The session of the Council of the European Communities, held on October 25th and 26th at Brussels, has produced the best results one could reasonably hope for. In the published Declaration the five member governments have in measured but firm terms taken up a position that puts the ball in the field of their absent partner.

In its heading and first paragraph the Declaration stresses that the absence of a member State deprives the Council neither of its status as duly constituted body, nor of all possibilities to function. Thus in a deft way, we are informed that it is quite possible to proceed with only the Five. This means in the first place that the Council can legally meet, and secondly that the absence of a member from the deliberations of the Council cannot legally frustrate the Council's power to vote. This is the crucial issue because, once a decision by a Community Institution has been legally arrived at, it can be binding on every member State (see Article 15 E.C.S.C., 189 E.E.C. and 161 E.A.E.C.). As already noted, neither in the Treaties themselves nor in the Council Rules of Procedure is any requirement of a quorum indicated. It is therefore possible that *majority* decisions (either qualified or ordinary) can be taken in the absence of a member of the Council, provided that the necessary number of positive votes be cast and all formal requirements for the valid convocation of the Council are met. This legal viewpoint seems to have been confirmed by the very fact that it was with discussions on agricultural finance and other important subjects that the Council had been occupied.

The body of the declaration is composed of two parts. In the first and larger section, the five governments begin by reminding the French of the common marriage vows: they maintain the necessity "*de poursuivre l'exécution des Traités de Paris et de Rome dans la fidélité aux principes qui y sont contenus et en vue de réaliser la fusion progressive de leurs économies nationales tant industrielles qu'agricoles*" and stress that the solution to any difficulties must be found "*dans le cadre des Traités et de leurs institutions*". They continue by expressing their agreement with the fundamentals of the Commission memorandum of July 22 and then charge the president of the Council with the transmission to the French government of their standpoint and of "*un appel pressant pour qu'il reprenne sa place au sein des institutions de la Communauté*", because they are convinced that a speedy adoption of the necessary regulations is possible "*suivant les procédures communautaires*".

In the second section the five governments reveal their awareness of the fact that the rupture is of a more than purely technical and legal nature, by referring to the declarations made by the French president on September 9th and the minister of Foreign Affairs on October 20th.

They respond by charging the president of the Council "*d'inviter, dans le cadre du Traité de Rome, le Gouvernement français à se joindre à eux dans une séance extra-ordinaire du Conseil des Ministres à Bruxelles. Cette séance pourrait se tenir exceptionnellement en présence des seuls Ministres, comme le prévoit le Règlement intérieur du Conseil. L'ordre du jour devrait porter uniquement sur un examen de la situation générale des Communautés*".

Here the Spaak-proposal has been adopted, but in a way that clearly distinguishes between the discussions concerning the implementation of the Communities (agricultural finance) and the political discussion about the French second thoughts on the evolution of the European Community. With regard to this second subject, the press-conference of September 9th and the speech by Mr. Couve de Murville in the French parliament have both tended to widen the themes of discussion, so as to embrace not only the Communities but also the European position in N.A.T.O. Although in this way a number of previously pending questions seems to have been raised anew, the French spokesmen have still carefully abstained from adopting definite positions.

We have heard many recriminations against majority rule, but on each occasion representatives of the competent information services have been on hand to explain that the hard words spoken did not imply the things one would logically deduce from them. We lack any indication as to the specific areas for which the retention of unanimous voting is desired; it cannot be presumed that this request applies across the board, even including the matters for which the unanimous vote has already been abandoned during the first and second stages of the transitory period.[1] Frenchmen being Frenchmen, one ought not to suppose that they cannot make up their minds on what to ask for. If no specifications have been given, the reason is merely that they deem it tactically wise to refrain for a while from engaging their own positions and to keep the issues meanwhile as vague as possible.

One has the same impression with respect to their objections to the presumably inflated position of the Commission. On the one hand, they concede that it has played an indispensable and extremely useful part in many negotiations; on the other hand, they insist that it should not become too important. On the one hand, they call for the disappearance of some of its members; on the other, the principle of the sovereignty of the member States touted by them, would seem in-

1. An article in "Le Monde" signed by Paul Winkler (October 24/25, 1965) recalls a pronouncement made by General De Gaulle in 1953 on the pernicious effects of unanimity rule: "*Il y a, encore, le Conseil, formé de six ministres appartenant aux six Etats, et dont toute décision importante doit être prise à l'unanimité, ce qui revient à faire en sorte qu'il n'en prenne aucune, sauf, peut-être, celle de ne rien décider*".

compatible with their interference in the choice of their partners' candidates.

Whatever their real intentions, the French government do present the impression that, while aiming for the maximum, they will nonetheless be content with whatever they can get out of their partners. The afore-mentioned lack of specification might well be a major proof that they want to stay in the Communities. Once a negotiator has specified his demands, he can ill go back on them; as long as he has not done so, however, he has not yet risked either a loss of face or a break-up. This implies that it is in the interest of all six countries to succeed without any concessions, but every concession made is sure to be met with new demands and every weakness is sure to be exploited; such is politics. In its declaration the Council has already made a sizable concession by considering the possibility of an important session without the presence of the Commission. May this remain the biggest concession, if not the last. By basing their stand squarely on the Treaties, the Five have shown that they sense where their strength lies and what the best way is to maintain a union of Six.

The election of Mr. Heath as leader of the Conservative Party in Britain was a clear indication that Conservative policy would support uncompromisingly the entry of Britain into the European Community as soon as this became politically possible. This has been borne out by the statement of Conservative aims *Putting Britain Right Ahead* which explains that for commercial, financial, military and political reasons Britain must seek a wider grouping if Britain is to maintain her security and prosperity.

