Member States will agree upon legislation in the subject area that interests your client? When are they likely to do so? What is likely to be the attitude of the European Parliament? Which countries will support the proposal, and which will object to it? All these are questions that may be relevant and they are questions of contemporary politics - they may be relevant to the answer you have to give to your client about the law.

So I come to my last point about changes in the legal profession. This has already been, I think, well covered in the special edition of Advocatenblad. You have the article by Mr Piet Wackie Eysten about the prospects for a European bar; you have the text of the Code of Conduct of the CCBE; and Mr Reece Smith has already spoken to you about what is being achieved and so has your Dean. Let me just mention a few other points.

Some people say that European integration is bound to produce the same result in Europe as they perceive in the U.S.A. - the creation of larger and larger law firms, which will like a monster eat up the smaller firms. In fact, you may be surprised to know that more than 50% of the lawyers in the United States are (I believe) sole practitioners - they work on their own. And only a little more than 10% work in law firms which have more than 200 partners.

I do not myself believe that European development - the development of European integration - by itself will dramatically change the style of legal practice in your
country or in mine. Certainly, as the ease and the speed of travel increase and the world gets smaller, then changes will occur. But if changes occur, that will be as much in response to social and political pressures, as in response to any specific requirements of Community law. Where Community law can help, or where membership of the Community can help, is in providing comparisons. We now have the opportunity to compare in a much closer way than before what happens in each of our countries and to learn from each other's experience.

For those of you who practise in small local law firms, it seems to me that there will still be a need for such firms offering a "standard" service to the "standard" client. The average person needs such a service and it is an honourable thing to provide it. **BUT** each of you, I think, must be clear about what service you can offer and what service you set out to offer.

Whatever you do, European law will, sooner or later, add a new dimension to your practice. If you don't know anything about it, then you will have to learn about it or join up with somebody who does.

I think that Scotland will be the first country to make it compulsory for new members of the profession to have studied European law at the University. But this is likely to come in all our countries and for younger lawyers European law will become a normal and natural part of their framework of thought. For them, also, the possibility of having their qualifications recognised in other countries will mean that they have the opportunity to move to other countries or at any rate to spend some time with lawyers in other countries.
The consequence is that for law firms and for the bars, there is a new challenge of finding ways to harness the energy and imagination of a new generation of young lawyers with new skills and new horizons.

In Scotland for about 15 years, we have welcomed young lawyers from other Community countries who come for 6 months to study at the University and spend some time with solicitors and advocates. They have greatly enriched our lives, and they now form a large club which includes all the Community countries. At least two of them are here today, one of them on the platform.

When I started to practise as an advocate in Scotland 27 years ago, there were no such contacts between the bars of Europe. Now these contacts are regular and I believe they are valuable, both in creating new friendships and in helping us all to do our work better.

This afternoon you will have the opportunity to test your knowledge of European law and perhaps learn some things that you did not know before. The programme is very practical and I am sure it will be very valuable to you. I wish you every success with it and I thank you very much indeed once again for the opportunity to be with you and to share your company.

DAVID A O EDWARD

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