

EDITORIAL COMMENTS

Last Summer saw the launching in Britain of the Campaign for a European Political Community. Under the vigorous leadership of Lord Gladwyn a manifesto has been circulated to members of Parliament and the leaders of opinion in other fields. It has already been signed by 71 Labour members, 71 Conservative members, and 9 Liberals (excluding Ministers and members of the opposition shadow cabinet, who do not sign).

The significance of this manifesto is that it calls upon Britain to define her policy towards the Community and to announce her intention to seek full membership under the Treaty of Rome. But it does not stop there; the declaration states that economic co-operation is not enough, and the need is for decisive political action. Britain's future development cannot be influenced from the sidelines. Not only should the objective of a new approach to the E.E.C. be to secure a speedy conclusion of negotiations on the basis of Britain's determination to fulfil the obligations of the Treaty, but

"It should indeed be made crystal clear that the Community which Britain would wish to join is one in which economic decisions in carefully defined areas are taken by a Council of Ministers by qualified majority voting on the proposals of an independent Commission, *similar techniques being gradually adopted in the political sphere as well*". (emphasis added)

The manifesto further declares that Britain's long and unbroken parliamentary and legal tradition would also contribute to the system of democratic control, supported by a strengthened European Parliament and upheld by the European Court. It further calls for a united Western Europe within the framework of the Atlantic Alliance that could establish close relations with Eastern Europe and effectively support the developing world.

Here is a clear and unmistakable call for a united Europa on supra-national lines. Signatures to the manifesto are still coming in, but it has already achieved an impressive measure of support from all parties in the British Parliament. Not only is support for a political community growing, but there has been a marked falling off in active opposition to entry into the Common Market. Those who in the past have been vocal and active in their opposition, now stand aside and merely counsel deliberation and caution. A recent poll has indicated that 68 per cent of the British electorate would be in favour of entry into the Common Market.

This shift of opinion has found a clear expression in the recent "declaration of intent" made by the British government.¹ It indicated that there is clearly a majority in the Cabinet believing that British membership is desirable, with a growing feeling that not only will the economic advantages be immense, but that membership is inevitable. The Prime Minister however is hardly the man to court a second rebuff and no form-

1. The Editorial Comments were already being printed, before the declaration was made, so that only minor changes could be made.

al application is therefore likely until it is *certain* that it will be accepted favourably by the Six. In this respect the outcome of his proposed visit to their respective capitals—especially Paris—in February 1967 may prove decisive. On the other hand the present declaration that the basic rules of the Common Market are being accepted by Britain has two major advantages. In the first place it provides Britain a clear cut aim to work for and secondly—at the present time even more important—it strengthens enormously the position of those in the Community who have for years expressed their desire to bring Britain in.

Stirrings have also made themselves felt in Denmark on the subject of European unity. Last September the Danish Prime Minister Mr. Krag let it be known that he would be in favour of a joint application by the four Nordic countries alone to join the Community, without waiting for Mr. Wilson. Force was added to this proposal by the promotion of Mr. Gyg Dahlgaard, who had been ambassador to the Community in Brussels, to become Danish Minister of Trade. Mr. Dahlgaard is an economic expert with no party ties, and he is now in charge both of Danish interests in E.F.T.A. and of negotiations with the Six.

On taking office, Mr. Dahlgaard declared that the initiative for British membership of the Common Market should come from Britain. He added, however, that there was a limit to the time that the Danes were prepared to wait for this: "We are prepared to give Mr. Wilson two years to decide if he really wants to join the Common Market and come out with a clear declaration. One year has now passed, but we cannot wait for ever."

Although there were some grounds for thinking that this lead might find active support in Sweden, in fact it did not do so. Mr. Gunnar Lange, the Swedish Trade Minister said specifically in Strasbourg at the last meeting of the E.F.T.A. parliamentarians that Sweden rejected any thought of entering the Community without Britain. This attitude was also adopted by the Norwegians, who in any case stand closest in this matter to the British.

