

EDITORIAL COMMENTS

The British White Paper

The long-awaited British White Paper giving an economic assessment of the likely effects upon her of membership of the Community was published in February. It received a mixed welcome in the British Press and was widely criticized during a two-day debate in the House of Commons at the end of that month. The British Government sought in it to make both a qualitative and quantitative assessment of the effects of membership upon the British economy in three key areas: (i) agriculture and food, (ii) trade and industry, and (iii) capital movements and invisible trade. To attempt such a daunting task in a document of some forty-five pages, which must be readily understandable by the non-expert reader, requires a special kind of courage, as well as an ability to present the economic arguments within the context of the political debate. The authors of the White Paper have concentrated exclusively upon the major economic consequences of membership for Britain alone, and have avoided any examination of the effects of British membership upon Commonwealth and other international trading agreements to which Britain is a party. The White Paper makes no allowance for negotiations on the terms of entry, assumes that the full impact of membership will not be felt until at least the mid-seventies, and focuses attention throughout upon the possible balance of payments costs of entry. The final range within which such costs may be expected to vary is given as £100 million to £1,100 million per annum; this, the document admits, reflects only the measurable *impact* effects and not the unquantifiable *dynamic* effects. It is, of course, far too wide to provide any real basis for judgment. The total effect of the document, which is often speculative in a controversial way, but nearly always determinedly non-committal as to its conclusions, is to present a great deal of evidence in a diffuse and cloudy way. No reasonable person could expect a document of this kind to be precise or concrete in its predictions; one could expect, however, to discern policy directions and objectives. Instead of this, we are given cautiously optimistic generalizations such as that with which the document closes:

“This White Paper demonstrates the need for negotiations to determine the conditions on which the opportunity for entry could be seized. Failure to reach agreement in these negotiations would not necessarily condemn Britain or the European Communities to political or economic sterility. But Europe would have lost another historic opportunity to develop its full economic potentialities in the interests of the welfare and security of its citizens; in that case the world would have lost a contribution to its peace and prosperity that neither Britain nor the countries of the European Communities can make separately”. (*Britain and the European Communities*, Cmnd. 4289, p. 46).

The debate in the House of Commons on February 24 and 25 was not calculated to dispel the widespread disappointment felt with the White Paper. A number of M.P.s, however, tried to present their views on the economic predictions contained in the White Paper in the light of their convictions as to the future political evolution of Europe. The large, and possibly growing, number of M.P.s who are opposed to British entry found much of comfort in the finely balanced short-term economic arguments put forward in the White Paper and were able to discount, as too speculative, many of the long-term economic advantages to which the White Paper, even though hesitantly, adverts. In the end the White Paper will probably have little effect upon the fundamental political decisions; it could, however, have been a useful adjunct to the negotiations if it had been prepared and presented as a reasoned policy statement.

The Budget and the European Parliament

In another marathon session, held from February 5 to 7, 1970, the shadows which had loomed darkly over the agreement on the by now inseparable triangle (financing of the common agricultural policy, "federal" resources for the Community and budgetary powers for the European Parliament) already reached in principle last December, have finally disappeared.

Although approval by the national parliaments has still to be awaited, it is now practically certain that, as of 1975, the Community will have its own "federal" resources, not only for financing agriculture but also for all other expenditures present or future which the Community might decide to place upon its budget. As already stipulated in the December resolution, the European Parliament—and not the Council—will from that time onward, have the final word in deciding upon these expenditures. However, in order to overcome French opposition against the—theoretical—possibility of an unlimited increase by the Parliament, the final compromise contains a phased growth plan to avoid expenditures from growing out of hand. In the future the European Community will establish, after consultation with the Medium Term Economic Policy and the Budgetary Policy Committees, a maximum rate of increase for those expenditures for each year as compared with the previous year. The maximum rate is based upon three criteria: the growth of the Communities' G.N.P., the change in the member States' budgets and the evolution of the cost of living during the running year. This rate is binding upon all institutions of the Community. If the increase in the draft-budget set up by the Council exceeds already one-half of the allowed maximum rate, the European Parliament in its turn may also increase the total budget with a percentage equal to one-half of the same rate. Moreover, under exceptional circumstances a new maximum rate may be fixed whenever the European Parliament, the Council or

the Commission deem that the activities of the Communities require the budget to be established at a higher level than foreseen.

It may be observed that this solution does not deviate too much from that which had been agreed upon earlier, as the Parliament would in any case have adopted similar criteria to those set out above. National budgets as well are in the final analysis determined by the actual possibilities existing in a country in a given year. At the same time, however, the solution indicates the very limited meaning of the budgetary control given to the European Parliament. It is understandable that commentators have described this extension of the parliamentary powers as "little more than nothing". True as this may be, the political effect of the decision should not be ignored. For the first time in many years a real step has been taken to underline the necessity of a European democracy to which until now most European Governments paid little more than lip service. Seen in this perspective the outcome of the hard negotiations should be praised as the first effort to invest the European Parliament with those real powers which national parliaments have gradually given up during the past decade.

But there is still no reason to rejoice. As long as Community legislation and policy making remain ultimately in the hands of the inter-governmental Council of Ministers, budgetary powers alone may easily lead the European Parliament to become more rather than less frustrated. The result reached must therefore be considered as a stimulus to encourage us to press even further for a full participation of the European Parliament in the legislative process of the Community.

