Chapter IV
Exchange Control Regulations in France *

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Although it is more than twenty years since the beginning of World War II many countries of the world still exercise some control over the international payments of private citizens and over international private investments. This is true of nearly all the European countries west of East Germany, including Great Britain, France, and West Germany, of most of the Middle Eastern countries and of many countries in the Western Hemisphere. Even such traditionally liberal countries as Switzerland have, although less conspicuously, exercised control over their international payments to and from countries with exchange controls by means of bilateral payments agreements.

Exchange control regulations have become a part of a general regulatory system aimed at close supervision of national economies—which in practice means control of its industrial and commercial activity, a certain amount of control of its agricultural production, plus credit, price, and employment controls. A new field of law, known on the Continent as economic law, has come into existence. For a long time only practitioners paid any attention to this law, and even they were concerned only with those laws, statutes, and regula-

* When this book was originally conceived, a survey of exchange controls in the Six against the background of the E.E.C. Treaty seemed an obvious need. By the time plans became concrete the need had become questionable—exchange controls had been dramatically relaxed almost everywhere. Nonetheless no one felt that a subject which had been of overriding importance to American investors in Western Europe and which is the focus of important provisions of the Treaty could be ignored. The compromise finally adopted defines the scope of Professor Jeantet's chapter as a description of exchange controls in one of the Six providing an example of what the problem of exchange controls has been in a Community country, an indication of how that problem has been affected by the Treaty, and a suggestion of what it may be should future balance-of-payments difficulties occur under the Treaty. Some of the most recent developments which took place after the completion of this chapter are mentioned in the footnotes.—The Editors.

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tions which directly affected their fields of activity. It was believed that these laws would all disappear soon after the end of the war. But that expectation was frustrated; a certain amount of control is still a necessity and probably will be for a long time, either because political evolution is increasingly favorable to governmental intervention in the economic life of nations, or because active hostilities have been succeeded by the "cold" war, or for both reasons. Steps have been taken, however, if not to abolish controls, at least to make them more flexible. The organization of the European Economic Community represents a very important step.

This chapter deals with only one part of the whole body of economic laws whose interdependence makes exchange control regulations, when viewed separately, seem both complex and abstract. It will be limited to a description of the exchange control laws and regulations in France, and will be divided into the following sections:

I. A General Survey of Exchange Control Laws and Regulations;
II. International Payments;
III. International Trade;
IV. French Investments Abroad;
V. Foreign Investments in France;
VI. Sanctions;
VII. Probable Evolution Under the European Economic Community Treaty.

I. A GENERAL SURVEY OF EXCHANGE CONTROL LAWS AND REGULATIONS

War was responsible for the introduction in France of the first exchange control regulations. Such regulation had been in effect in Germany for many years prior thereto. The Law of July 11, 1938, concerning the general organization of the country during wartime provides in Article 46 that, in case of a state of war, decrees issued by the President of the Republic may regulate or suspend the import, export, transfer, use, or sale of certain resources, that is, all goods and services, including money.¹

¹ Journal Officiel de la République Française (hereinafter cited as J.O.) July 13, 1938. The Decree of July 3, 1915 prohibited the export of gold, the Law of Aug. 1, 1917 created controls on exchange operations and was completed by the Law of Jan. 7, 1918. All of these were abrogated, however, by the Law of Mar. 30, 1929. Art. 46 of the Law of July 11, 1938 has been completed by Art. 5 of the Order of Jan. 7, 1959, [Jan. 10, 1959] J.O.
Soon after the declaration of war, a decree dated September 9, 1939, prohibited or regulated for the duration of the war the export of capital (currency or other assets), exchange transactions and transactions in gold. A decree dated the same day required French citizens to declare their assets abroad to the newly created Exchange Control Office. The first of these decrees was ratified by the National Assembly and has the same force as a statute. It has remained in force in spite of the end of the state of war (May 10, 1946), and other texts have been added to it—namely, seven orders and two statutes. Application of these basic texts is effected by thirty-one decrees of the Head of the Government, thirty-two ministerial decisions of the Finance Department, more than seven hundred regulations of the Exchange Control Office, nearly nine hundred instructions and five hundred notes of the same office. The rules which are presently in force represent about a thousand pages of printed matter.

In itself this calls for explanation and comment.

A. THE HIERARCHY OF TEXTS

It should be understood that such statutes, orders and the Decrees of September 9, 1939, are "laws" in the technical sense of the word. The main consequence of that fact is that they are not subject to judicial review, and they alone provide for penalties (although the definition of the offense is given by administrative rules).

Decrees, ministerial decisions and regulations are as binding as statutes, but only to the extent that regulations are in conformity with ministerial decisions, ministerial decisions with decrees and decrees with the statutes. They represent a hierarchy of rules and, unlike statutes, if they violate requirements of form, involve an abuse of power, or are contrary to law, a private claimant can

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seek recourse in the competent court, the Conseil d'État.\(^7\) Illegality of a regulation could also be urged before the Criminal Court and Criminal Court of Appeals in case of criminal prosecution under such a regulation.

Instructions and notes are comments of the competent governmental department and are not binding, except on the department itself. Accordingly, no claim in court is normally possible. Because some of these instructions appear in fact to be as important as regulations themselves, there is a tendency, however, in the decisions of the Conseil d'État to admit appeals based on illegality or abuse of power against instructions.\(^8\)

Individual decisions of the competent department may also be attacked on the ground they are illegal or constitute an abuse of power.\(^9\)

**B. THE GENERAL EFFECT OF THESE RULES**

The existence of this hierarchy of rules is suggestive of the technique of regulation. The law provides very broad definitions and applicable penalties and gives the government broad powers to prohibit or regulate certain operations. The government provides more precise (but still broad) definitions. Generally it forbids almost any operation which comes within the scope of its powers but delegates to the Ministry of Finance, who subdelegates to the Exchange Control Office, power to grant general (by regulations) or special (by individual decisions) exceptions. The result is the converse of the normal rule—instead of "all which is not prohibited is permitted," the rule is virtually "all which is not expressly permitted is forbidden." Such a formulation is inelegant and burdensome for private persons but places the governmental agency on the safe side in cases of omission.

This formulation also affords the agency concerned another advantage: it allows adaptation to special circumstances and to frequent changes in the economic situation. It is, indeed, one of the prominent features of economic laws that they give broad powers to

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the competent agencies and that the agencies constantly modify the
rules. Private citizens must, therefore, constantly re-check what is
permitted and what forbidden, and uncertainty about the future
necessarily results.

A distinction must be made, however, between basic principles
and current rules—the former being fairly stable and the latter
changing frequently. Because a study of exchange control regula-
tions might otherwise promptly become obsolete, this chapter con-
tains statements of basic principles as distinguished from current
rules.10

The regulations now in force greatly increase the rights of pri-
vate investors granted by the legislative and administrative texts
establishing the basic principles. The policy of the Fifth Republic
is to follow sounder finance practices, strengthen national exchange
rates, and promote private trade and investment. Two important
sets of regulations have been promulgated to these ends: the first
included Regulation 669 on foreign investments in France, issued
at the beginning of 1959, and the second, published in the Journal
Officiel of July 26, 1959, included four regulations which greatly
facilitate monetary payments to and from the franc area.

C. THE AUTHORIZATIONS DELIVERED BY
THE EXCHANGE CONTROL OFFICE

One consequence of the above-described system is the need for
practitioners to have an accurate knowledge of the essential ex-
change regulations in order that they may know what kind of
authorizations are necessary and how they may be obtained. These
are of three kinds. The principal kind of authorization covers trans-
fers of funds to and from the franc area. Indeed, one could imagine
exchange control regulations which would apply only to such trans-
fers, since the main purpose of such regulations is to maintain a
satisfactory balance between the general debit and credit account
of France in relation to the rest of the world. The transactions
primarily affected are the conversion of francs into other currencies
and vice versa, and the actual transfer of funds back and forth

10 The more important principles are contained in the following texts: the Decree of
concerning foreign investments in France; the Order of May 30, 1945, [May 31, 1945]
June 6, 1958, [June 25, 1958] J.O. concerning French investments abroad; and, most
important of all, Decree 47-1337 of July 15, 1947, [July 20, 1947] J.O., amended by
decree 59-1440 of Dec. 21, 1959, which contains a statement of most of the basic rules
along with the Ministerial Decision of the same date, [July 20, 1947] J.O.
between the franc area and other monetary areas of the world. Crediting and debiting foreign accounts is part of such transfer.

But it is difficult to exercise effective control over transfers, which for the most part represent payments, if obligations between one area and another may be freely assumed. This is why international trade itself is controlled—that is, why the second kind of authorization, licenses to import and export goods are required.

In the third place foreign investments in the franc area are also controlled, not to implement old-fashioned notions of protectionism, but because foreign investments mean debts for the future which might one day upset the national balance of payments.

During periods of emergency, special measures have been applied to French citizens residing in France. Thus foreign investments could be requisitioned in order to supply the state with the necessary foreign currency. No requisition orders are presently in force, but French citizens residing in France must still declare their assets abroad and all residents must repatriate their income.

D. The Various Agencies

Authorizations are issued by the Exchange Control Office, which is the principal competent agency, the Department of Finance, through its Section for Exterior Finance (Direction des Finances Extérieures) being another. The Exchange Control Office, which is a separate and autonomous agency of the state, is supervised by the Department of Finance but has been given authority to issue the necessary regulations and make individual decisions. Decisions are very often made upon the advice of the competent ministries (mainly the Department of Commerce and Industry and the Department of the National Economy). Each of these departments has to appoint representatives to a special Investment Committee, which is consulted by the Minister of Finance when large investments are in question.

