an important contribution to the systematization of the subject matter. The author is known for his publications in the field, and he is closely familiar with the practice through his activities in the Commission. This original approach gives to his work a particular interest.

The work is divided into four parts. The first is a general presentation of the subject, with an evaluation of the respective competences of the Member States and the Commission in safeguarding Community law. The second part is the most substantial. It presents the control mechanisms, per sector, in matters such as agriculture, own resources and VAT, and structural funds. It also studies the different aspects of mutual assistance between national authorities and between those and the Commission. It then goes on to examine the role of the Court of Auditors and the Budgetary Control Committee of the European Parliament. A third part presents the antifraud policy of the Commission and the Council. Finally, the fourth part studies the methods of control in Germany, France, Belgium and the Netherlands.

The author defines fraud as practices affecting the flux of income and expenses in the Community budget. He observes these practices with an emphasis on the import and export of goods, on VAT, on Community interventions in the market and on subsidies from structural funds. He argues that the action of Member States is insufficient, due to factors specific to the national control mechanisms, and pleads for more extensive competences for the Commission, taking as model those attributed to the Commission in competition matters.

It is true that the work suffers from a certain degree of approximation and is partially out of date because of the enactment of new Community instruments on the subject. Furthermore, the style is at times a little rough, this being probably due to the translation. However, this should not overly irritate the reader, for the book tends to give a technical understanding of the subject rather than a more academic approach. The work of J. Vervaele is a must for all those interested not only in the problem of the fight against fraud, but also in the more general theme of implementing Community law and of shared competences between the Member States and the Commission.

The work includes an important documentary section, presenting reports from the Court of Auditors, the European Parliament and the Commission. It is completed with useful indexes of cited acts and decisions, and contains an excellent bibliography.

Marc Fallon
Université catholique de Louvain

Mulert, Martin. *Die deutschen Bundesländer vor dem Europäischen Gerichtshof.* Berlin: Duncker & Humblot, 1996. Pp. 318. DM 92; ÖS 718; sFr 92.

This monograph focuses on a highly delicate problem, which is located between European and German constitutional law: How can standing of the German *Länder* be improved in proceedings before the European Court of Justice (ECJ) if the litigation before it directly or indirectly affects their competences and prerogatives? The question was already the subject of discussion when the *Land* Bavaria sued the German government before the German Federal Constitutional Court (*BVerfG*), alleging that the quota regulations in the 'Télevision sans frontières' Directive 89/552/EEC violated EC law and that, therefore, the directive should not be applied in Germany as being contrary to principles of federalism (pp. 144–148). The *BVerfG* avoided going into the merits of the case by rejecting the claim as being inadmissible at the time, given that the federal government had not yet taken action to implement it. It, however, hinted that it may grant protection once the interests of the *Länder* were directly impaired. Fortunately, the litigation was discontinued.

The author is correct in saying that this and similar conflicts could be avoided if the *Länder* had standing before the ECJ on their own, without being dependent on the privileged position of the Federal Re-

public under Art. 173 (1) EC Treaty which may or may not support their claim. However, as the author observes, standing and intervention conditions for non-privileged plaintiffs have been handled extremely restrictively by EC law and Court practice. This not only concerns the position of the *Länder*, but any type of public interest action, as has been shown elsewhere (cf. the papers in Micklitz and Reich (eds.), *Public Interest Litigation before European Courts*, 1996, including a paper by Dauses on the position of the *Länder* before the ECJ).

Art. 173 (4) EC Treaty makes *locus standi* dependent on direct and individual concern. This may be the case in state aid matters where funds are paid out in violation of Art. 93 (3) EC Treaty by a *Land*. If the Commission orders the federal government to ensure repayment, the *Land* may sue the Commission because in this case it is directly and individually concerned (cf. joined cases 62 72/87, *Ecécutif Wallon and SA Glaverbel v. Commission* [1988] ECR 1573). Standing will, however, not be assured in litigation where legislative or administrative competences of the *Länder* under German constitutional law are concerned, as in the television case (pp. 60–63). The author rightly asks whether standing under Art. 173 (4) should be extended to allow the *Länder* to attack Community regulations or directives violating their prerogatives, similar to the case law in anti-dumping proceedings (cf. case C-358/89, *Extramet v. Council*, [1991] ECR 1-2501), but rejects this approach as being somewhat too far-fetched (pp. 57–58).

A more fruitful approach, in the opinion of the author, would be to extend standing of the *Länder* under Art. 173 (3) in analogy to the *Tchernobyl* case (C-70/88, *Parliament v. Council*, [1990] ECR I-2041) where the European Parliament (EP) was granted standing to defend rights and prerogatives of its own. The Maastricht Treaty expressly confirmed this case law, but only for the EP and the European Bank. The author argues for a parallel treatment of the position of the EP and the German *Länder*. I think his approach is flawed. Although the Maastricht Treaty (Art. F [1]; 198a EC Treaty as amended) has become more '*Länder*-friendly' (pp. 98–106), and effective judicial protection may be a necessary corollary to compensate the still weak position of the *Länder* (pp. 107–112), this does not justify drawing an analogy to the EP. The latter is, after all, an institution with its own rights and prerogatives under the Treaty, which it must be able to protect against institutional imbalances. In contrast, the *Länder* only have a very limited 'constitutional' position in the regional council. Other rather general pronouncements on subsidiarity, mutual cooperation and regionalism cannot be used to upgrade the *Länder* (and similar regional bodies in other countries, such as the Spanish *Comunidades autónomas*, the Belgian *Régions/Communautés*, etc.) into semi-privileged plaintiffs under Art. 173 (3) (*contra* pp. 112–137).