The fact that the Danish move comes at a time when by the end of 1966 the Free Trade Area will become a reality is symptomatic of the *malaise* which is generally felt as a result of the division of Europe. The Danes share the greater part of their foreign trade equally between Britain and Western Germany, and suffer greatly through being outside the Common Outer Tariff of the Community. There were also indications that Sweden might be prepared to abandon to some degree its traditional position of neutrality for the advantages to be gained by joining the Six. Austria has already taken the step of negotiating separately with Brussels. All this indicates the great harm that is being caused by the continued fragmentation of the European economy.

The agreement reached by the Council of Ministers of the Six on July 24, 1966 for common market organisations for sugar, oil and fats, thereby

creating a full common market for agricultural products within two years, brings to the forefront again the different systems of agricultural support in operation in Britain and the E.E.C.

Although farmers in Britain provide about two-thirds of those food requirements which can be produced in temperate climates and about one-half of the country's total needs, this still leaves Britain as the world's largest market for foodstuffs. Most significant in the food import bill are wheat and flour, sugar, bacon, butter, meat and fruit and vegetables.

Between one half and one-third of the Government's financial support for agriculture is in the form of direct production grants, designed to raise farm productivity and to encourage certain types of production. Next to these grants there exists a system of price guarantees. The form of price guarantee most generally used is the deficiency payment, which means that the government makes payments to producers related to the differences between the average market prices realised and the guaranteed price, based on a specific quantity of produce marketed annually. This method enables the government to avoid direct intervention in the market and allows the ordinary channels of trade, both domestic and imported, to flow freely. If production rises above the desired level, the average support per unit of production is reduced. In this way production is guided and the cost of support is limited. In order to ensure that the support is not undermined by excessively low market prices, since 1964 minimum import prices for cereals have been applied.

In the European Community the agricultural support is organised quite differently. Before common market organisations were established, several methods of support were used, but the system of deficiency payments has not been prominent among them. In many cases the system used has been the fixing of internal prices with restriction or prohibition on imports. The principal features of the common agricultural policy are that trade in farm products between member countries is to be freed from restrictions and that the prices of foodstuffs produced within the Community are normally to be maintained by levies on imports from outside sources and by market support and export subsidies financed jointly by the member States. These arrangements are to be fully operative from July 1968, by which date agreed common prices are to be introduced for most of the principal products. The fund from which the cost of market support and export subsidies is to be met—the Agricultural Guidance and Guarantee Fund—is to be financed in the period to December 1969 in two ways. Part of the cost will be met by member-States handing over to the Fund 90 per cent of the proceeds of levies charged on imported foodstuffs and the remainder will be met by contributions on a fixed percentage basis from the budget of member-States. In addition to connecting the cost of market support and export subsidies, the Fund will also help to finance expenditure on the reform of farm structure, production and marketing in the Community. These differences between the E.E.C. and British systems of agricultural support largely reflect the

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differing roles of agriculture in the respective economies and they have ramifications far further than domestic agriculture. The British government has indicated that adoption by Britain of the E.E.C. common agricultural policy would create problems in four main areas, for which solutions will have to be found. In the first place British producers would encounter changes in the profitability of the different commodities, since producer prices for most products tend to be higher in the Community than in Britain. In particular the price for cereals would be highly increased, which would have its effects on the cost of feeding stuffs to the livestock producers and a reduced profitability of such products as pigs, poultry, eggs and milk. Secondly, the preference that would have to be given to Community products over those from the outside would affect Britain's trade with Commonwealth and other overseas suppliers. Thirdly, there would be an effect on the balance of payments. As main importer of foodstuffs Britain would have to pay higher prices for imports from the Community and would be required to make a substantial contribution to the Agricultural Guidance and Guarantee Fund. Finally, there is the problem of higher retail prices in the cost of food in Britain.

None of these problems are unsurmountable. Their existence does indicate, however, that hard negotiations are required before they are solved. It is very unlikely that the Six will change substantially their agricultural policies, but some adaptations may be feasible to meet Britain's wishes.