Aspects of the mission of the Exchange Control Office are delegated to several other administrative bodies. One of the most important is the customs administration which controls all physical transfers, be they imports or exports. Monetary transactions are

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11 Since this chapter was written, exceptions to this rule have been created.
12 Created by a statute dated Oct. 18, 1940, [Nov. 1, 1940] J.O. Since this chapter was written, however, the Exchange Control Office has been eliminated as an autonomous agency and legal entity by Decree 59-1438 of Dec. 21, 1959. Prior functions of that Office are now exercised by the Bank of France, under the supervision of the Department of Finance, or directly by the Department itself. Whenever the Exchange Control Office is referred to, it must be deemed to mean, therefore, either the Bank of France or the Department of Finance.
effect by the Office itself and for it and for the Exchange Stabilization Fund by the Bank of France, which is wholly state controlled. Applications have to be filed with the Exchange Control Office by interested parties or by their duly appointed agents or attorneys. But only French or foreign banks which have been designated as "Authorized Intermediaries" (practically all the major ones) are permitted to carry out the actual transactions. These Authorized Intermediaries receive a special delegation of authority from the Exchange Control Office to receive deposits of foreign currencies and negotiable instruments, to buy them, to open and keep the accounts in francs of non-residents, to receive and make international payments for the accounts of clients, to buy foreign currencies on the currency market for clients' accounts, to handle export and import licenses, and to keep, for the Exchange Control Office, appropriate records of their transactions. They very often receive authorization from the Office to carry out transactions subject to their acceptance of a duty of supervision and responsibility therefor. As such, "Authorized Intermediaries" have mixed status, part private part public, and consequently they assume special responsibilities.

Since exchange control regulations apply to the whole franc area and not to France only, a definition of the franc area and of certain basic notions is at this point necessary.

E. THE DEFINITION OF THE TERM "FRANC AREA"

Pursuant to the new Constitution of the Fifth Republic, the Executive Council of the French Community of States (La Communauté) was created on December 19, 1958. The Executive Council on June 12, 1959, issued the following Decision:

Exchange control regulations shall be common to all Member States of the Community. Treaties concerning payments shall include all such States.

The Decision provides further:

all public and private resources in foreign currencies shall be put at the disposal of the Community. They shall be assigned to each State by the department in charge of the

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15 Because local offices have been created. The "Caisse Centrale de Coopération Économique," formerly known as the "Caisse Centrale de la France d'Outre-Mer," is their central office.
16 See Order 58-1254 of that date.
economy and finance of the Community, with a view to an appropriate satisfaction of the needs of each. Such department issues the appropriate regulations. Import and export programs shall be determined by each State which shall also issue the appropriate authorizations.

The Executive Council of the French Community decided on the same date that the franc was the common monetary unit of all members of the Community, it being understood that each may have a separate currency with a parity base in relation to the French franc. This parity may only be modified by a decision of the President of the Executive Council. Currencies of the members of the French Community are freely convertible among themselves, and funds are freely transferable.

The franc area thus includes the territory of the French Republic—that is Metropolitan France—the Overseas Departments such as Guiana and the Departments of Algeria, and all Member States of the French Community. But it also covers a larger area, which includes countries which either use the franc as a monetary unit or currencies of their own (Morocco, Tunisia, Guinea, Cambodia, Laos, and Viet Nam). The parity base is not the same for all "francs." For example, the C.F.A. francs which are used by African Member States of the Community are worth two Metropolitan Francs.

A complete study of the problems raised by the definition of the franc area (contained in a regulation 18) would go far beyond the scope of this work. All rules mentioned in this chapter normally apply to the whole franc area. There are occasionally minor differences, which however, it will not be possible to explain. As used in this chapter the term designating all the world outside the franc area is "abroad," franc means the French franc, and France means the territory of the French Republic and Monaco. 19

F. THE DEFINITION OF "RESIDENCE"

Exchange control regulations attach little importance to nationality, except in regard to compulsory declaration and requisition of assets abroad. Instead they are concerned with the usual place of

19 Decree of July 15, 1947, art. 73, [July 20, 1947] J.O.
residence (résidence habituelle), since an individual’s residence is considered a more realistic indication of the location of his main interests and of the likelihood that he will withdraw income or the proceeds of assets situated elsewhere. Normally, payments between residents do not involve an international transfer of funds, whereas a payment between a resident and a non-resident sooner or later will.

A resident is a person who habitually resides in the franc area; a non-resident is a person who habitually resides abroad. But there is no definition of residence in the exchange control laws and regulations. The Exchange Control Office stubbornly refuses to give such a definition. Where French nationals are concerned, the Office virtually never considers a change of residence subsequent to September 1, 1939 as bona fide.

French non-residents who establish a residence in France must declare their foreign assets within six months after doing so. Recently, in giving instructions concerning the purchase and sale of real estate in France by non-residents the Exchange Control Office decided that a four-year effective residence or non-residence could be considered, but it took great pains to explain that this was not a general definition of residence. It has even gone so far as to create a special franc account, the “Interior Non-residents Account,” which must be used by French citizens who have a temporary residence abroad and by foreigners who have a “temporary” residence in France. Since the words “resident” and “habitual residence” are used by the law itself, only courts can finally decide, in each case, who is or is not a resident under exchange control regulations. For all practical purposes, however, residence coincides with the location of one’s main center of activity, provided that his physical presence there is in the aggregate of sufficient duration. Strangely there has been no litigation on the question, parties preferring, because of the uncertainty, to settle disputes. Establishments of foreign companies or corporations in France are also considered to be residents, whereas the foreign establishments of French companies or corporations are deemed to be non-residents. This treatment of establishments, like the notion of “residence”

\[\text{See Part V, Section B, infra.}\]

\[\text{Since this chapter was written, Reg. 700 of Jan. 23, 1960 has authorized French citizens who have resided four years abroad to open “foreign accounts” in France with the authorization of the Bank of France. Four years' residence abroad thus appears as the decisive criterion of non-residence—at least for the purpose of Reg. 700, [Jan. 23, 1960] J.O.}\]

\[\text{See Part VI, infra.}\]
itself, is familiar to specialists in tax law, and they know its difficulties. It means in practice that for financial purposes, as for tax purposes, such an establishment must be considered autonomous, with separate assets and books, as if it were a separate legal entity—indeed, as if it were a subsidiary. 23

G. THE MEANING OF SOME FREQUENTLY USED EXPRESSIONS

1. French assets abroad (avoir français à l'étranger) mean all kinds of property, real or personal, all goods, all rights of a pecuniary nature which are located abroad and owned by a resident of French nationality or a French branch of a foreign corporation or company.

2. The corresponding expression is “foreign assets in France” (avoir étranger en France).

3. Currency assets (avoir en devises) mean foreign currencies and short-term negotiable instruments which represent foreign currencies. 24

II. INTERNATIONAL PAYMENTS

By “international payments” is meant monetary payments which involve a transfer of funds across the frontiers of the franc area, but they may also include payments by a private debtor who is deemed to be a “resident” of the franc area to a non-resident private creditor or vice versa.

Since international transactions nearly always involve international payments, knowledge of the proper channels and procedures for making such payments under exchange control regulations is vitally important. Only the most general rules will be considered in this section. More specific rules will be examined in the sections concerning international trade, French investments abroad and foreign investments in France. Special rules resulting from the


24 Other or more complete definitions appear in the following sections of the text.
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existence of bilateral monetary or payments treaties or inter­national clearing agreements are not included.

The franc area could be thought of as a monetarily closed unit. Payments to and from it must be made through appropriate channels, closely supervised by the Exchange Control Office. It not only supervises payments but authorizes them (when they are made from the franc area to a creditor abroad). It also authorizes residents to buy the necessary foreign currencies.

A. Basic Rules

The basic rules are set forth in the following hierarchy of texts:

The Decree of September 9, 1939,25 prohibits or regulates the exportation of capital and all transactions involving the exchange of money and gold, but the definition of capital exportation is left to decrees.

Article 27 of the Decree of July 15, 1947, now in force 26 specifies that “All payments addressed abroad are subject to the authorization of the Exchange Control Office.” Article 2 of the same Decree also prohibits all physical exportation or importation of money, gold, negotiable instruments, or titles of debt, except as authorized.

Thus, transfers of funds to and from the franc area are controlled in their entirety. To make such control still more effective, Article 15 requires all foreign currencies or “instruments which represent foreign currencies” to be deposited with an Authorized Intermediary. Article 30 provides, however, that whenever transfers of funds are allowed (which they automatically are in the case of payments to be received from abroad, while payments to be made abroad must be specifically authorized), such transfers must be made through an Authorized Intermediary.

The Ministerial Decision dated July 15, 1947, which specifies the scope of application of this Decree, provides for certain exemptions, for example, in regard to travellers and tourists. It also regulates such matters as the opening of accounts to non-residents, the functions of Authorized Intermediaries, and the like, which are discussed elsewhere in this chapter.

These basic rules expressly refer to transfers of funds (or of legal instruments which, for this purpose, are treated as funds) to and from (mainly from) the franc area. They also concern payments in foreign currencies within the franc area which are directly

26 Decree 47-1337, [July 20, 1947] J.O.
prohibited 27 or prohibited by virtue of other provisions, such as the obligation to deposit foreign currencies.

But no mention is made of payments in francs, within the franc area, between a resident and a non-resident. And indeed, such payment should not be considered as a contemporaneous exportation (or importation) of funds, although a payment in francs made to a non-resident may necessarily involve a future exportation of funds.

A regulation of July 11, 1954, 28 was the first to provide that payments in francs between residents and non-residents (tourists excepted) should be made through the Authorized Intermediaries, thus identifying such payment with the exportation or importation of funds.

The validity of this provision is questionable. Whether it is still in force is still more questionable in the light of a new regulation, 29 which applies to transfers of funds between the franc area and foreign countries. The new regulation does not say that any specific part of the earlier one is abrogated, but it provides that parts of the earlier one 30 (which concern payments "between residents and non-residents") shall be replaced by more favorable provisions in the new regulation. 31 The earlier regulation remains in force, however. The substituted provisions do not refer to payments between residents and non-residents, but only to transfers of funds to and from the franc area. Accordingly it can be concluded that payments in francs within the franc area, between residents and non-residents, are free of regulation. But considering that penalties are very heavy in case of infringement of the exchange control regulations and since it is easy to obtain the (perhaps) necessary authorization, payments between residents and non-residents without authorization would be ill-advised.

