

EDITORIAL COMMENTS

It is widely believed that around the time of the British election a decision of a fundamental nature was taken by the Labour party leaders in respect of their desire to enter the European Community. The appointment of Mr. George Brown and Mr. George Thomson by Mr. Wilson to look after European affairs has given general satisfaction. The sympathies of these two men as dedicated Europeans are well known, and their presence indicates that no favourable opportunity for entry into the Community will be missed.

The Labour party manifesto for the election stated that the Labour government would be prepared to enter the Common Market provided that essential British and Commonwealth interests are safeguarded. This is the classic position of the Labour party, which it has always adopted. That the party did not envisage any immediate opportunity for going into Europe was perhaps borne out by the following statement in the manifesto:

"Labour believes that close contact with Europe—joint industrial ventures, scientific co-operation, political and cultural links—can produce among the 'Six' that understanding of Britain's position which is necessary to a wider European unity".

Although the Foreign Secretary Mr. Michael Stewart had indicated last January that the British government were edging closer to the Community, and that the only really outstanding question was agriculture, Mr. Wilson seemed to give this a smart turn-down in his statement of March 18, in Bristol. He repeated that given the right conditions it should be possible to join the E.E.C. as an economic community, "but we reject any idea of supranational control over Britain's foreign and defence policies. We are in Europe, but our power and influence are not, and must never be, confined to Europe. We shall be ready for contacts, for informal discussions through the proper channels, for any probings that might be necessary to assess the kind of terms on which Britain might join. Given a fair wind we will negotiate our way into the Common Market, head held high, not crawling. And we shall go in if the conditions are right." Mr. Wilson further insisted that Britain must be free to go on buying food and raw materials in the cheapest market provided by the Commonwealth countries and not have this wrecked by levies.

During the debate on the Address, when the Labour government was expounding its policy for the next session of Parliament, Mr. Michael Stewart, the foreign secretary, made a considered statement on Britain and the Community, when he said (on April 26):

"We are ready and willing to enter the European Economic Community, provided that there is the safeguard of essential British and Commonwealth interests and mindful of our obligations to our partners in E.F.T.A.

EDITORIAL COMMENTS

I want to carry this a little further. We recognise—I think that everyone now recognises—the very considerable advantages that would be open to this country if we can get into the European Economic Community. I think it is true that there is a wider realisation of this than there used to be.

“Therefore, the question today is not so much whether we ought to try to join, but whether it is possible to negotiate the kind of terms which would safeguard the essential interests to which I referred. As to that process of safeguarding, the House will remember that it took at least two years to hammer out the Treaty of Rome itself and that, in that process, the nations that fashioned that Treaty were naturally very mindful of their own essential interests. We would not ask or expect that the whole process should be begun again from scratch, *nor do we question the institutions set up by the Treaty*, (italics added) but it is essential that, within the framework of those institutions, provision should be made for the safeguarding of our essential interests.

“This will mean changes in the working rules of the European Economic Community. When I say that, I am not saying that Britain is trying to enter the Common Market without accepting any of the obligations. But I am saying that if Britain became a member of the European Economic Community, we, with our world-wide trading position would add very considerably to the advantages which members of the Community now enjoy. We should, in fact, enrich the Community considerably, just as membership of the Community would bring advantages to us. . .

“If the Community were to be expanded by the addition to it of this country, it is clear that there would have to be some adjustments in our practices. There would also have to be some adjustments to some of the working rules of the Community. The process of adjustment would have to be carried out on both sides and it would not be wise to enter into negotiations unless that were clearly understood on both sides.

“The reason that it is sensible to urge this process of adjustment on both sides is that there are advantages on both sides. There would be advantages to us in membership of the Community and there would certainly be advantages to the Community if it were enlarged by British membership. There would also be a general advantage to mankind if the Community became wider in this fashion.”