The recent cartel decisions of the Court of Justice in the cases of LTM vs MBU, Italy vs. E.E.C. Council and Commission and in Grundig-Consten are reported in the Case Law Section at p. 197 and annotated by Dr. Deringer and Professor Mashaw. They end a period of increasing uncertainty during which business gradually began to lose its confidence in the application of the E.E.C. rules for competition, national courts were rendering conflicting decisions and the E.E.C. Commission could not engage itself in new fields of action, while a Damoclean sword was pending above its policy. A new period can now begin in which the Commission can concentrate on serious restrictions of (horizontal) competition, as soon as its hands are freed from the heavy burden of thousands of exclusive dealing agreements. The latest figure is 32,000, of which 12,000 would fall under group exemptions and 20,000 could be exempted after adaptation. The Commission expects that its first regulation—the draft of which was published towards the end of August—exempting certain groups of such agreements will enter into force by the spring of 1967.

Not only because of these effects the Court decisions are most opportune. They also indicate the general cartel philosophy of the Court, which is aimed in the first place at a prevention from the *cloisonnement du marché*. Naturally a number of questions of interpretations have not been resolved. In particular the national courts will be presented with difficulties where

they have to give economic evaluations in border line cases. But it is more important to note that the Court has succeeded in laying down a number of principles which can serve as guide-lines for the business world at large. In the *Revue du Marché Commun* of last March 1966 an interesting article was published concerning the nomination of members of European Parliaments by national Parliaments.

The recent controversy over the selection of Italian delegates to the Parliament and the stir caused in France by the Strasbourg debates concerning the crisis of the Communities inspired the author, Elena Bubba, Director of the European Parliaments Secretariat, to inquire into the question of the systems of representation in the European Assemblies.

The Hague Congress of May 1948 and the European Movement, that was born there, advanced as their principal concrete proposition the establishment of a European Assembly. In a fervour that was fed by memories of the *serment du Jeu de Paume*, it was expected that once the representation of the peoples found themselves together, their moral authority would be equal to the antiquated national barriers. The initiative of the French and Belgian Governments in the summer of the same year took up this idea: an assembly, whose members should be elected by the national parliaments, would freely deliberate and vote, without any governmental instructions. But the procedure of election and the liberty of voting were the object of long drawn negotiations with the British Labour Government, that rejected both points, which were in the mind of their authors closely connected. The British resistance based itself on general political considerations (Britons do not share in the inspiring memories of the French revolution, that so strongly stir some Continental meetings) but in the beginning of 1949 the British delegates found the weak point in the Franco-Belgian ideological system by invoking the danger that the gathering of a European political platform might easily become a European platform for the Continental communities. At that time the objection was not without some pertinence and so the Franco-Belgian delegates tried to meet it by proposing an election-procedure that would have excluded any representatives of the extreme left. It seems even to have been suggested that the members of the assembly-to-be should take an oath by which they oblige themselves to respect "*une charte conforme à la conception occidentale de la démocratie*". For the student of the philosophy of democracy it is a pity that we have missed the many consequent elucidations that would have resulted from such a requirement!

The statute of the Council of Europe, that was signed on May 1949, left each government free in the choice of the procedure, by which the members of the Consultative Assembly would be named. By different procedures all governments named members that in fact were designated by the national Parliaments. In all countries, with the exception of France and Italy, delegations were composed on the basis of a proportional representation of the various parliamentary parties. In those countries the reduced number of

delegates to be elected ensured that on such a basis the small communist parties would be insufficient to claim a seat in the Consultative Assembly. In France and Italy matters were different. The ratification acts in both these countries provided that delegates were to be designated by majority vote. Communists revolted against these provisions and particularly in Italy, where the ratification debates were practically completely taken up by this question, Signor Togliatti used all his gifts to raise legal and political objections against the exclusion of his party and to contest the representative character of the proposed Assembly.

Communist parties everywhere joined in the battle and opposed the European idea. But the French and Italian parliaments finally designated their representatives by majority vote, excluding the Communists and, in Italy, the Socialists party led by Signor Nenni. As somebody justified this proceeding: "When composing the fire-brigade you do not include incendiaries."

Meanwhile the Consultative Assembly was more especially preoccupied by the possibility that governments might abuse their power of designating delegates in ways that would harm their liberty of voting and it obtained in fact a revision of the Treaty which made it possible for national parliaments to designate their representatives themselves. This was taken over in drafting the E.C.S.C. Treaty, that attributed the election of members to the national parliaments directly, those parliaments being free in their choice of the mode of election to adopt. The same happened in the two Treaties of Rome, establishing the Common Market and Euratom.