Non-resident tourists are authorized to bring into France any amount of any kind of currency, including francs. They may not use foreign currencies directly for payment, but must first sell their currencies through an Authorized Intermediary, except when goods are delivered outside customs limits (hors douane). In such cases the rate of exchange is also more favorable because of tax differences. They may freely use the proceeds of such sale, or imported francs, for their own personal needs. They may sell foreign cur-

27 Decree 47-1337, art. 59.
30 Title I, chapter 1, paragraphs I and II of Reg. 574.
31 Title I, chapter 1 of Reg. 682.
rency of one kind against foreign currency of another kind, provided they operate through an Authorized Intermediary. They may physically re-export such currencies, but it is safer for them to obtain the necessary documents in order to be able to prove that they are exporting currencies actually brought in by them.

Recent regulations make it possible for residents to import freely any amount of any type of currency and to keep it. But since they can neither re-export foreign currencies nor use them for payments, the sole possible use is for sale through Authorized Intermediaries.\(^\text{32}\)

As far as transfers of funds are concerned, the rules in force may be summarized as follows: Except for tourists and the importation of currencies, all payments which involve a transfer of funds, or legal instruments which represent funds, must be authorized and made through designated channels, that is, through Authorized Intermediaries. Authorization is, however, not necessary for payments received from abroad. Any resident to whom a payment is made is obliged to repatriate it, through appropriate channels, within one month, and to sell the foreign currency to the Exchange Stabilization Fund.

There is one other important rule. Payments made to and from a foreign account in francs are considered as a transfer of funds from or to the franc area, but general authorizations are provided for, which greatly facilitate such payments.\(^\text{33}\)

The corollary to these rules is the prohibition of compensation between payments to be made to and from the franc area.\(^\text{34}\) “Private” or unauthorized compensation is a major offense.

**B. THE CURRENCY MARKET**

Because residents do not have the necessary foreign currencies to pay their foreign debts, because they must sell their foreign currencies to the Exchange Stabilization Fund, and because non-residents who invest in France must normally sell foreign currencies and buy francs in order to invest in France, it has been necessary to create an official currency exchange which is supervised by the Bank of France. But an increase in demand and in offers resulting from the increase in the volume of private international trade has made

\(^{32}\) For details see Reg. 697, [Jan. 23, 1960] J.O.

\(^{33}\) Foreign accounts and general authorizations are explained more fully in the following discussion.

\(^{34}\) E.g., a resident of France collects money due in France to an American and the American in turn collects money due the resident of France in the United States. The two collections compensate for each other in an amount equal to the lower of the two.
possible the creation of a "Free Currency Market" to which, however, only Authorized Intermediaries have access. Under the relevant regulation the Free Currency Market is now the sole currency market in France.

This market is closely supervised for a number of reasons. The first is to maintain rates of exchange between the franc and other currencies at a level which is fairly close to official rates. Since the market is "free," its rates are determined by buy and sell offers, and, whenever necessary, offers to buy or sell are made by the Bank of France for the account of the Exchange Stabilization Fund itself. This system presupposes that the Bank has the necessary monetary reserves in the currencies quoted on the market. If its reserves are exhausted, a devaluation may eventually become necessary.

Another purpose of the close supervision of the Free Currency Market is to keep a check on the legality of sales and purchases in order to make certain that the appropriate authorizations have been issued, and that funds are used in accordance with such authorizations. Unused foreign currencies must in due course be resold on the Market, and when they are, the profits, if any, must be refunded to the Exchange Stabilization Fund. No one is allowed to buy foreign currencies merely for speculative purposes. However, Authorized Intermediaries may set off their gains against their losses, and profits are only refunded when they are in excess of a certain percentage (2% at the present time).

Sales and purchases on the Free Currency Market may be made for cash or on account, according to the authorizations granted. The number of foreign currencies quoted on the Market is, however, restricted.

They are presently divided into two main categories: (1) Foreign currencies from the so-called "convertibility zone" and (2) those of countries with which France has reached a bilateral payments agreement. The first group includes U.S. and Canadian dollars, the pound sterling, the Swiss and Belgian francs, the Deutsche Mark, the Portuguese escudo, the Mexican peso, the Italian lira, the Austrian Schilling, the Dutch florin and the Swedish, Danish, and Norwegian crowns. Recent regulations (of July 26, 1959) have put all of these currencies in a single category, which means that authorizations to buy such currencies are equally available and that conversion from one to the other is easy.

The so-called "bilateral group" includes only Czechoslovakia and

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Yugoslavia. Payments between France on the one hand and Chile, Ecuador, or Uruguay on the other, are made in U.S. dollars.

C. FOREIGN ACCOUNTS IN FRANCS

Payments abroad do not always involve a purchase of foreign currencies on the market and their transfer to a creditor's account outside the franc area. They may also be made to a franc account of the creditor held in France by an Authorized Intermediary.

The basic rules governing this transaction are set forth in a Ministerial Decision concerning the application of Decree 47-1337. The present reach of the rules is defined by a recent regulation.

The matter has been considerably simplified by these rules. Four types of "foreign" accounts (accounts of a non-resident), still exist, but only one type is common, the "Foreign Account in Francs." The three others are: "the Foreign Account in Foreign Currency," which an Authorized Intermediary may hold for a non-resident, under special authorization of the Exchange Control Office; the "Temporary Account" held for non-residents to which payments in francs may always be made; and the "Interior Non-Resident Account" (I.N.R.) created to meet the special situation of foreigners who have a temporary residence in France or French citizens who have a temporary residence abroad.

The normal foreign account in francs is now called either "foreign account in convertible francs" or "foreign account in bilateral francs" (hereinafter "convertible account" and "bilateral account").

A basic rule must be kept in mind concerning such accounts: a payment made from such an account to a resident or by a resident to such an account is an international payment as defined under exchange control regulations. Accordingly, the same kind of general or special authorizations must be obtained for such payments as for international payments.

Three situations must be considered in regard to each type of foreign account: the opening of the account, transactions resulting in a credit to the account, and transactions resulting in a debiting of the account.

Arts. 19-30, Ministerial Decision (hereinafter cited as Min. Dec.) of July 15, 1947, concerning the application of Decree 47-1337.

See note 10, supra.


Such accounts are said to be blocked because they may only be used in cases of emergency when an international payment is not authorized. A special authorization of the Exchange Control Office is necessary to withdraw money from such accounts.
1. CONVERTIBLE ACCOUNTS

a. The opening of an account by an Authorized Intermediary for a non-resident who has his residence in the "convertible zone" is permitted. A special authorization must be obtained, however, if the account is opened by a non-resident French citizen or by residents of certain countries which have special payment agreements with France.

b. Such an account may be freely credited with the proceeds of sales of foreign currencies of the "convertible zone" on the Free Currency Market, or by debiting another convertible account.

c. Such an account may be freely debited: to pay for the purchase of currencies of the "convertible zone" where currencies obtained on the Free Currency Market are used, or to credit another convertible account, or to make a payment in the franc area.

Convertible accounts are, then, free from governmental intervention in the sense that deposits are readily convertible and withdrawn. These accounts serve as a kind of anteroom to the franc area and general authorizations indicate how far the door of this anteroom is open into it.

Another important feature of these accounts is that they have no nationality. Such an account may be opened in the name of anyone, provided he is a foreigner residing in the convertible zone, and provided he does not belong to a country which has special exchange regulations preventing him from doing so.

Overdrafts on such accounts must be specially authorized by the Exchange Control Office. Such authorization is freely given whenever the overdraft is connected with exports. Conversion between currencies of the convertible zone is free, and it is also possible to buy Czech or Yugoslavian currencies with assets in these accounts.

2. BILATERAL ACCOUNTS

a. Accounts of this type may be opened freely in the name of non-residents residing in one of the countries of the so-called "Bilateral Group": Albania, the East Zone of Germany, Bulgaria, Chile, Ecuador, Finland, Hungary, Israel, Poland, Rumania, Czechoslovakia, U.S.S.R., Uruguay, and Yugoslavia. Special rules apply for Chile, Ecuador, and Uruguay, payments being made to and from these countries in U.S. dollars.

By the general authorization given in Reg. 683, [July 26, 1959] J.O.


b. Bilateral accounts may be freely credited: with the proceeds of sale on the Free Currency Market of any currency of the convertible zone, or of the currency of the country where the owner of the account has his residence, or by debiting an account of the same nationality.

c. Bilateral accounts may be freely debited in order to buy on the Free Currency Market the currency of the country in which the owner of the account has his residence or to credit an account of the same nationality, or to make a payment in the franc area, provided the true debtor is a resident of the country in which the owner of the account has his residence and the true creditor is a resident in the franc area.

The difference between the two types of accounts, convertible on the one hand, and bilateral on the other hand, and the reasons therefor are obvious. 44

III. INTERNATIONAL TRADE

The above-described rules are applied to international payments involved in international trade, and the necessary authorization to make such payments is linked with the authorization to import or to export goods, both of which are generally prohibited.

A. ORIGINS OF THE PROHIBITION

A basic Decree of November 11, 1944, prohibits both the exportation and importation of goods. This prohibition was made necessary by the state of war then prevailing. It has since been used to control the economy of France. During the post-war recovery period authorizations to import goods were reserved for basic raw materials, equipment and supplies such as coal, oil products, heavy equipment and certain food products. Imports were to be made in accordance with the Plan for Reconstruction, popularly known as the "Monnet Plan," and the hierarchy of needs established by that Plan. Even now there is a priority for imports which are in keeping with the present five-year plan.

There has been a tendency, moreover, to use that control as a means of protecting national industry, although there is also a counter movement towards free international trade. The Organization for European Economic Cooperation (O.F.E.C.) has worked un-

44 It is also obvious that all countries of the world are not mentioned in the above rules (for example, Argentina, Brazil, Spain, and Egypt). Special rules apply to those countries as a result of special payments agreements with France.
ceasingly to get its members to accept a progressive liberalization of trade among themselves.\textsuperscript{45} The Coal-Steel Treaty and the Treaty establishing the European Common Market have made, and will make, important contributions to the liberalization of trade\textsuperscript{46} and international payments.