The Prime Minister was later asked in the House of Commons how recent statements of ministers could be reconciled with his own unpromising speech at Bristol, to which Mr. Wilson replied (on May 10): “There is no incompatibility between any of these statements.” When pressed on the subject of agriculture, he stated: “What I said in my speech at Bristol was that the agricultural policy would mean a levy of 65 or 70 per cent on our imports of grain—one of the few items for which we have the figures at the moment—from the Commonwealth. It is certainly the view of the government that this is not an acceptable position for us. If

EDITORIAL COMMENTS

the agricultural policy were altered in some way to make it more acceptable, our approach would be very different."

Thus it is clear that the dialogue between Britain and the Six on the terms of entry into the Community is proceeding in earnest, which is as much as can be expected as long as General De Gaulle does not make his position clear. There may be difficulties ahead, but it is no part of British policy to seek to emasculate the institutions of the Community and negotiations may proceed on the basis that these remain intact.

In his statement before the European Parliament on June 29, 1966, introducing the ninth general report of the E.E.C.-Commission, President Hallstein stated that the most important event of the past period had been the constitutional crisis which nearly brought the political development of the Community to a stand-still. Quite significantly the report commences with a lengthy chronological review of the period between July 1965 and February 1966—at which time a compromise solution had been reached by the Six at Luxembourg. One can only fully appreciate this review when bearing in mind the widely differing viewpoints on the institutional framework of the Treaty which divided France from the other Five already prior to July 1965. It is far too early to draw definitive political or institutional conclusions from the crisis. But in any case it has not prevented the Community from continuing to survive. This fact is clearly demonstrated by the substantial progress the Community has made towards its objectives in a number of areas during the past year. During this year the transition from the second to the third stage of the transitional period took place.

In this connection the importance of the recent Council decisions of May 10 and 11 cannot be too easily overestimated, as the Commission has rightly pointed out. In the first place the realisation of the customs union for industrial products has been fixed as of July 1, 1968, i.e. one and a half years before the original time schedule of the Treaty. Free trade for nearly all agricultural products should be achieved by that same date. From now on European industries, agriculture and commerce can take into account a large potential market. Secondly an agreement has been reached on the financing of the common agricultural policy until the end of the transitional period. It may be recalled that this was the technical breaking point on which the crisis was set off. Finally the Council fixed in a precise action programme the objectives to be achieved in the commercial, social and fiscal fields to ensure a harmonious development of the Community. Of course these decisions are not yet complete: the Council has still to reach an agreement on the Common price level of a number of important agricultural products and on an additional mandate for the Kennedy-round negotiations. Only after this has been achieved it can be said that the customs union has entered its final stage.

Apart from the progress towards the customs union the Community has

EDITORIAL COMMENTS

made hadway in a number of other areas. A draft for a first medium-terms economic policy programme for the period 1966-1970 was submitted to the Council. In June 1965 the Council also reached agreement on the principles of a common transport policy. The Commission has now drafted proposals on the basis of these principles. The preparatory groundwork has also been laid for the harmonisation of the turnover tax system. It is expected that the Council can act shortly in this matter. Furthermore the Commission has made known its position on company mergers and the formation of European Companies. On the other hand very little progress has been made on a common commercial policy, especially when one takes into account the rigid time-schedule of the Treaty. Similarly the Commission notes that the harmonisation of customs legislation is not running parallel to the present state of customs disarmament. Political will has to be displayed by the governments to reach a solution. In the field of establishment and free supply of services the time-limits set in the general programmes could not be kept, but the present rate of advance is satisfactory. As far as the free movement of capital is concerned, a real European capital market does not exist.

