

## EDITORIAL COMMENTS

From the start it was evident that this year's political climate was not very propitious for any major steps in resolving the Communities' structural problem. The story of the frequent misunderstandings between the General and the Bundeskanzler in fixing a date to discuss political union already constituted a clear omen. Although her partners had the feeling towards the end of last year of having made large and onerous concessions, France itself saw things in a different perspective and thought that she had got only her due by dint of great efforts and patience. Whereas her partners considered the decisions on agricultural policy to be an engagement for further developments, the French government gave the impression of considering these decisions as completely separate and would direct activities to the problems raised by the unification of the treaties. A short cooling-off period was indicated so as to afford all concerned a sombre reappraisal of the relative importance of their common interests as compared with their various ideological bickerings.

When the Commission drafted its proposal on agricultural finance, it can never have had the illusion that it would be adopted by the Council without ado. One should give the Commission full credit for the convincing way in which it demonstrated both the logical cohesion and "treaty-conform" character of the triptych agricultural fund — common resources — parliamentary control, but it knew — we should perhaps say: none better — that political viability depends on still other factors. One gets the impression that it was above all intended to furnish something that offered everybody just enough to overcome the deadlock in the discussions and to constitute the start of a new programme for the coming years. Such intentions would partly explain the Commission's relative immobility in the Council of June 30: had it not prepared any modifications and alternatives because it did not expect the discussions to reach a final stage?

The outcome is well known. As various member governments welcomed — though never without certain reservations — the proposals as a promising starting-point for discussion, the French insisted that the Council had not been convened to examine suggestions about the future development of the Communities, but to resolve a very practical and pedestrian question, the financing of the agricultural policy for the next five years. Programmatic proposals and discussions were uncalled-for, what was wanted was a limited hard-headed and immediately effective text. When midnight struck without any decision having been reached, the presiding minister, M. Couve de Murville, closed the session and France withdrew her delegates from all further discussion in the Council.

There is little sense in examining the right and wrong of the French thesis, that by their inactivity her partners have infringed their previously accepted obligations and that thereby the decision of 1962 to enter the second stage has been abrogated. Should the conflict ever be submitted to the Court of Justice, this position will certainly be explained in all necessary detail and thus become more comprehensible.

It is of greater importance that for the first time a member State has taken matters into its own hands. Whereas the Treaty provides ways and means of bringing any violation of Community obligations to justice, nonetheless a member State introduces a new procedure and a new sanction of its own making and proceeds to apply them according to its unilateral discretion. Acquiescence would create an absolutely novel situation, that would put the character and solidity of the Communities in quite another light than has hitherto been given by the text of the Treaties. Are the Communities to be bodies in which all members are subject to a common rule and a common will or are they no more than organisms for the cooperation of sovereign States, that depend for continuing existence on the persistent will to cooperate of each of its members?

It would seem that the French government has consciously raised this issue and that it intends to get a decision on it once and for all. The defenders of "*l'Europe des patries*" have understood very well that even if the Commission's proposals should be fundamentally resolved into a simple continuation of the existing system for agricultural finance, the points raised about common resources and parliamentary control would nevertheless stay on the agenda and be implemented at some later date. This explains the evidently inspired rumours in the French press, that the crisis cannot be ended by simply adopting the French view on agricultural finance, but that more is needed; that the partners would have to agree to abandon the other obnoxious subjects for the time being; that the rule of unanimous voting should be retained and that the mandate of some unacceptable members of the Commission should be terminated at the occasion of the merger of the executives. They want it definitely understood that the Commission has no political role to play and that the Communities may not develop beyond the unanimity of its members. It is their interest to stress the fundamental nature of the crisis as clearly as possible.

In the Council session of July 26 the Commission appears to have made suggestions for a redrafting of its proposals. Some have thought this action over-hasty, but the Commission no doubt wanted to retain the powers of initiative given to it under the Treaty. Where all sorts of bilateral discussions and negotiations are to be foreseen in the coming months, it wanted evidently to furnish by its memorandum a complete review of the different alternatives and of their advantages

and disadvantages. It is in the nature of things, that these suggestions have remained confidential, but it is to be supposed that above all they indicated practical solutions, that they tried to avoid the basic disagreements and to paper over the cracks that have appeared. Such has always been the hitherto very successful policy of the Commission. It has constantly confronted 19th century ideological quarrels with 20th century realistics and always tried to prevent the opposing points of view of becoming too deeply entrenched.