**B. The Rome Treaty and the Trend Towards Liberalization**

Under the Treaty trade among the Member States is to be completely freed during the transitional period. Each year, basic quotas must be increased, and restrictions on exports are prohibited.\textsuperscript{47} Other obstacles to trade among Member States such as customs duties, currency restrictions and the like must also be removed and a uniform tariff is to be applied to trade with non-member states.

Article 67 of the Treaty provides that members of the Community must gradually remove restrictions concerning transfers of funds among residents of the Community, to the extent necessary for the proper functioning of the Common Market, and that, during the first four-year stage, current payments among Member States must be entirely freed. In case of disturbance of the financial market of one of the Member States or in case of financial difficulties, emergency measures may be authorized, however.\textsuperscript{48}

These rules have been given effect in all Community countries and liberalization in France in fact goes beyond the requirements of the Treaty and has accrued to the benefit of non-European as well as Community countries.\textsuperscript{49} Indeed, liberalization has now reached the point where quotas constitute the exception rather than the rule.

Exports, upon which there are no restrictions, have increased steadily. Two devaluations have boosted them by reducing French prices in relation to world prices, and will probably permit increased imports without damage to France's balance of payments. These rules relate, nonetheless, to a transitional period, and they therefore provide for emergency measures and do not require that all currency controls be suppressed. They require only that all necessary authorizations shall be granted.

In sum liberalization of currency control has made the regulations more flexible and made available more liberal allowances of

\textsuperscript{45} See Chapter III \textit{supra}.
\textsuperscript{46} \textit{Ibid}.
\textsuperscript{47} Chapter III, Part II, \textit{supra}.
\textsuperscript{48} Treaty art. 73. See Section VII, \textit{infra}.
\textsuperscript{49} See Chapter III \textit{supra}.
foreign currencies to those applying for authorizations. But exchange control laws and regulations remain for a number of reasons.

International trade is considerably freer, but it is not yet wholly free. Supervision and control of international transactions helps to keep a check on them. It also provides a check rein, if necessary, on the economic development of the country, and helps to acquire the statistical data which forms the basis of the five-year economic plans.\(^{50}\) Last, but not least, it gives the government a means of effective and immediate action in case of emergency. The system of exchange control laws and regulations in France makes it easy to make the necessary changes. Regulations can be promptly modified, and departmental instructions, pursuant to a change of administrative policy, may introduce virtual freedom by making the granting of authorizations almost automatic.

Such flexibility is considered necessary, but it also makes—and probably unavoidably—import and export transactions somewhat complex.

C. Importation

1. As a rule, an authorization ("license") must be obtained from the Exchange Control Office and detailed rules are set forth in the relevant regulation \(^{51}\) for doing so. Special forms must be filed. Then the competent department, usually the Department of Commerce and Industry, passes on the application. The granting or refusal of an import license is discretionary, but if discretion is abused, or if the principle of equality among applicants is violated, appeal to the administrative court, the Conseil d'État is possible.\(^{52}\)

The import license is a non-transferable administrative document. Its validity is limited to a maximum of six months, which means that the goods must have been shipped to France before the six months have elapsed. The license must be checked by customs authorities at the time the goods enter French territory.

When a license is granted, it automatically gives the beneficiary the right to buy, through an Authorized Intermediary, the amount of foreign currency corresponding to the price mentioned on the

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\(^{50}\) These plans are not state imposed, but are, rather, detailed forecasts which guide the action of the competent departments and nationalized enterprises.


license. There are strict rules, however, to avoid an illegitimate use of the foreign currency thus acquired.

The purchase of foreign currency may be made for cash or on account. But it can only be made on account until a credit on documents has been obtained. If the license is not utilized in due time, the foreign currency must be resold and the profit, if any, resulting from differences in the rate of exchange, credited to the Exchange Stabilization Fund. When goods have been shipped directly to France (or, in certain cases, through Antwerp, Amsterdam, or Rotterdam), payment becomes effective by transfer of the funds to the account of the sender of the goods. This rule has no exceptions. Alternatively a transfer of francs to an account in France of the sender is possible. The amount of money so transferred must never exceed the C.I.F. price of the goods.

2. In certain cases, the maximum six-months' validity of import licenses is inadequate—for example, when the goods to be imported consist of heavy machinery the manufacture of which cannot be completed within six months' time. In such cases, moreover, the foreign manufacturer often requires a payment by installments, beginning before the goods are delivered or even shipped.

A special procedure has been adopted for such cases, that of "Prior Authorizations." They are granted only when the importer can support his application by producing a written agreement between himself and his seller. The authorization makes possible the purchase of foreign currency, on account, within six months prior to the time the installment to be paid is due. The grant and use of such authorizations are very closely supervised.

3. When imports of certain goods have been freed, the same procedure must still be followed, but another regulation declares that the necessary licenses for such goods are to be automatically issued. Whether "Prior Authorizations" are also to be automatically issued is not quite clear, but experience indicates that they are easily and promptly obtainable.

Goods bought for cash with a value inferior to 350,000 francs or those which are paid for on an E.F.A.C. account are handled more rapidly. In such cases it is sufficient to produce the invoice at the Customs Office and at the offices of an Authorized Intermediary


54 This amount has been raised to 5,000 new francs (equivalent to 500,000 old francs) by Reg. 696, [Jan. 23, 1960] J.O. Unless otherwise stated, "francs" means "old francs." One "new franc" equals 100 "old francs."

55 See text at note 64, infra.
in order to import and pay for such goods. A similar procedure is applicable in importing spare parts which have a value less than 50,000 francs.

4. Another special procedure applies to goods not subject to quotas. This is the case for goods which are temporarily imported into France and are to be re-exported with or without modification, for those which technically are not considered as imported goods (for example goods in transit), and for certain privileged goods (furniture in case of a change of domicile, goods with diplomatic status, small postage parcels, and the like). The same procedure also applies to goods which have been freed pursuant to rules of the Organization for European Economic Cooperation and to coal and steel products subject to the Coal-Steel Treaty. In such cases an import certificate is automatically granted by the Exchange Controls Office. A certificate is a much simpler document than a license. Like licenses, certificates authorize the entry of goods into France and the purchase of the necessary amount of foreign currencies. The rules applicable to such purchases are very similar to those already described above, with minor modifications—for example, the certificate is valid for three months only.

5. One apparently simple case of importation is specially treated by the Exchange Control Office—importation without payment. A special authorization is required since imports of this kind are not considered normal. They may involve illegitimate payments, made out of assets which have not been declared, or unlawful private compensation. When imports are linked to exports, the transactions are submitted to special scrutiny, to make sure that both are legal. Sometimes the Exchange Control Office grants import licenses with the proviso that the raw materials or parts so imported shall be re-exported within a specified time in the form of manufactured products. When equipment or finished products are imported in connection with foreign investment in France, payment authorization becomes part of the authorization to invest.

6. The above procedures apply to goods which may be physically imported, but intangible goods may also be imported. The most important example is that of industrial property rights—patents, trademarks, technical data, and such services as are linked with the communication of know-how. In such cases, only the payment of the price, royalties, or fees must be authorized. But the

56 See section C, subsection 1, supra. See also Reg. 698 of Jan. 23, 1960.
57 See Part V, infra.
58 See Chapter V infra.
usual practice, greatly favored by the Exchange Control Office, is to submit a written contract for approval. The approval given to such a contract, which is very closely examined by the competent authorities, means that when application is made for authorization to make payment it will be granted upon a showing that the payment is in conformity with the approved contract. There is no known instance of the refusal of such an authorization. Considering the wording of such approvals, it is questionable, however, whether they commit the Exchange Control Office legally.

Special rules also apply to insurance premiums, transportation costs, and the like. For example, residents are not allowed to export from France more than 25,000 francs at one time nor more than the equivalent of 50,000 francs \(^{59a}\) in foreign currency per year for purposes of travel.

D. EXPORTATION

The only reason why exports still require licenses or some kind of similar authorization is that the Exchange Control Office wants to make certain that the total counter value of exported goods is repatriated into France, and that the foreign currencies thus obtained are introduced into the exchange market and put at the disposal of the Exchange Stabilization Fund. Moreover, exports are normally made against payment in the currency of the buyer. When that currency is "convertible," whether it or another currency is in fact used is not very important. But in certain cases, and due to special international agreements, the buyer must pay in United States dollars, although he does not reside in the dollar zone. Special supervision is also exercised over exports made to countries of the bilateral group, and to countries whose currency is weak, in order, as far as possible, to balance exports to, against imports from, such countries.

For this reason, the exporter must as a rule commit himself to repatriate the price of the exported goods and such repatriation must be made through an Authorized Intermediary within a month from the date payment is received. The normal duration of the export license is three months, and payment must usually be obtained within six months after the delivery of the goods to the purchaser. Special authorizations may be obtained for consignments abroad,\(^{60}\)


\(^{59a}\) This amount has now been raised to 1,500 new francs (150,000 old francs).

\(^{60}\) Reg. 686, [July 26, 1959] J.O.
and special procedures have also been devised for exports which require a longer lapse of time before payment. As is true of imports, moreover, simplified procedures have been established for certain exports of small value.

The French Government makes every effort to promote exports. For example, applicable industrial and commercial credit restrictions are not applied to export activities. Moreover, credit insurance and export insurance can be obtained from special organizations controlled and financed by the government and depreciation rates are accelerated when applied to equipment for the manufacture of products for export. (One of the most important incentives for exporting is the fact that exported products are not subject to the turnover tax, the tax on added value, the rate of which is 20%.)

Exchange control regulations also grant a special right to exporters: they may retain, in a special account called an E.F.A.C. Account, a percentage of the foreign currencies earned by their exports. The percentage is 12% in the case of exports to the United States. The foreign currencies obtained by an exporter can be used to pay, without going through a complex procedure, the commissions of agents abroad (which otherwise could only be paid on special authorization), business travel expenses, and advertising. They may be used, upon special but easily obtainable authorization, to purchase equipment for the enterprise of the exporter, and they can be converted into other currencies. But the currencies of E.F.A.C. Accounts cannot be transferred to a third party and such accounts are kept, under strict rules, by an Authorized Intermediary. Every three months the exporter must sell on the exchange market at least 10% of the unused balance of his E.F.A.C. Account.