The parliaments of the six member States maintained the adopted methods, in four of them the designation was made on a proportional basis, which meant for the Benelux countries that Communist parties could not qualify for being too small, and for Germany that the Communists were left out as having no existence in law. In France a special act upheld the majority vote, after the left had unsuccessfully tried to have the principle of proportionality adopted in the ratification act (one of the consequences being that this act was only adopted by bare majority, a two-thirds majority, that would have been necessary to give the Treaty a higher, constitutional, status, being unobtainable under these circumstances. The consequences of this circumstance have already appeared in the opinions of the Italian Constitutional Court concerning the supremacy of Community Law over National Law).

This situation has resulted in certain inconveniences. As the Italian extreme left takes up the polemical battle on the occasion of every, even incidental, renewal or replacement of a representative, the Italian delegation in the European Parliament has always been renewed with a considerable time-lag and seats that fell vacant in mid-term have often not been filled at all. Sometimes Italian members that had already lost their national mandate, continued for a long time as members of the European Parliament by virtue of the rule that a member sits until the designation of his successor. At

present the sitting Italian members of the European Parliament were designated in 1959, after the parliamentary elections of 1958 and there has been no renewal yet after the elections of 1963. Of 36 members, 4 are now deceased, 8 lost their seat in the 1963 elections and 5 are members of the Italian Government. This situation does of course not strengthen the hand of Signor Fanfani, when he insists on an increase of the European Assembly's powers.

At various times Italian statesmen have tried to find a way out of this situation and one can imagine that especially after the inclusion of the Nenni-socialists in the government, it became untenable. But the socialists themselves did not want to be accepted as a matter of grace but insisted on the adoption of proportional representation as they had always done.

But the opposition to initiatives in this direction readily denounced them as a further sliding to the left and in this way the question became politically dangerous and at a certain point threatened the Government's existence. It has not yet been solved.

Another disquieting aspect was revealed when after the French elections of 1962 the U.N.R.-U.D.T. members of the European Parliament increased their number from 9 to 15 by reason of their proportional strength in the French Parliament.

This strengthening brought them to seek recognition as a parliamentary group, but the rules of the European Parliament provide a minimum number of 17 to be admitted as a separate group and the consequent privileges. Of course the number 17 has nothing sacred in itself, but various people thought it undesirable that a group should be exclusively composed by delegates from only country.

Nevertheless the attention of Parliament was drawn to the circumstance, that on the basis of the French mode of designation, the majority in Paris could quite easily change the hitherto accepted rule of proportionality (always with exclusion of the communists) and on the first occasion replace two non-U.N.R.-U.D.T. members by their own friends and so obtain the sacred number. One understands that in these circumstances the European Parliament preferred to give in rather than see the representativeness of the French delegates reduced. But unhappily there was more to follow.

The debate, in October 1965, on the crisis of the Communities was exceptionally impassioned and the U.N.R.-U.D.T. group found itself in the unattractive position of becoming the much reproached whipping-boy.

They were particularly sensitive to the trenchant criticisms made of their national government by some of their compatriote-colleagues from the French opposition. At a certain moment an incident occurred and a deputy of the majority, at the same time member of the European Parliament declared, that if such incidents happened again "nous pourrions être amenés à considérer que l'accord tacite que la majorité a respecté, même dans ce qu'il avait d'incomplet, ne saurait constituer une loi intangible, dès lorsque certains de ces bénéficiaires oublient trop aisément qu'ils représentent, dans les as-

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semblées européennes, non seulement leurs amis politiques, mais d'abord et avant tout, notre Assemblée et leur pays". And another one in an article expressed his bitterness about "des français que nous avons nous-mêmes envoyés à Strasbourg par souci d'une sorte de fair-play que nous regrettons bien aujourd'hui" (quoted in the said article by Signora Bubba).

Here the so fervently defended liberty of voting and deliberating seems to be endangered and the communication between modes of designation and parliamentary freedom becomes apparent.

It is an astonishing thought that such happenings find their first origin in the fears of Ernest Bevin.