"When the present difficulties and uncertainties in Europe are resolved" continues the statement "we believe it would be right to take the first favourable opportunity to join the Community and to assist others who wish, in the Commonwealth and E.F.T.A., to seek closer association with it." The statement goes on to declare that until this becomes possible a future conservative government will co-operate with other European countries in joint policies in the common interest. It calls attention to the need for technological co-operation on a European scale, not only in the field of aircraft, electronics, telecommunications and space development, but also in developing production and purchasing policies. The statement also welcomes the fact that some Commonwealth countries are seeking to enter into separate agreements with the Community and "thus they are doing for themselves what Britain was trying to do on their behalf in the negotiations in Brussels".

A further pointer towards this unambiguous attitude towards Europe is to be found in the proposals of the Conservatives towards

agriculture. Not only must it be made more efficient to enable the pressure on the balance of payments to be eased, but the emphasis for most commodities must be shifted from support by deficiency payments to support by import control, and this is to be achieved by import levies. There can be little doubt that Britain, at least on the Conservative side, is serious in its intention to form part of a European Community. The statement by Mr. Duncan Sandys on September 25, 1965 before the joint meeting of the European Parliament and the Consultative Assembly of the Council of Europe is equally indicative of this attitude. At this occasion Mr. Sandys laid much emphasis on the special institutional structure of the Communities, which in his view is indispensable for the achievement of their aims.

In the Labour party too, support for this is growing and it is hoped that these views will soon begin to exercise pressures and achieve results in Europe. Many good Europeans on the Continent have in the past been rightly critical of Britain's attitude towards Europe, but they should now recognise that Britain's stance has altered.

In England the first fines have been imposed under the Restrictive Trade Practices Act 1956. Eight companies, the largest of whom was Richard Thomas and Baldwins Ltd., who were members of the Galvanised Tank Manufacturers' Association have been fined a total of £102,000 for contempt of court in breaking their undertaking given to the Restrictive Practices Court in 1959 that they would not enforce or give effect to the restrictions in the price-fixing agreement which the Court declared to be contrary to the public interest, or to make any other agreement or arrangement to the like effect.

The original agreement between the members of the Association was an agreement which fixed the prices, discounts and other terms of sale, for galvanised cisterns and hot water tanks. This agreement was registered under the Act and the members of the Association did not seek to justify its terms when the agreement came up for consideration by the Court. It was accordingly declared to be against the public interest, and an undertaking, which has the same technical effect as an injunction, on the above terms was accepted by the Court.

Prior to the Court proceedings the members of the Association had concluded a "notification agreement" (which is not subject to the Act) whereby the parties agreed to notify to each other any increases in prices within two days of their being made. In fact however the parties had gone beyond the terms of this new agreement and had notified each other of any *intended* increases in prices in advance. This gave rise to the suspicion that subsequent general price increases were the result of an illegal arrangement between the members of the Association. The particular matter dealt with by the Court however concerned a

more positive arrangement in 1961 whereby a price differential of 5 per cent between firms in the North and firms in the South was agreed upon. This arrangement was made during a trade recession and was necessary in order to protect Northern members from competition from outside the Association. The second admitted breach concerned a general rise in prices of 5 per cent which was agreed upon in 1963. The Court attached considerable significance to the fact that there was an almost complete absence of any documents, minutes, memoranda or correspondence relating to meetings at which the increases were discussed, and some of the members were not even able to remember the vote which was taken on the point.

There is no doubt that the effectiveness of the Restrictive Practices legislation lies in the last resort in the policing of its provisions, which in turn must depend on the vigilance of the Registrar of Restrictive Trading Agreements. The Court issued a severe warning against any further behaviour of this kind and made it clear that the penalties for future offences would not merely consist in fines on the companies concerned, but might also in appropriate cases result in imprisonment for the individuals responsible.

In an important address delivered to the European Parliament on June 16, 1965, E.E.C. Commissioner Von der Groeben, chief of the Competition Group, formulated some basic views of the Commission in the field of competition. Under the title "Competition Policy as part of Economic Policy", it has now become available in English from the Publication Services of the European Communities in Brussels. Mr. von der Groeben stressed throughout the benefits which have already begun to accrue to industry and the Community peoples as a whole, as national economic and legal frontiers progressively disintegrate. Recognizing the advantages of large scale units of production for overall industrial growth and for strengthening the position of Community enterprises vis-à-vis the outer world, the Commission has pursued a threepronged policy. In addition to removal of distortions of competition related to the different national tax, company law, subsidy and state enterprise systems, the Commission will aim in the future especially toward elimination of artificial obstacles to economically desirable mergers. Consequently it will continue to urge the creation of a European form of company, the harmonization of shareholder and creditor protection and bankruptcy law, and the facilitation of mutual recognition of companies and trans-national mergers. Secondly, it seeks to equalize the conditions under which medium and small firms compete with the comparative giants by encouraging cooperation and merger. Thirdly, the Commission will seek to maintain workable competition, "competition that is effective in practice",

in the oligopoly market setting. Article 85 provides no help with regard to controlling undesirable mergers; Article 86 may in certain conditions provide the answer.

The scope of the latter provision has so far been rather neglected in legal literature. We therefore welcome the contribution of Prof. Samkalden and Mr. Druker at pp. 158 et seq. of this issue in which the most crucial legal problems posed by Article 86 are discussed on a comparative basis.