The legal theory of E.F.A.C. Accounts, as well as that of accounts in which an importer or exporter holds foreign currencies for certain purposes, has yet to be articulated. He certainly is the

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61 The National Credit Council ("Counseil National du Crédit") fixes credit terms—duration, interest and maximum amounts—which banks grant to private enterprises, and it has facilitated export credits, e.g., by the Decision of Feb. 5, 1959 fixing the Bank of France interest rate for export transactions at 3% instead of 4.25% and permitting longer term bills of exchange.

62 French Insurance Company for Foreign Commerce ("Compagnie Française d'Assurance pour le Commerce Extérieur" or "Coface") created by Decree of June 17, 1946. See also Law of July 21, 1950.


64 Export and Accessory Expenses Account ("Exportation—Frais Accessoires Compte").

owner of the assets, but an owner who must use them for designated purposes. His right of ownership does not have the same content as in private law. It is restricted by state controls, and is exercised as if it were a social function; fortunately the restrictions are only temporary in the sense that the proceeds, in francs, may be freely disposed of.

IV. FRENCH INVESTMENTS ABROAD

“French investments” are investments which are or have been made by physical persons of French nationality who habitually reside in the franc area, or by companies, and other such entities, on behalf of their establishments located in the franc area.

A. EVOLUTION SINCE WORLD WAR II

The general policy of the various laws and regulations applicable is quite simple:

All assets abroad owned by French residents must be declared to the Exchange Control Office.

Certain assets which are physically in France such as foreign currencies, letters of exchange, promissory notes, bonds, and stock insured abroad are considered as “assets abroad.”

Whenever possible or, in other words, whenever the assets consist in negotiable instruments, such assets must be deposited with an Authorized Intermediary in France or in an establishment abroad of an Authorized Intermediary.

All income having its source abroad, including proceeds of exports, must be repatriated and the corresponding foreign currency sold to the Exchange Stabilization Fund. This rule applies to all residents, French or non-French.

Assets abroad may be subject to requisition against due payment.

Acquisition and transfer of assets abroad are subject to prior authorization. Transfer and all other transactions must be made through an Authorized Intermediary. However, current transactions for purposes of exploitation and maintenance are authorized.

When exchange control regulations were first introduced in France, their purpose was merely to prevent the flight of French

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66 A policy which has been summarized in Decree 47-1337 of July 15, 1947, [July 20, 1947] J.O.
67 Decree 47-1337 of July 15, 1947. But important exceptions to this rule have been created by Reg. 702, [Jan. 23, 1960] J.O.
capital, but at the end of World War II a different problem arose. At that time—the French economy was ruined—stores and factories were either physically destroyed or obsolete; there was a considerable shortage of foreign currency; the level of exports was at the lowest point it had been for a long time whereas imports in substantial quantities were sorely needed. Accordingly, the government wanted to be able to use French assets abroad to aid recovery. Requisition was considered both necessary and legitimate, the more legitimate since those who had invested abroad had suffered less from the consequences of the war. As time went on, requisition no longer appeared necessary, but the French economy still fluctuates seriously as the number of devaluations indicates. It is therefore still imperative to prevent substantial flights of capital, and the continued existence of a permanent canvass of French investments and assets abroad is thought necessary to help to keep track of transfers abroad from France. It also aids supervision by the tax authorities, and, since French payments to other countries have only in the last few months been fully balanced by export trade receipts, such a canvass is still necessary to make effective the obligation to repatriate the income of French investments abroad. But exchange control authorities are quite aware of the necessity to develop French enterprises and investments abroad to further national prosperity and security. Thus general prohibitions have been maintained in principle, but exceptions have become more and more frequent.

B. THE PRESENT SITUATION

The result of the above-described evolution is that requisition of assets abroad has since 1950 been practically eliminated. It has never been applied to residents other than those of French nationality, and its practical scope has always been limited to cash (of the so-called "hard" currencies) or such assets as could be easily transformed into cash. Residents have never been obliged to sell real property nor to dismantle their enterprises abroad. Nonetheless, compensation for requisitions was at the official rate of exchange, at a time when that rate was much lower than the rate of exchange prevailing outside France and, for that reason, requisition was deeply resented.

The three effectuating decrees were those relating to the requisition of foreign currencies in cash, the requisition of assets in

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gold kept abroad, and the requisition of certain foreign stock and bonds. These have not been abolished, but their application depends on regulations of the Exchange Control Office. Ownership and transfer of gold inside France is unregulated; but gold cannot be freely acquired or transferred abroad; nor transferred abroad, or from abroad, from or to the franc area.

The obligation to repatriate income—which as a matter of practice is an obligation only of residents of French nationality, although theoretically all residents are subject to it—is less resented now than it was for the simple reason that the free rate of exchange has ceased to be higher than the official rate.

The obligation to declare assets abroad, which does not apply to non-French residents of France, is still in effect. Such assets must be declared within six months of their acquisition (in some cases they can be acquired without authorization) or within six months of the establishment of residence in France, for French persons who resided outside the franc area prior thereto.

Despite very heavy penalties, which may include five years imprisonment, confiscation of assets and a fine many times their value, the enforcement of the obligation to declare assets abroad has been very difficult. Declaration has been looked upon as the first step to present or at least future requisition, and French owners of such assets have therefore been reluctant to declare them. Very often the result of such legislation has been to prevent them from being repatriated.

From time to time therefore Finance Ministers have taken a realistic view of the situation, and a law has been adopted granting amnesty to non-declared assets in order to encourage their repatriation. Such is the case of the "permanent" amnesty resulting from a 1948 law. Under this law as modified assets which are illegally abroad—that is, those which were not declared in due time or which were acquired without due authorization—can be repatriated without other consequences than a 25% fine, which it is in most cases advantageous to pay because the fine also covers all taxes, including heavy inheritance taxes, which were due. A special procedure

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has been devised to permit anonymous repatriation. A new order has extended in two ways the benefit of the amnesty: (1) it applies to assets which were not declared prior to June 24, 1958, and (2) the 25% fine is eliminated. Repatriation must, however, be made through appropriate channels to enjoy the benefits of the amnesty.

C. A NEW FLEXIBLE POLICY CONCERNING ASSETS ABROAD

Some flexibility has been introduced into the regulations applying to the management of assets abroad:

Foreign currencies can be freely introduced into France by residents (introduction by non-residents is a fortiori free) and they do not have to be deposited. Foreign stocks and bonds quoted on the Paris Stock Exchange (they are more and more numerous) can be freely acquired, but the negotiable instruments themselves are not physically delivered to the buyer.

Authorizations for the purpose of subscribing for increases in capital stock are more and more freely granted, through general or special authorizations, to shareholders of foreign companies, although the shares must be deposited. Whenever such stock is quoted on a foreign stock exchange, it is easy to sell it, provided the sale is made under the supervision of an Authorized Intermediary and provided the proceeds are either invested in similarly quoted stock or repatriated.

Real property abroad may be freely sold to a non-resident or even to a non-French resident, provided there is a deed of sale, provided the sale is made for cash in convertible currency or in currency of the country where the property is located, and provided the proceeds are duly repatriated. Income from real property may, without authorization, be used to meet expenses or taxes, insurance premiums and repair costs of real estate (but not improvement and management costs).

These rules make clear that exchange controls are at present slight. All purchases, sales, encumbrances, payments and gifts are normally subject to authorization. In case of death the appropriate
inheritance laws are applied and legacies are unregulated. The drafters of the exchange control laws and regulations have indicated embarrassment in connection with transfers by inheritance of assets abroad. Authorization is required of "any act the aim of which is to dispose of" or modify the substance of assets abroad or to reduce "the rights in such assets." 78 Application of the appropriate law of inheritance does not, accordingly, result in the application of exchange regulations. But the creation of a legacy is an "act," and although there is no known example of difficulty in such cases, there is no doubt that difficult problems could be raised by certain dispositions of the will of a resident—for example, certain types of trusts which would prevent normal repatriation of income by resident beneficiaries. The Ministerial Decision of July 15, 1947, authorizes "the taking over of assets abroad acquired by inheritance." This is a clear acknowledgement that, at least in so far as the acquisition of assets by inheritance is concerned, exchange control regulations do not affect substantive rights.

But a deed of partition of an estate among heirs must be submitted to the Exchange Control Office if resident heirs, under the applicable law, must agree to accept a reduction or merely a modification of their rights.

The above rules permit strict control of new investments abroad. As a matter of practice new investment consists in the opening of a branch, the creation of an independent or subsidiary company or the increase of funds invested in such branch or subsidiary. In such cases special authorization must be obtained, and to obtain it, sufficient evidence of the commercial interest of the new enterprise or of its enlargement must be supplied. Normally the Exchange Control Office gives the authorization on the condition that a report shall be made each year on the development of the project, including a balance sheet and an income statement, and that normal dividends shall be repatriated and distributed.

When all provisions of the Rome Treaty have been given full effect, it is to be expected that all restrictions to French investments in the states of the Community will disappear, but, prior thereto, only "progressive steps" towards liberalization are to be anticipated. 79

78 Decree 47-1337, art. 58, [July 20, 1947] J.O.
79 See Section II, supra.
V. FOREIGN INVESTMENTS IN FRANCE

Under the French Civil Code, as applied by a long line of decisions, foreigners may freely acquire assets of any kind in France, as well as any private rights that are recognized by French law, and they may exercise any trade or profession, except where expressly prohibited by statute. Such prohibitions are rare in the commercial trades and exceptions to these are often permitted. Special rules do apply, however, to such occupations as banking, mining, the manufacture of pharmaceutical products, and the publishing of magazines or newspapers. No law requires that the president or the general manager or the majority of the directors of a company be French, except in a very few cases such as companies which operate public utilities or companies which enjoy long-term licenses for the importation of crude oil and oil products, and practically no law requires a majority or even a minority of shareholders of a company organized in France to be French. A foreigner who wants personally to exercise a trade in France, or who wants to become chief executive (president, or manager, or head of a branch) of a company which does business in France, must obtain a “commercial permit,” from police authorities. He must also obtain a “labor permit” if he wants to work in France as an employee. But commercial and labor permits are normally granted and abusive refusals are scarce.