It is not to be expected that the crisis will resolve itself this year. It needs some time for sober and hard-headed reflexions to catch up with the emotional reactions that have precipitated the present situation. But whatever the outcome it will be decisive for the future of Europe and of the world in general.

The Eighth General Report of the Community covering the period from March 31, 1964 — April 1, 1965 demonstrates even clearer what is at stake in the present political situation. In its introduction the Commission was able to report: "Even more than in other years, 1964 was a period of rapid advance in the building of Europe. In fields where much ground had already been covered, further important successes were recorded; in those where nothing significant had been achieved, a beginning was made". The customs-union belongs to the former category where progress is most spectacular. It may be recalled that in its "Initiative 1964" the Commission has proposed July 1, 1967 as the date upon which the customs union should be completed. As from January 1, 1965 the duties on industrial products amount to only 30 per cent of their original level. Duties on agricultural products for which no common market organisations exist have been reduced by 50-55 per cent. Requests for tariff quotas and temporary suspensions decline steadily. At the present time the proportion of the Community's total imports from non-member countries brought in under tariff quotas is estimated at under three per cent. The Council decision of December 15, 1964 — in the words of the Commission among the most important ever taken — fixing common price levels for cereals has stimulated the common policies for other agricultural products as well. In the field of establishment and the supply of services less progress has been made, although measures have now been taken to accelerate the rate of implementation. Priority has been given to industrial and commercial activities. Four new directives have been enacted bringing the total to 14.

The first decisions on restraints of competition by enterprises have now been published. They indicate certain general principles which may serve as guide lines for the business community. The new regulation permitting group exemptions will expand the scope of action of the Commission.

The Commission notes with pleasure that its recommendation to the member States of April 1964 on economic cycles policy has been followed in its main lines, thus constituting a beginning of common economic and financial policy.

In two main areas — commercial policy and transport — progress has remained behind the general development of the Community. The Commission looks with great concern upon the failure to reach agreement on the gradual implementation of a common commercial policy as foreseen by the Treaty. Immobility in this field may endanger in particular the full effect of the common agricultural policy.

With respect to transport a new milestone was reached after the conclusion of the Commission Report. On June 22, 1965 the Council of Ministers reached an agreement to establish a common transport market in three stages. The first stage should last three years and will only apply to interstate traffic. The second (which will regulate intra-state transport as well) will end ultimately on December 31, 1972. Before the end of this stage the principles of the final stage have to be outlined. No formal regulations have yet been enacted, but three main principles have been agreed upon for the first two stages. In the first place a compulsory rate bracket tariff system will be introduced for transport by rail and by road; a special tariff system will apply to transport by inland water. The criteria for both tariff systems will have to be determined at a later stage by the Council. The rate bracket tariffs must be published by the member States. Tariff rates and other conditions which deviate from the published tariffs will have to be notified to the competent organs of the member governments between the moment of signature of the transport agreement and the execution of the contract. In the third place a special committee consisting of representatives of the member States under the presidency of a member of the Commission will be created. Its function will be to supervise the development of the transport market. Although many difficulties will still have to be overcome in the final regulations, this first compromise in the field of transport must be welcomed.

Meanwhile an expression of opinion in Britain has been made by a significant group of young Europeans. Writing in the special number of the "Journal of Common Market Studies" for June 1965 they deal with the future of Britain's relations with Europe. This group strongly supports the need for greater unity between Britain and its continental neighbours on the basis of an Atlantic partnership. There can be no escape from the interdependence of Europe and the United States in matters of defence, and a true partnership can only be brought about when Europe has the strength to deal with the United States as an equal. To achieve this end it is essential that Britain should show

herself willing to play her full part in Europe and to shoulder the full political commitments implicit in this policy.

The authors point out that there are compelling economic reasons for Britain to seek a larger market. Indeed Britain is the only highly industrial country with a home market of less than 100 million. She badly needs the advantages of large-scale production, development and research, together with the benefits of a more competitive climate.

