

EDITORIAL COMMENTS

The end of the transitional period

Unless extended by an unanimous decision of the Council on a proposal from the Commission, the transitional period, during which the common market should be progressively established, will automatically come to an end on January 1, 1970. According to Article 8, para. 7, the expiry of the transitional period is "the final date for the coming into force of all the rules provided for and for the setting in order of all that is involved in establishing the common market".

In a communication requested by the European Parliament,¹ addressed to that institution as well as to the Council, the Commission has taken stock of the present situation. First it analyses the meaning of the provision cited above: it does not state any condition for the transition to the definitive period but it fixes the consequences of the expiry of the transitional period for the Treaty as a whole. Consequently expiry for some parts of the Treaty and extension of the transitional period for others is not possible. Those rules to which the Treaty or secondary Community legislation expressly refer will come into force by the end of the transitional period. However Article 8, para. 7, does not determine whether those rules are of a self-executing character and therefore can be invoked by private persons, irrespective of action by the institutions or the national legislator or administration; the self-executing character of any provision of Community Law follows only from its content or nature. Some other Treaty rules will no longer be applicable (*e.g.*, Article 226). The force of most provisions, however, will not be affected by the expiry of the transitional period; if, by that time, the approximation under Article 100 of certain national provisions directly affecting the setting up of the common market have not been realized, that does not imply that such an approximation would not be possible in the future. According to Article 8, para. 7, by the end of the transitional period common policies foreseen by the Treaty must be effected to the extent that their realization is a prior condition for the operation of the common market. Consequently the non-fulfilment by institutions or member States of their obligations which, in this respect, should be performed before the end of the transitional period, constitutes a formal Treaty violation which will be subject to Court proceedings pursuant to Article 169 or 170 and 175.

In the second part of its communication, the Commission sums up the material achievements which should form the basis for the transition to the final stage. Here progress varies greatly in the different fields. Of the four freedoms, the realization of the principles of free movement of goods, both industrial and agricultural (the latter mainly in the framework of common market organizations) and of the free movement of workers have gone furthest. On the other hand, serious delays exist with respect to the adaptation of commercial monopolies (*e.g.*, the French

importation of oil); the freedom of establishment and freedom of services and the free movement of capital. The setting up of a common transport policy and of a common commercial policy is far from complete. The co-ordination of economic policies should be realized in such a way that the operation of the common market would be safeguarded. This part of the communication of the Commission provides an impressive survey of all that remains to be done.

Considerable scepticism seem justified as to whether significant progress in all these fields can be obtained before the end of the year. In its memorandum the Commission takes no stand on the question whether it will propose an extension of the transitional period. In January, before the European Parliament, Commission President Jean Rey declared that the Commission was not prepared to do so; such a proposal could easily be used to accommodate the Council's failure to act. More recently, different opinions have been heard, according to which, the Commission might propose an extension unless the Council were able to act on a number of urgent points such as the Barre plan to co-ordinate economic and monetary policies, the common financing of agricultural policy after the end of the transitional period, and the new Mansholt proposals for agricultural structural reforms. Whether this is possible remains very doubtful, however, in the present state of indecision in the EEC. For the time being, the withdrawal of President de Gaulle certainly gives no reason to be more optimistic in this respect. It is too early to predict the outcome of the negotiations which are beginning. The coming months will be decisive. At all events, it would be most unfortunate if an extension of the transitional period were decided upon without any firm commitments being agreed on between the member States.