Under exchange control laws and regulations, however, non-residents, whether foreign or of French nationality, cannot always freely acquire assets in France. This section deals with the problem of acquiring assets in France, with investments, and also with the management rights of inventors under exchange control regulations.

A. Basic Rules

An order attempts to give a definition of the “foreign assets in France” to which it applies. According to it, those words mean all movable or immovable, all tangible or intangible assets which are “located in France, including negotiable instruments,” and also “all rights which can be exercised in France,” provided the owner

80 "Foreign investments" here means investments in France by non-residents.
of such assets or rights is a non-resident. Difficult questions may arise in connection with the location of intangible assets. They (for example, bearer shares of stock) are located in France when they are physically there, or when they (for example, the rights of a partner in a partnership) are rights to an asset located in France. The trend of exchange control regulations as far as stocks, bonds and debentures are concerned is to take into account those which are issued in France and payable in francs.

One order went so far as to authorize the Minister of Finance not only to regulate the acquisition and transfer of such assets but also to impose compulsory declaration of assets in France held by non-residents and even to regulate the acquisition and transfers of assets held by companies organized in France, whenever non-residents participated in the management of such companies. But the decrees and ministerial orders which put these provisions into effect have been abolished.

In 1947 authorization of the acquisition or assignment of the following kinds of assets was made compulsory:

a) Real property: land, buildings and rights in land and buildings considered in France as "immovables." Leases were not included.

b) Assets of a going concern: this phrase normally includes commercial premises (fully owned or under commercial lease), commercial name, installation, tools or equipment, goods, trade-marks and the like, each single element being considered as a means of building the assets of a going concern.

c) Stocks, bonds or debentures, issued by a French company or issued by a company organized abroad when such shares or stock are physically located in France. Subscription is, naturally, considered as an acquisition. These regulations also require the opening of accounts for non-residents to be authorized.

When the requirements for opening a convertible or bilateral account or for paying francs into such accounts are not met, a "temporary" account may be opened, but such an account is blocked, and special authorization is necessary to withdraw money from it. The sole use which may be made of such funds is the purchase of stock.
on the Paris Stock Exchange, provided the stock purchased is itself placed in a temporary blocked account. Transfers from a blocked account to another blocked account of the same nationality is possible.

Since it has become possible for non-residents in all cases to open convertible accounts to which the proceeds of the sale of convertible currency on the French currency market is credited, and since such accounts may be used to make any kind of payment in France, a non-resident may freely acquire in France all assets other than those mentioned in the above list, provided, of course, that the assets so acquired are not exported from France. Furthermore, non-residents may acquire assets in France by operation of law: for example, by virtue of laws of inheritance, or tort law. The freedom to acquire is linked with the freedom to assign the asset, thus assignment of the assets listed above must be authorized.

Normal exploitation and acquisition of the income of an asset are unregulated, but problems arise in regard to the utilization of such income in France and its withdrawal from France and in regard to utilization and withdrawal of the proceeds of the sale or assignment of legitimately acquired assets.

Withdrawal is subject to authorization. Credits to Foreign Accounts of Francs which have a source other than the sale of foreign currencies or another foreign account are not permitted. It is not certain that even if income or the payment for an asset sold is in francs that these may be used without authorization for other payments in France. If one considers that the provisions of Regulation 574 are still in force, such a payment must be made to an account of the non-resident, and an authorization is therefore required. The alternative would be to pay the funds into a temporary blocked account. But if those provisions have been abrogated, then a payment may be made in cash and such cash may be used freely (except for transactions of the kind listed above).

General authorizations have become more and more frequent, and even where authorization is still necessary—and this is true in regard to withdrawal from France of income or the proceeds of the liquidation of an investment—it is easily obtained. The basic rules remain, then, but recent regulations and instructions have increasingly reduced their effect.

91 Similar rules apply to “bilateral accounts.”
92 Reg. 683, supra note 90.
93 Title I, chapter I, paragraphs I and II. See text at note 29, supra.
Among the liberalizing rules are those which encourage investment in France. An examination of the status of the principal kinds of foreign investments in France under presently applicable rules is at this point necessary.

B. REAL PROPERTY

Real property in France may be acquired freely by a non-resident provided the acquisition is paid for in cash from a convertible account or from a bilateral account (in the latter case the account must be of the same nationality as that of the residence of the buyer) and provided the acquisition is made through a notary. Notaries in France have a special status which makes them officers of the state in certain respects. If the property is acquired from another non-resident, the necessary amount of foreign currency of the buyer must be transferred in France through appropriate channels to pay transfer taxes and other legitimate costs of the deed of sale.

Real property legitimately owned by a non-resident may be sold to a resident for francs, and such francs may be credited to a Foreign Account of the vendor (if the vendor resides in the convertible zone, a convertible account must be opened; if in the bilateral zone, a bilateral account of the same nationality as that of the residence of the vendor). The sale must be made through a notary. In short, "disinvestment" may be freely effectuated.

Leases are unregulated, whether the non-resident is the lessor or the tenant, but transfer of commercial leases may be considered a transfer of assets of a going concern.

C. STOCK, BONDS, AND DEBENTURES QUOTED ON THE PARIS STOCK EXCHANGE OR ON THE PARIS BROKERS' EXCHANGE

Provided it is paid for from a Foreign Account (even a blocked temporary account) and through an Authorized Intermediary, the stock, bonds, or debentures issued by a French company may be freely bought. The corresponding certificates are placed in a convertible account or a bilateral account, or a blocked account, ac-

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95 Id.; Instruction to Notaries, Jan. 21, 1959.
96 "Paris Brokers' Exchange" is a free rendering of "Marché des Courtiers en Valeurs." "Paris Stock Exchange" renders "Marché Officiel." Brokers on the "Marché Officiel" are called "Agents de Changes" and their status dates back to 1810 (but is now principally regulated by the Decree of Oct. 7, 1890). Both "Agents" and "Courtiers" are brokers but the "Agents" have special privileges and more restricted duties, although both are under supervision of the same committee, the "Comité des Bourses." The reasons for the difference in status of the two is mainly historical.
According to the origin of the funds. All dividends are automatically paid into the same kind of foreign account as the one in which certificates are kept, as are proceeds of sales made through appropriate channels. An authorization is necessary when such assets are not sold through official channels. Subscription to the increase of capital of French companies is equally free when the shares are quoted on the Stock Exchange or the Brokers' Exchange and when subscription is made through appropriate channels. Non-residents are authorized to buy French stock on the Stock Exchange or Brokers' Exchange, not only for cash but also on margin. If stock is bought on margin, the usual guaranty must be deposited and may be composed of funds originating from a Foreign Account or stock on the Exchange which is itself in a Foreign Account. As the result of a general authorization, various convertible currencies amounting in value to hundreds of millions of dollars were invested on the Paris Stock Exchange in a recent six months' period.

Non-residents are authorized to withdraw from France legitimately acquired stock, debentures, and bonds issued there in franc denominations. In case of withdrawal, dividends are freely transferred through an Authorized Intermediary. Physical transfer of certificates and coupons must always be made through banks and Authorized Intermediaries. Owners must keep in mind that any assignment of the stock, bonds, and debentures which they have thus taken out of France must be authorized.

D. Private Investment in Companies Organized in France

Stock of or interests in French companies may also be purchased directly and increases of their capital subscribed to. By "interests" is meant the rights of members of partnerships (sociétés en nom collectif, sociétés en commandite) or in limited liability companies (sociétés à responsabilité limitée). Such interests may not be issued in the form of certificates or negotiable instruments and, of course, cannot be quoted on exchanges. Shares of stock, on the other hand, are issued by stock companies (sociétés anonymes) in bearer or registered form, are negotiable instruments and may or may not be quoted on the exchanges.

While purchases on the Stock Exchange normally involve portfolio investments only, the purchase of interests in companies or

97 "Marché à terme."
99 Ibid.
100 Instructions 772 and 773 of Jan. 21, 1959.
non-quoted shares generally represent decisions to participate actively in business ventures. Such investments, which create new enterprises or enlarge existing ones, are very much encouraged by France, since they increase employment and contribute generally to the country's prosperity. They are especially encouraged outside the Parisian industrial zone, and when the enterprises to be created are to be located in areas where employment opportunities are scarce. Tax reductions, extensive credit, and even subsidies may often be obtained in such cases. Large foreign companies are thus motivated to make France their base of operations within the European Common Market.

These investments are subject to the authorization of the Exchange Control Office. This authorization is required by law for the purchase of or subscription to shares not quoted on the Stock Exchange or Brokers' Exchange. Control in this area is in fact exercised by the competent technical ministries, through an Investment Committee, however. Application for authorization involves a description of the venture, special emphasis being given to the amount of the contemplated investment, its technical contribution (for example, know-how, industrial experience) to France, the need for French-manufactured equipment and supplies, the location of the plant, the expected size of the labor force, the expected sales volumes and the contribution which the venture will make to the reduction of imports and the increase of exports. Such ventures often involve not only an application to buy or subscribe to shares, but also to import heavy or highly technical equipment. The applicant must also give information on the expected means of financing, and particularly on the amount of bank or other credit which may be needed, and whether the investment is to be made under a guaranty of the United States International Cooperation Administration. It must also be indicated whether the investment is purely foreign or involves French capital—which may help in achieving acceptance but is not a necessity. The application submitted does not, except in extreme cases, constitute a commitment, but the future attitude of French authorities towards the new enterprise will naturally be affected by the bona fides with which the project submitted to them is carried out.