The Court of Justice in 1969

It has become customary in recent years that the yearly report of the European Commission on the activities of the Communities contains a separate section on the development of Community Law. The Third General Report since the merger of the executives, which has just appeared, confirms once more the important role of the Court of Justice in this respect in construing "a Community legal order which can be distinguished both from the municipal legal order and the international legal order". Compared with 1968 there was a significant increase in new cases brought before the Court (77 against 33). A total of thirty judgments was rendered in a number of which the Court had to pronounce on delicate questions of a constitutional character. The Court re-emphasized both explicitly (*Walt Wilhelm Case*)¹ and implicitly² the supremacy of Community Law over national law. Again in the *Walt Wilhelm Case* and in the case of the French discount-tariffs³ it con-

¹ See 6 C.M.L.Rev. 1968-69, 488.

² Case 28/68, *Recueil* XV, 125 (*Caisse régionale de sécurité sociale du Nord de la France v. Torrekens*, preliminary ruling on request by French Cour de Cassation).

³ Cases 6/69 and 11/69 (*Commission v. France* and *France v. Commission* respectively). A summary of these cases will appear in the July issue of Volume VII.

firmed its intention to arrive at a clear delimitation between the competences attributed to the Communities and those retained by the member States in the spheres of respectively cartel and monetary policies. In the latter case the Court stipulated expressly, that even though the member States continue to bear the final responsibility for monetary matters, this does not mean that they are entitled to take unilateral measures which are forbidden by the Treaty.

A similar desire to distinguish and separate the powers of municipal courts from those it exercises itself underlies the Court's approach to the procedure of Article 177 of the EEC Treaty concerning preliminary rulings. Its whole case law in this area is based on the concept of co-operation between equal shares of jurisdiction as was illustrated again in 1969 in a number of cases.⁴ Still in the field of constitutional law an important judgment was rendered concerning the question whether fundamental rights, or guaranties of a similar character can bind the institutions of the Communities. One may remember that in Germany in particular the *Bundesverfassungsgericht* has raised this question in connection with the constitutional control of the Treaty provisions.⁵ The Court in Luxembourg has—although unobtrusively—dispelled all doubts by declaring that it has to observe the fundamental human rights as part of the general principles of Community Law which it must apply.⁶

Completing the Common Market

The influence of the Hague summit conference has been so great that several measures taken by the institutions of the EEC on the occasion of the expiry of the transitional period have passed rather unobserved. Some of them are worthy of mention as they emphasize that the Common Market has entered a new period.

From now on, not only quantitative restrictions on imports are prohibited as between member States, but the same applies for all measures having equivalent effect. The Commission has issued two important directives to that end, the first one dealing with provisions imposed by law, regulation and administrative action with regard to the supply of goods to the state, its territorial bodies and other legal persons under public law; the second one aiming at the abolition of any measures in existence which have an equivalent affect to quotas. The former directives (70/32, J.O. 1970, L 13/1) obliges the member States to amend their legislation, for example, in such a way that henceforth imported products in free circulation

⁴ *Inter alia*, Case 23/68, *Recueil* XV, 43 (*Klomp v. Tax inspector*, preliminary ruling on request by Court of Appeal of The Hague); Case 29/68, *Recueil* XV, 165 (*Milch, Fett, Eierkontor v. Hauptzollamt Saarbrücken*, preliminary ruling on request by Finance Court Saarland).

⁵ See Editorial Comments 5 C.M.L.Rev. 1967–68, 243 and Case Law, 5 C.M.L.Rev. 1967–68, 484.

⁶ Case 29/69 (*Stauder v. Stadt Ulm*), to be summarized in the July issue of Volume VII.

will not be excluded from supply and that no discriminatory requirements will be applied to other than national products or their suppliers. In the schedule to the latter directive (70/50, J.O. 1970, L 13/29) the Commission declares definitely that all measures which have an effect equivalent to quotas must be abolished at the end of the transitional period even if directives have not been issued to that end. In this declaration the Commission takes a clear position in the controversial issue as to whether Article 33, para. 7, limits the direct applicability of Article 30 to quotas (*cf.* Rambow, 6 C.M.L.Rev. 442). In the light of this statement, the definition which the Commission has given in Article 2, para. 3, of its directive is of great importance. According to this article it will be forbidden *inter alia* to prescribe minimum or maximum prices for imported goods, to make importation dependent on the deposit of a caution sum and to apply to imported goods other prescriptions as to composition, presentation or packing than those applicable to national products.

The directive does not affect the application of Article 36, which admits restrictions on imports justified on the grounds of *inter alia* public policy, safety or security and of the protection of health. Moreover, measures which form part of trading monopolies or of national marketing organisations in so far as these still exist, are excluded from the directive.

Moreover, the Commission has at last exerted itself to make a number of recommendations to those member States which ought to adjust their trading monopolies (J.O. 1970, L 31). The Federal Republic has only to deal with an alcohol monopoly, a complicated affair because alcohol derived from agricultural products will before long be included in a common market organization, while synthetic alcohol will not. To France and Italy, the Commission had to make a number of recommendations. Those addressed to France concern matches and lighters, potassium, basic slag, powder and explosives, and, last but not least, petroleum and its derivatives. The recommendations to Italy concern matches, cigarette paper, flint and salt. Generally speaking, the recommendations, if carried out, would create a situation which should be considered as satisfactory—in so far as the existence of a national trading monopoly within the common market might be acceptable at all. However, the impact of the recommendation relative to the French petroleum monopoly is very much lessened by the decision of the Commission regarding the application of Article 115 in the field of energy (J.O. 1970, L 14/12). According to that decision member States are authorized until the end of 1971 to exclude most petroleum derivatives from Community treatment, pending the establishment of a common trade policy in this sector.