

EDITORIAL COMMENTS

A retrospect view

With the present issue, five volumes of the Common Market Law Review have been completed. During these years the successive Editors have endeavoured to provide the most important information concerning the legal evolution of the European Community treaties. The first editorial expressed as the main reason for the setting up of a new journal the fact that the new structures created by these treaties were "more and more occupying the attention of jurists both inside and outside the member States". This statement remains true today. Throughout this period many events have contributed to the present shape of the three Communities. Significant progress to build up a new body of European law has been made in a number of fields, such as by the achievement of the customs union, the creation of common agricultural and competition policies and the harmonisation of the turnover tax systems. In other areas of equal interest the results have been far less striking and even disappointing. Well-known examples are the already long-awaited transport policy and, but for some exceptions, the field of co-ordination and harmonisation of laws in general. But the greatest stagnation exists with respect to the institutional development of the Communities and their relations with third countries. This is in the first place a question of major concern to European politicians, but it cannot leave the legal profession untouched. The political disagreement between the member States as to the future structure of the Communities has been the cause of the lack of balance in the decision-making process. A number of conventions have developed which continue to stress the preponderance of the interests of the individual member States at the cost of the Community as a whole. As a result, the European Commission has not been able to exercise in full its independent role and a more effective participation of the European Parliament is still an unfulfilled promise. All this shows that the bodies created are far from generally accepted. On the other hand the "grands arrêts" of the Court of Justice have not failed to exercise considerable influence on the attitudes of national legal institutions. Nevertheless much remains to be done to achieve a fully integrated legal structure.

In this context the Common Market Law Review has tried to fulfill the specific function of serving as a channel of communication between lawyers trained in different legal systems. The Editors believe that this role continues to be of particular importance especially as long as the Communities have their present limited membership.

Editorial policy

As of the sixth volume a number of changes are envisaged. In consultation with the Publishers it has been decided that each volume of the

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Review will henceforth coincide with a full calendar year, in order to facilitate references to the Review. To bridge the gap between this issue and the year 1969, the next issue—first issue of the sixth volume—will appear in November 1968. It will contain current material running from March to August inclusive. The presentation of the Review will remain basically as before. To the leading articles a section containing shorter notes will be added in which particular legal questions—usually of topical importance—can be discussed within a few pages. This new section will also provide room for discussion on contributions which have appeared in this journal or elsewhere. A first sample is given by the notes by Messrs. Mok and Alexander in this issue. The structure of the survey of literature will be modified in such a way that it will contain, quarterly, a list of articles that appeared in periodicals according to subject-matter and a short indication of their contents. Moreover, each issue will contain a more elaborate critical review of literature on a specific subject. The legislation section will, in the future, not only enumerate new legislation and other relevant material of the Communities, but it will also add some critical comment. The same applies to the legislation of the member States in relation to Community law. The Editors will be assisted in their task by national correspondents.

The new Secretary to the Editors, Mr. R. H. Lauwaars, fellow of the Europa Instituut of the University of Leyden, will receive general editorial assistance from Mrs. A. G. van der Gaag-Mansholt. In this way the Editors hope to be able to discharge the new tasks which they feel are necessary for the continued careful analysis of the law of the European Communities.

The new administration of the Commission

More than nine months after the new European Commission assumed its functions, it has decided upon the definitive organisation of its services in a single administration. During that period the old administration of the former High Authority and European Commissions operated under the political leadership of the unified executive. Although something can be said for not altering the brains and the body of a new being at the same time, and though the Commission has respected the time-limit of one year under Annex I of the Merger Treaty, it must be admitted that the present reorganisation has not been performed in an altogether satisfactory manner and has caused great unrest amongst a considerable portion of the staff. At the time it took office the new Commission could not have a fixed idea of the organisation of its services. Collaboration between the High Authority and the two Commissions had provided a general survey of problems and of possible solutions with regard to the merger of their services. But the Commission clearly under-

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estimated the situation as it proceeded to the appointment of the new Directors-general without a clear picture of the way in which the different fields of activity should be divided amongst these directorates and without knowledge of the number of high staff members that the Council would be willing to include in a new organigram. After that, a decision on this latter point was taken and special rules were set up in order to assure to resigning officials a reasonable financial position. The Commission was able to fix definitely the new structure of its administration and to nominate formally the Directors-general, Directors and Chiefs of Division fitting in that structure. The total number of employees for the financial year 1968 was limited to 4882, implying a reduction of less than 5% of the number of employees of the High Authority and the two Communities together. However, more than 500 employees expressed their wish to make use of the special rules for released personnel; this fact gives proof of a rather wide-spread discontent with working conditions of the staff. Taking all these circumstances into account, the result of the reorganisation could have been worse. Apart from the joint services (Legal, Statistical) and a few specific Euratom offices, such as the Joint Nuclear Research Centre and the Supply Agency, there have been created 19 Directorates-general. This is a fairly high number if compared with the total of 26 for the three executives separately. Partly this has been done in order to achieve a balance in the allotment of work to each commissioner. In addition to existing Directorates-general such as Agriculture, Social Affairs, Transport and Development of Overseas Countries (now called Development Aid) entirely new ones have been created, mainly in the economic and technical fields (Industry, General Research and Technology and Regional Policy). It may be hoped that the creation of a Directorate-general Energy from a variety of composite administrative units will enable the Commission finally to develop a unified conception of a common energy policy with a view to the merger of the Communities as a whole. It is somewhat surprising that the Directorate-general External Relations of the EEC Commission has been divided into two parts: one for external relations in general (association, adherence) and one for foreign trade. A large part of the foreign relations of the Communities concern trade relations. It should be welcomed that all questions concerning harmonisation of commercial and economic legislation have been brought together under the Directorate-general Internal Market. After a somewhat unhappy start the new administration of the Commission can get to work: there is certainly enough scope for action.