When authorization is obtained, the interests or stock may be acquired, and the rules already described for their acquisition then apply. Newly-acquired stock may be transferred abroad, or deposited in a bank in France, or held by the company itself. Divi-
dividends and other proceeds are transferable and convertible provided
the owner of the stock is a resident in the convertible zone. If the
stock is not deposited with an Authorized Intermediary, a certifi-
cate of residence must be produced for transfers, which must always
be effected through an Authorized Intermediary. Transfer of stock
dividends remains subject to authorization—which is easily obtain-
able if the relationship of stock to dividends is reasonable.

Assignment of such interests and stock is also subject to authori-
ization of the Exchange Control Office, as is the withdrawal of the
proceeds in case of "disinvestment." The requirement of authoriza-
tion is retained to make certain that transactions resulting in with-
drawal are legitimate.101

E. OPENING OF A BRANCH IN FRANCE

The opening of a branch does not, of itself, require authorization
since no new company is organized. In fact, however, authorization
may be necessary—for example, because the assets of a going con-
cern are acquired.

The transfer of profits is subject to authorization, but the initial
authorization normally provides that further authorization shall
be automatic. The sale of a branch is also subject to authorization
since it involves the sale of the assets of a going concern.

F. LOANS

Loans in francs up to 100,000,000 francs need not be authorized
if made from convertible accounts,102 if for a term of not more than
five years and if the interest rate is not higher than the lower of: 5%,
and 1½ times the rate of interest applied by the Banque de
France for loans against securities.

Mortgages may be obtained through a notary. Interest and prin-
cipal payments are transferable and convertible through the original
convertible account out of which the loan was made. Assignments
of loans are subject to authorization, and authorization is also neces-
Sary for loans which do not meet the above requirements.

G. EFFECT OF THE E.E.C. TREATY

The above rules apply to non-residents in general. When non-
residents are residents of a Community country, the provisions of

101 But Reg. 419, which applied to dollar investments and has been superseded by
Reg. 669 of Jan. 21, 1959, was more precise as to the purely technical character of the
supervision to be exercised at the time of "disinvestment."
102 See Part II, supra.
the Rome Treaty apply. Under Article 52 "restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State shall be progressively abolished in the course of the transition period." Article 58 provides that companies organized in accordance with the law of "a Member State and having their registered office, central management or main establishment within the Community" enjoy the benefit of, inter alia, Article 52. Progressive elimination of restrictions includes the elimination of all restrictions to the creation of agencies, branches, or subsidiaries.

Since these provisions require no immediate action on the part of the Member States, special rules have not yet been established for investments in France of nationals of the other five Member States. A problem might arise, however, if, contrary to the prohibition against new restrictions to establishment (Article 53) or to a program established by the Council (pursuant to Article 54) authorizations were refused, since, under the French Constitution, the Treaty, and, therefore action of the Council pursuant thereto, supersedes regulations and even laws. In any case Regulation 669 may be considered a step in the direction of the progressive abolition of restrictions to establishment envisaged by the Treaty.

VI. SANCTIONS

Penalties for infringement of exchange control laws and regulations may be heavy, but the Ministry of Finance has the right to settle for a conventional fine, so that court decisions concerning penalties are not frequent. Infringement may also affect the validity of a contract or prevent or invalidate its performance. Here again court decisions are rare—obviously because parties do not like to become involved in court cases which may have penal consequences.

A. PENAL SANCTIONS

Two texts are here relevant. One, of very general effect, concerns the prevention of infringements of exchange control regulations. The other one applies only to infringements of regulations applicable to French assets abroad.

103 French Constitution (hereinafter cited as Fr. Const.) 1958 art. 55. See text, infra at note 123.
104 See note 81 supra.
Penalties consist in fines of a minimum of 150 francs and of a maximum of 300,000,000 francs and imprisonment of from one month to five years (or up to ten years for repeating offenders). The court must, moreover, confiscate the corpus delicti or, upon request of customs officials, it may impose fines of an amount equal to the value of the corpus delicti.

Fines are somewhat smaller in cases involving French assets abroad and in such cases the criminal court is not bound to confiscate the corpus delicti. Attempted violations, when so characterized by a court, may be prosecuted and accomplices may also be charged.

The general principles of the French Penal Code apply to these sanctions, but derogations from the Code make them more stringent. A complete review of the derogations is beyond the scope of this work. Nonetheless it can be generally stated that the sanctions of economic laws and regulations are severe, and that the defendant has less protection against a rigorous application of the rules than he does in regard to other offenses. The reason is widely accepted. Violations of economic rules and regulations do not seem, prima facie, as unethical as other offenses, and it requires a very strong deterrent to frighten people into abstaining from actions which formerly were considered legitimate, and which are so directly to their advantage.

One of the most striking features of the penal provisions of this legislation is that proof of an intention to commit the forbidden action (dolus penalis) is not a necessary element of a conviction. Naturally an insane person or anyone deprived of will may not be considered responsible; but for all others these laws are applied in the same way as traffic regulations-violations are, so to speak, automatically punished. Needless to add, the old principle nemo censeitur ignorare legem (no one is deemed to be ignorant of the law) is strictly applied.

The other prominent feature of these statutes is that their enforcement is intended to be a weapon in the hands of the competent government agencies. This explains most of their special provisions.

In the first place, infringement itself is not defined in a statute enacted by the French Assembly, but by an administrative body. It is provided that "Infringements of exchange control regulations are punished as provided in the present order." Thus, the normal

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107 Cases in which the Decree of Sept. 9, 1939 is applicable.
109 Order 45-1088 art. 2.
French principle *Nullum crimen, nulla poena sine lege* (no crime, no penalty, absent a law) is only in part respected. The “crime” is defined in a regulation, and in consequence of its official publication everyone is presumed to know all of the subleties of complex and changing rules.

Secondly, broad powers are granted to certain administrative officials to discover and make an official record of infractions. These are not only the normally competent police officers, but also the customs officers and officials of the Ministry of Finance and Exchange Control Office. Such officials have power to investigate, obtain information from other governmental agencies (with respect to suspected offenses) and to go through postage parcels addressed abroad or sent from abroad.

Thirdly—and this is probably the best proof of the true aim of the statutes in question—prosecution depends on the decision of the Minister of Finance (or his representative) and the Ministry may choose to settle for a conventional fine, even after a judicial sentence has been handed down, unless the accused has been sentenced to a term of imprisonment in which case the court’s decision is final.

Settlements occur very often, not only because there are doubtful cases, but also because the government agency itself considers that its proper function is not to obtain heavy judicial penalties, but to recover assets which would otherwise be lost to the French economy. The policy of the exchange control administration is the same as that of a bureau of taxation. This is why, in case of death of a defendant, the possibility for prosecution does not disappear: confiscation of assets in the estate of the deceased person may be possible. Moreover, companies are jointly liable for fines to which their officers have been sentenced, when the infraction was committed in the interest of the company. It is only in the more extreme cases that judicial intervention is sought.

**B. Civil Law Consequences**

Contracts which violate certain prohibitions are void (under French law). In other cases, for example where payment in a foreign currency must be authorized, the law may make performance impossible, although the contract may not be void.

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110 In the Journal Officiel.
111 See Order 45-1088 arts. 3–7.
112 *Id.*, arts. 8–10.
113 *Id.*, art. 11.
114 *Id.*, art. 12.
The first category includes provisions 115 which subject all assignments of real property rights, all acquisitions of goodwill, stock, debentures and bonds issued in France or located in France, and all subscriptions to such stock, debentures, or bonds to prior authorization when a non-resident is a party to the operation. It also probably includes the provisions, 116 under which all acquisitions and all acts, of which the purpose is the assignment or substantial modification of assets abroad, are subject to authorization when a French resident is a party to such act. Indeed, as a rule French courts will hold void transactions in violation of law, at least when a penal sanction is attached to the prohibition violated. 117 In one case, 118 for example, the court declared that a subscription to the shares of a company made by a resident acting as a straw-man for a non-resident was void because the necessary authorization had not been obtained. Under French law such a result is not subject to question, and, since the nullity is the result of a criminal offense, any interested party may bring an action to have the transaction voided.

Such consequences are harsh, and it has been argued that, since the nullity depends upon the lack of the necessary authorization of the Exchange Control Office, and since prosecution depends upon a decision of the Ministry of Finance, such a transaction should not be voided until that office has definitely refused its authorization. No court decision supports this theory, but it can, at least, be argued that if the Exchange Control Office grants its authorization a posteriori, but before a final court decision has been reached concerning the validity of a contract, the contract could not be declared void. Since the criminal offense has been purged, it can no longer be said that the contract involves a breach of law.

The nature of the nullity is important. It does not result from an incapacity to act, but from a violation of French public policy (i.e., \textit{l'ordre public}). For that reason unauthorized transactions by French residents abroad should not be void, at least when, according to the relevant choice-of-law rules, such transactions are not subject to French law. 119 Many regulations of the Exchange Control Office specify that transactions which are subject to the ex-

115 Decree 47-1337, art. 51, [July 20, 1947] J.O.
116 Id., art. 58.
119 Unless they are subject to Article VIII, section 2(b) of the Bretton Woods Agreement concerning the International Monetary Fund which provides for the unenforceability of exchange contracts prohibited by regulations of the signatory states.
change control regulations of another state must also conform with such regulations.

When exchange control regulations affect only the performance of certain obligations, the consequences may be very difficult to foresee. The most frequent and interesting case is the one concerning the prohibition of unauthorized payments. If, for example, a license contract, which provides for royalties to be paid by the French licensee to his foreign licensor, has not been submitted to the Exchange Control Office before it is executed, difficulties may be expected at the time an authorization for transfer of the first royalties is applied for. If the contract is under French law, and if it does not clearly provide that payment must be made in foreign currency, the French debtor will have performed its obligations under French law by a payment of the corresponding amount of royalties into a "temporary" account, which is blocked. On the other hand, if it is clear that payment must be made in foreign currency, non-performance may lead to a cancellation of the contract. Since, however, the contract will have been in force for a period of time, royalties will have accrued, or in certain circumstances damages will be payable. A French court would certainly grant such damages, but they could not be transferred without authorization.