The Commission is not very outspoken in its views on the general political and institutional developments of the Community. It does point out, however, that all institutions continued to function even during the crisis. The Commission indicates as its continuing task to press for the full execution of the Treaty, even though it shares the opinion of the ministers of the Six that the existing differences over majority voting do not prevent the pursuit of the activities of the Community. Although only implicitly this view seems to indicate that the Commission evaluates the Luxembourg accord as a factual agreement which does not have any legal significance. As if to compensate for the *political* character of the Luxembourg agreement, in one of the last chapters on the functioning of the institutions, the Commission has inserted a separate section on the characteristic mechanism of the Community *legal* order which makes for interesting reading. In it are also summarised the key questions and their solutions which have so far occupied the legal service of the Executives.

On June 3, 1966, the British government was embarrassed by a leak in the press which suggested that she was about to withdraw from E.L.D.O., the European Space Vehicle Launcher Development Organisation. This prompted a statement from the Foreign Office which referred to "serious doubts" about whether or not the government should continue to participate in the E.L.D.O. programme. These doubts were centred on financial, technical and economic assessments. In consequence the government did not propose to continue its participation in the activities of the Organisation, and it had so informed its partners.

This news caused alarm and dismay among the British public, and in

the rest of Europe. The British government, it seemed, was proposing to withdraw from one of the few constructive European organisations to which it belonged. In so doing it was indicating a desire to withdraw from other European commitments and this was regarded as two steps backward after its initial step earlier this year towards Europe.

There is no doubt that the Organisation is in trouble, and the British government may well be right in its views on financial, technical and economic grounds. The way in which the British government acted, however, was a considerable shock to its other Treaty partners in the organisation, consisting principally of the Six, and appeared to be a demonstration that Britain did not seem able to learn how to behave as a good European. In the result Britain has stayed in, and a more acceptable sharing of the financial burden has been agreed upon. Public attention is now focussed on E.L.D.O. and the other European organisations for space technology, namely, E.S.R.O., the European Space Research Organisation, and C.E.T.S., the European Conference on Satellite Communications. The urgent need is for a planning body which is capable of decision-making in this field on a long-term basis, and in our view this will only be effective when there is established an executive body, with real powers, formulating plans in the common European interest. It is to be hoped that the governments will recognise the need for this at their next meeting in July. In the longer term the problems raised by science and advanced technology, with the rapid escalation of costs of research and development, present a challenge which cannot be avoided if Europe is to have an independent future.

During the last few years it has become more and more evident that the law of the European Communities is getting solidly entrenched in the legal orders of the member States. National organs participate in the law-making process of the Communities by virtue of legislative and administrative acts implemented pursuant to Community measures. Pronouncements by and before national parliaments are of importance for the course of the integration process. National judges render decisions involving points of Community law whether in the field of agriculture, social security or anti-trust law.

The national implementation, application and interpretation of Community law has thus become an important factor for those who wish to remain informed about the development of a real "European law". It is with these thoughts in mind that the Editors are glad to announce that a number of qualified experts have been found ready to report regularly in this review on current developments concerning Community law in their respective countries. It is hoped that the knowledge of this "cross-frontier" application will contribute to a better insight in and solution of the numerous problems which still hamper a correct application of the new law. Dr. Louis Suetens, associate professor at Louvain University, has already contrib-

EDITORIAL COMMENTS

uted information on Belgian law in previous issues. Professors Tallon and Kovar of the University of Nancy will report on the application of Community Law in France. Their first chronicle appears in the present issue. Mr. Klaus Hopt, associate of the Institut für europäisches und internationales Wirtschaftsrecht of Munich University, will report on developments in Germany. His first contribution can be found in the Case Law Section. Mr. A. Pappalardo has been found willing to report on Italian law and practice. Finally the Juridical Institute of the University of Rotterdam, directed by Professor Pieter Sanders will, as of this issue, report regularly on European developments in the field of company law.

CORRIGENDUM

In the article by Professor H.F. van Panhuys in the issue of March 1966 the first line of the footnotes on p. 427 should be read as follows:

14. *Cf.* too Hamel, Sociaal Economische Wetgeving (S.E.W.), No. 12, 1964, p.