It may seem tempting for some British firms to seek association with larger units in the United States. This way, however, can never lead to a development in the interests of Britain. She will at best be only the junior partner in any enterprise, and all the skill, the techniques and the "know-how" will be retained in the hands of her more powerful associate. The way ahead lies in dealing on terms of equality with the countries of Western Europe, and joint projects with France and other neighbours are to be welcomed as a start in this direction. It is one of the more satisfactory results of their experience of government that Mr. Wilson and his colleagues have moved appreciably closer to Europe. Pressure to accept the principles of the Treaty of Rome have come from leading elements of both the Conservative and Liberal parties. The election of Mr. Heath as leader of the Conservative Party is a clear endorsement of his European policy. The general state of public opinion in England is ready to support a move into Europe whenever it should become practical politics. The service which this group of writers has performed is to show what this involves in practice. All those who support the Community method and techniques should remember that there is growing support for their point of view in Britain.

The relationship between Community law and national law is one of the most fascinating and elusive legal problems which the Treaty of Rome has raised. A contribution to this discussion has now been made by President Hallstein, speaking in the debate on the Dehousse report (EP doc. 43/1965-66) on this topic to the European Parliament last June which followed his enumeration of the principles which should govern this relationship exactly one year ago (Debates EP 1964-1965, no. 72, p. 162). He lent his weight not only as President of the E.E.C. Commission but also as a distinguished lawyer in his own right. Conflicts between two systems of law, he pointed out, are in practice rare, but such a conflict does arise in the European Communities. When a conflict arises, this cannot be determined (except under a procedure based on Article 169) by the European Court of Justice, whose main function is to interpret Community law, but not national law. The places where the conflicts have to be resolved are, on the other hand, in the national courts, whose duty it is to apply

both Community and national laws. Professor Hallstein gave a warning that such conflicts may be more apparent than real, and may on closer examination be capable of being resolved. If however it is plain that the two systems are in conflict, is a national court to refrain from applying a rule of national law because it runs counter to Community law? To this the answer he gave is an unqualified "yes", for "only if the question can be answered affirmatively is uniform inviolable validity ensured for Community law within its field."

The reason for this is not far to seek. The Community law is, as Professor Hallstein stated "most emphatically" not part of general international law which is alien to the member States, and to which national law would in some systems have to be preferred. "Community law is not alien law but is valid directly in the member States in so far as it is directly applicable — without the need for any national act of ratification or reformulation. It is binding on the citizen and on the courts in the same way as municipal law". In order to fulfil the intention of the makers of the Treaty, Community law must be accepted by all, for the Communities have no other sanction at their disposal, and this law must have equal binding force in all the member States.

"However, in its substance also Community law is something different from traditional international law; it differs in at least two aspects. Normally it is directly applicable but in exceptional cases it is limited to obligatory relationships between member States and Community. As we know, in international law the situation is exactly the opposite. Community law is furthermore an organised system governed by its own legislative, judicial and supervisory bodies. It is therefore the autonomous law of an association of states, and for this reason to equate it with international law is wrong in every respect." The key to the effect of Community law is to be found in the special nature of the European Community. "The establishment of a new unit transcending individuals means rather — and it seems to me that this is a general principle of law — that the members are subject to measures taken by the new law-making body in conformity with a treaty. This already holds in private law if we think of the constitution of companies and associations. It is also valid in municipal public law. And it is valid in the law as between states."

There is no doubt that the result which must be achieved is accurately stated, but it is unlikely that all will be satisfied with the reasons given for it. Meanwhile we await the next step in this great debate with interest.

We welcome the start of two periodicals which will do much to swell the literature in the vitally important field of European law. Both appear in the French language. The first, *Revue Trimestrielle de Droit*

*Europeen*, appears in Paris under the editorship of Roger Houin and Claude Albert Colliard, the second *Cahiers de Droit Européen* under the name of Leon Goffin. It requires determination and courage to initiate a legal periodical, and it is always a sign of faith on the part of the promoters. It is therefore encouraging for all those devoted to the concept and reality of European law that such distinguished editors should recognise the need for further publications and should openly express their belief in its future.

This new field has been greatly stimulated by some trenchant decisions of the European Court of Justice, and particularly the enunciation of "a new legal order" in Europe. For the most, however, the growth of the new concepts in the European field have been due to the industrious activity of scholars and practitioners in their published writings on these topics. These new contributions to this effort are therefore greatly to be appreciated and will, we hope, be well supported.