Customs Union

July 1, 1968, "Common Tariff Day" marks an important turning-point in the development and progress of the Community. The achievement, eighteen months ahead of the planned schedule, of this first stage towards econom-

ic unification should give cause for satisfaction but not for complacency. Nearly all customs duties on trade between the Six are now removed, and, of possibly greater significance, a single external customs tariff now applies to all imports from outside the Community. In addition, the first part of the tariff reductions negotiated at Geneva last year as part of the "Kennedy Round" agreement will now be implemented; the new joint tariff will thus be generally lower than was assumed until recently. Mr. Rey, when addressing the European Parliament in Strasbourg on May 15, described the establishment of the customs union as having great economic, psychological and political significance. This is undoubtedly true, yet it should not be forgotten that many ensuing problems, notably those concerning the collection and distribution of revenue from the common external tariff, remain unresolved. The abolition of customs duties does not bring in its wake the abolition of all frontier controls; a formidable number of checks and controls will remain at the frontiers until a common commercial policy is achieved, tax harmonisation may have brought about common rates, mutual recognition of products inspection and common technical standards, etc., are accepted. How far will the present achievement, encouraging as it undoubtedly is, serve to stimulate member Governments on the long path towards the far greater degree of economic integration envisaged in the Treaty of Rome? How far will the customs union mark a genuine point of departure for the Community? The Commission at least has indicated very clearly its own attitude in a statement issued to mark the present milestone:

"Now that the customs union is complete, work on the achievement of economic union must be continued. This means that the common economic policies designed to transform the customs territory into an economically organised continent must be built up or completed. We must put the finishing touches to the common agricultural policy, much of which is already in place, and finish work on policies for harmonisation or unification in the commercial, fiscal, social, transport, and other fields, as provided for in the Treaties . . ."

The events in France and their implications for the Common Market

The students' riots in Paris and elsewhere, the subsequent near to general strikes throughout France, the general elections and their outcome have kept a great many people in suspense. The significance of these events for the future developments in Europe cannot easily be measured. It seemed that the Gaullist regime was shaken to its roots, but it emerged from the crisis, in as far as appearances go, firmer established than ever before. Therefore it can hardly be expected that the French attitude as far as Community questions are concerned will be changed in a fundamental way. Foreign Minister Debré hastened to stress this point in his first press conference after having changed hats with Couve de Murville. The strike and its consequences for the French wage level have, however, brought about serious economic difficulties and the French

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Government, though—as it said—not going behind the decision on the customs union's entry into operation as from the first of July, announced special measures to face them. These measures, including quantitative restrictions on importation of several products, subsidies for exports, also within the Common Market, and restrictions in the field of capital movements, were taken unilaterally and, with general reference to the provisions of the Treaty of Rome, communicated to the Commission and the governments of the other member States. Evidently the French Government preferred not to fix its position as to what provisions were meant. In doing so, it demonstrated once again its tactical abilities: leaving the choice to the other party that was not in a position to deny *every* possibility for such measures.

The Commission chose to follow the prescriptions of Article 108 EEC: by that way it could take—though somewhat late—the initiative, making recommendations to France and, with regard to the so-called mutual assistance, to the other member States as well, and deciding upon the safeguard measures of France, leaving to the Council the disagreeable task to amend the decision. Seen in this context, the unilateral action of France can be considered as having been taken in conformity with Article 109. Some member States seem to have envisaged to bring first a Council decision in terms of para 3 of that Article: “on the basis of an opinion of the Commission and after consulting the monetary committee, the Council, acting by means of a majority vote, may decide that the State concerned shall amend, suspend or abolish, the measures of safeguard (taken provisionally when a sudden crisis in the balance of payments occurs)”. However, the course taken by the Commission excluded that possibility: application of Article 108, paras 2 and 3, rules out the applicability of Article 109, para 3.

On July 19, the Council accepted the proposal of the Commission on mutual assistance; on July 23, the Commission authorised France to take measures of safeguard. According to this decision, some measures taken under Article 109, must be investigated. Probably, France will abide by this decision and there will not be found a qualified majority in the Council to amend it. The relevant decisions are published in O.J. 1968 L 189/13 and L 178/15 respectively.

Some people seem willing to contest even the applicability of Article 108 EEC in this case; they pretend that a country cannot be said to be seriously threatened with difficulties regarding its balance of payments as it can dispose of such considerable gold reserves as is the case with France. It should be noted, however, that Article 108 does not distinguish between countries whose monetary situation is intrinsically strong or feeble.

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As for the measures taken in the field of steel products to which the Coal and Steel Treaty applies, the Commission, after consultation with the Council, has not only authorised subsidies on the base of Article 67, but also import restricting measures on the base of Article 37 ECSC (*vide* O.J. 1968 L 159/4). In the latter case criticisms would be better founded. The difficulties in the steel-industry are undoubtedly the consequence of a variation in wages and in working conditions as is meant in Article 67, para 2, of the Paris Treaty. According to those provisions the Commission, acting as the High Authority, can only authorise France to grant assistance to the affected steel-industry as it actually did. It is far from clear that assistance under that article would not be sufficient to avoid fundamental and persistent disturbances in France's economy as meant in Article 37.

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