Another dispute between the parties is possible. A non-resident may argue that it was the resident's duty to apply for the necessary authorization in due time. The resident may answer that the existence of exchange control regulations in France is well known, and it was up to the non-resident to stipulate such terms and conditions as he deemed necessary. There has been a great deal of theoretical discussion of this question, but each case requires its own solutions. Precedents are, for example, of little help in regard to the most frequent cause of litigation in this area—losses due to a sudden change in the rate of exchange between the currency of the debtor and that of the creditor. One case is, however, clear: if a loss is suffered because of the negligence of the debtor, he must make such loss good. 120

VII. PROBABLE EVOLUTION UNDER THE E.E.C. TREATY

New exchange control regulations in France which have created more freedom in international trade, payments, and investments

since the end of the year 1958, were not introduced solely to comply with the Rome Treaty. Their scope is, in fact, broader than that of France's Treaty obligations—to which the regulations make no reference.

Consideration of the effect of the Treaty on those regulations is therefore indicated. Three points should be stressed: 1) The provisions of that Treaty are mandatory, and, at least to the extent that they are self-executing, must now be considered part of French exchange control laws; 2) The implementation of the Treaty is progressive; 3) The effect of the Treaty is to shift from national authorities to Community authorities the bulk of the power to regulate international trade, payments, and investments, both among Member States and, to a large extent, between the Community and third countries.

A. FRENCH LAW AND COMMUNITY LAW

It is important to realize that the hierarchy of French texts applicable to exchange control is now affected by the provisions of the Treaty which have become a part of internal French law. It is a clear principle of French constitutional law that when a Treaty has been duly ratified, its provisions prevail over any contrary provision of a prior or subsequent law. Accordingly the self-executing provisions of the Treaty are binding on French citizens and must be applied by courts whenever appropriate. That principle was expressly stated in the Constitution of 1946, Article 26: “Diplomatic treaties duly ratified and published have the same force as a law even though they be contradictory of internal French law, and no legislative act is necessary to their enforcement beyond that required for ratification.”

The new 1958 Constitution is different but no less precise. Article 55 under the Title “Treaties and International Agreements” reads: “Treaties or agreements duly ratified and published have, as soon as they are published, an authority superior to laws, provided, for each treaty and agreement, that it shall be so applied by the other party thereto.”

Accordingly, articles of the Treaty which concern foreign exchange control are part of French law and a person to whom the benefit of these provisions accrues may have recourse to the competent court to vindicate his rights.

122 See text at note 7.
123 Fr. Const. 1946.
124 Fr. Const. 1958, art. 55.
B. A Transitional Period

During the transitional period powers of exchange regulation are to be progressively shifted from the Member States to Community institutions. Since the purpose of the Treaty is to establish an economic community, a single market common to the Six, it is to be expected that the power over economic decisions, which determine the need and form of exchange control regulations, would also be shifted to the Community. Indeed, the powers given to the Community institutions to make economic policy are great, while those which directly concern exchange control regulations, curiously enough, appear weaker. Exchange control measures are plainly subordinate, however, to questions of economic policy.

A thoroughgoing study of the Treaty would accordingly be necessary to indicate the probable effect of the Treaty on exchange control regulations. Some examples of the Treaty provisions concerning international trade, investments, and transfers of funds will, failing that, suggest the kinds of progressive changes which can be expected to influence exchange control regulations.

Increases of quotas and reductions of tariffs pursuant to the Treaty began on January 1, 1959, and bilateral quotas were merged by each Member State vis-à-vis the five other Member States, into global quotas which were increased by 20% (10% for each product). A similar increase must be effected at the beginning of each succeeding year. All quotas must disappear by the end of the transitional period. State monopolies of a commercial character must be organized in such a way that they do not constitute an obstacle to progressive liberalization. Services rendered across national boundaries are also to be freed of restrictions, but since modification of national laws may be necessary in certain cases (for example, as to pharmacology) the Council will establish a program to facilitate the exchange of services from country to country.

Tariffs and charges of similar effect were first subjected to a general reduction of 10%. At the beginning of the two 18-month periods subsequent to January 1, 1959, and one year after the beginning of the last of these periods a new 10% general reduction must be made (of at least 5% as to each product, or 10% if the rate is higher than 30%). The reduction on each product should reach 25% at the end of the first stage and 50% at the end of the second

124 Treaty arts. 31-33.
125 Treaty art. 37.
126 Treaty art. 59.
127 Treaty arts. 60-63.
four-year stage (the timing of the reductions in the second stage again to be 18 months, 36 months, and 4 years after its beginning). In calculating those percentages duties which are not designed to protect national industry (i.e., duties of a fiscal nature) may not be taken into account. Import duties are to be completely abolished by the end of the transitional period.

Investments are similarly to be freed of restrictions. Existing restrictions may not, moreover, be made more restrictive after January 1, 1958. But the freedom of establishment, which is accorded powerful protection by the Treaty both in regard to physical persons and to companies, may raise technical problems. For this reason the Treaty provides, as it does as to services, that the Council shall, before the end of the first stage, lay down a program for the progressive implementation of the freedom of establishment. Since this program must be adopted by a unanimous decision of the Council, the Treaty also provides for a way to establish a program during the second period if unanimity has not been achieved prior thereto.

It is clear, then, that at least as of the second stage, transfers of funds among the Six will be facilitated.

Article 67 of the Treaty provides, moreover, that restrictions on monetary transfers within the Community by residents of a Community country must progressively disappear, but the implementation of this provision is to be very cautious. Article 67 itself specifies that restrictions must be abolished “to the extent necessary for the proper functioning of the Common Market.” What is asked from Member States is not, at least during the transitional period, to abolish restrictive regulation but to apply it in such a way that it does not result in an obstacle to free trade and investment within the Common Market: exchange authorizations are to be granted “in the most liberal manner possible.” In the same way Article 67 provides that total freedom shall be granted current payments no later than the end of the first stage—this rule to be implemented pursuant to Article 106 according to which each Member State pledges itself to authorize payments in the currency of the country in which the creditor has his residence. Article 71 provides, moreover, that “Member States shall endeavor to avoid introducing within the Community any new restrictions.”

The caution here manifest is explained by the evident fear of

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128 Treaty art. 17.
129 Treaty art. 52.
130 Treaty art. 56.
131 Treaty art. 68.
further monetary troubles. The Treaty contains many safeguard clauses which may be invoked to deal with emergencies, and principally with balance-of-payments difficulties, which France insisted upon.

C. Probable Effect of a Transfer of Powers

It is accordingly probable that present national exchange control laws and regulations will not be immediately abolished, at least not by reason of the Treaty provisions. As has been indicated, the effect on French exchange control regulations has been to make them more flexible, but not to abolish basic laws. This could also be said of the exchange control regulations of the other Member States. Nevertheless, implementation of the Treaty will sooner or later result in virtually complete freedom of international payments and of the transfer of funds within the Community (absent emergencies, and the Community institutions are to decide, subject to decision by the Community Court, whether emergencies exist).

A further result will also be achieved. In order to create a common market it is not only necessary to abolish internal obstacles, it is also necessary to establish a common economic policy. Many steps must be taken to this end pursuant to the Treaty. One of the most striking is the progressive establishment of a common external tariff. An economic community, however, far exceeds the bounds of a customs union. The Treaty therefore envisages decisions by the Council concerning economic trends (the politique de conjoncture) and negotiations by the Community (through its Commission) not only of customs but of commercial treaties with third states.

A special body, the Economic and Social Committee, has been established to assist the Council and the Commission in their economic functions, and special means to implement Community economic policy are provided for. Foremost among these aids are the European Investment Bank and certain funds. Little by little the Member States are either divested of their economic

133 See Protocol Concerning France annexed to the Treaty.
134 See, e.g., Treaty arts. 73, 109 and 226.
135 See Treaty arts. 18, 19 and 23.
136 Treaty arts. 103 (3).
137 Treaty art. 113.
138 Treaty art. 193.
139 Treaty art. 129.
140 Treaty arts. 199 and 132 (3).
powers or must exercise them under the direction, or at least under the supervision, of the Commission or of the Council. The second yearly Report on the Activities of the Community by the Commission lays special emphasis on this aspect of its functions and stresses the important role of the Community in discussions with the O.E.E.C. and with G.A.T.T.

Under these conditions, it will be difficult for any of the Member States to maintain an independent set of exchange control rules and regulations, even in regard to relations with third countries. For example, the Treaty provides that after December 31, 1960, nationals of any one of the Six shall be accorded national treatment in any of the other five Member States in regard to financial participation in companies of the latter. The words used to designate “nationals” (in French, ressortissants) may apply as well to companies as to physical persons, and if that construction is accepted by the court, a company formed in France would be free to subscribe to the capital of a company formed in Italy, even though the “French” company’s stock was wholly owned by U.S. investors. It would accordingly be meaningless for Italy to apply to investors from outside the Common Market prohibitions which would be stricter than those of France and correspondingly it would be meaningless for France to maintain stricter rules of investment than those of any of the other Six. The consequence of this logic has in fact already made itself felt even if the regulations do not yet reflect it. It is accordingly probable that, during the transitional period which ends in 1970 or at least no later than 1973, French exchange control laws and regulations will either be profoundly modified or abolished.

141 Treaty art. 221.

142 Some doubt might be expressed as to the accuracy of the opinion expressed in the text, given the usual translation of the word “ressortissants” as “nationals” and given the wording of Article 58 of the Treaty, to which Article 221 expressly refers. Article 58 states that “for the purpose of this chapter,” which differs from that of Article 221, companies which are described in the first paragraph of Article 58 are assimilated to “natural persons being nationals of Member States” which seems a contrario to exclude such assimilation in other chapters. But (1) at least in French, “ressortissants” does not denote physical persons only; (2) the very wording of Article 58 indicates that when physical persons are meant it must be specified that the “ressortissants” concerned are physical persons; and (3) there would be no point in preventing a French company formed by U.S. citizens from subscribing to the capital of an Italian company, since practically the same results could, thanks to Article 58, be reached by forming in Italy a branch of the “French” company.