The author is, however, correct in criticizing the hostility of Community law as far as participation of the *Länder* in other proceedings is concerned. Examples here include infringement proceedings under Art. 169 (pp. 159–173), interventions under Art. 37 Statute of the ECJ (pp. 174–186), with useful suggestions for amendment. The *Länder* position is much better when a case in which they participate as plaintiffs or defendants is referred to the ECJ under Art. 177 because then they must be heard according to Art. 20 (2) of the Statute of the ECJ (pp. 188–193).

The author, however, does not draw correct and realistic conclusions from his own analysis. Improved participation of the *Länder* before the European Court can only be achieved within the preliminary reference procedure. If a *Land* is convinced that a Community act has violated its prerogatives and may be challenged under EC law, it has to take its case first to a German court (eventually the *BVerfG*) which then, under the Foto-Frost doctrine of the ECJ (case 314/89, [1997] ECR 4199) has to refer the case to the ECJ if questions of legality under EC law are in dispute. German constitutional lawyers, including the author, seem to 'forget', as the Maastricht judgment of the *BVerfG*

has done, that every court (whether constitutional or not) of last resort is under an obligation to refer questions of validity of EC law to the ECJ, Art. 177 (3)!

Dr. Norbert Reich
University of Bremen

Achermann, Alberto, Roland Bieber, Astrid Epiney, and Ruth Wehner (eds.). *Schengen und die Folgen*. Bern: Verlag Stämpfli + Cie AG, 1995. Pp. 263. sFr 64.

Schengen, a small town in Luxembourg, has become for some people the symbol of free movement in Europe. For others, it represents the '*Sündenfall*' of two-step integration by using 'mere' international law instruments. The Schengen II Agreement entered into force for seven countries on 26 March 1995. The authors of this volume, all well-known specialists in the intricate interplay of free movement, migration and asylum rules, tell somewhat different tales about Schengen, which is caught between Community, Member State and international law. Their reflections, discussed first in a seminar for Swiss officials in 1994, were published a year later. The information remains timely, as not a great deal has happened since.

In her first contribution, Astrid Epiney looks into the relation between Art. 7a and 5 EC Treaty, on the one hand, and the structure of 'Schengen II' under international law on the other. She perceives potential frictions, but is convinced that, by allowing for priority of Community law in Art. 134 of Schengen II and harmonization with later international law in Art. 142, those potential conflicts can be removed (pp. 43 ff.). Community law is not hostile to using international law instruments for closer cooperation between some countries, if the basic goals of the Treaty – free movement without border controls – cannot otherwise be realized. She regrets, with good reason, that Schengen, unlike the Judgment Convention and the Agreement of Social Policy, was not put under judicial scrutiny by the European Court (p. 48).

The contribution of Alberto Achermann offers a profound, yet critical, insight into the extremely delicate and politicized problem of asylum rules under the agreements of Schengen II and (not yet in force) Dublin. The most innovative part has been the exclusive competence of one country to rule – with extraterritorial effect – on asylum applications (in reality, rejections!), a principle which helped the German *Bundesverfassungsgericht* in its controversial three judgments of 14 May 1996 (with strong dissenting opinions) to justify the serious restrictions on grants of asylum introduced by German legislation of 1993. Achermann insists on the following political and legal defects of the agreements: unequal burden sharing, no free choice of applicants, no mutual recognition of positive decisions on application, no control over so-called 'safe third country' rejection practices, a very narrow concept of family in contradiction to Art. 8 ECHR, no mandatory judicial control. The author sees some positive signs under the initiating powers of the Commission under Art. K.3/9 Union Treaty and Art. 100c EC Treaty (with the possibility of qualified majority decision-making from 1 January 1996, which has not yet been used).

Ruth Wehner gives a very detailed overview of police cooperation under Schengen II, including collection, exchange and dissemination of information and data protection.

In his brief closing remarks, Roland Bieber is, in contrast to Epincy, quite sceptical as to the 'model character' of Schengen as a form of cooperation outside the Treaty. It uses, he claims, rather 'primitive' (p. 185 – why?) instruments under international law. This needs to be overcome by more integrative means of Union or Community law, with participation by the institutions of the EC and eventual submission to control by the ECJ. This, in his opinion, is required by Art. C EU Treaty (p. 186). But what is to be done if some Member States, such as the UK, simply reject any Community initiative in this area? Will the possibility of majority voting under Art. 100c be a realistic alternative, or will it