

EDITORIAL COMMENTS

Negotiations for admission

On June 9, the President of the Council of the Communities signed letters addressed to the Foreign Ministers of the four candidate countries, informing them officially of the Council's decision to open negotiations between the Communities and their countries, and inviting their governments to a first meeting in Luxembourg on June 30. Did this invitation take the British Government by surprise? It was reported that no rooms were reserved for its delegation in advance, so that they were obliged to stay outside the City of Luxembourg! The first working session with the United Kingdom took place three weeks later, and will start with the other candidate countries in the second half of September.

It is difficult to predict how much time the negotiations will take, but one should hope that the parties on both sides will restrict the problems for discussion to the absolute minimum. Most questions regarding the adjustment of existing Community law to the situation of an enlarged Community can be postponed until after the admission of the new member States, and be decided by the new institutions. The Communities will propose that the new Commission shall consist of fourteen members, including at least one national of each member State and no more than two of any one State. As to the Council, the votes of member States with regard to decisions to be taken by a qualified majority should be weighted as follows: France, Germany, Italy and the United Kingdom 10 each, Belgium and the Netherlands 5 each, Denmark, Eire and Norway 3 each and Luxembourg 2. The qualified majority would be fixed at 43. Consequently the big four member States will not be able to impose their will upon all the others; any two of the big four member States cannot be outvoted, and the four new member States may act together as a blocking minority. This voting system seems indeed of a kind that may facilitate a restriction of the problems to be decided during the negotiations—provided that France is willing to forget the notorious Luxembourg resolutions of January 1966, and provided that new member States are granted full voting rights during the transitional period, which is still not quite sure.

In preparation for the negotiations, the Communities have defined their position on a number of points, such as the transitional period and some problems relating to Euratom and coal and steel. The transitional period will be identical for all new members and the same for industry and agriculture; precise obligations on both sides will be defined and a timetable for their implementation drawn up. The period will end automatically, but its length will be open for negotiation. These points are, even so, not the most important ones to be discussed. On more difficult questions (butter, sugar, financial obligations, relations with other EFTA countries) the Communities have preferred to wait for initiatives of the

applicant States, either because it seemed wise to do so, or because otherwise preparation would have taken much more time so that the (unofficial) fixed deadline of June 30 could not have been maintained. It is clear, therefore, that the negotiators of the Communities will have to ask very soon for further guidance as their present mandate neither gives sufficient indications or latitude for the solution of the major problems which will inevitably occur.

It should be pointed out that negotiations will be conducted by the Communities and not, as before, by the member States. The Council will define a common position towards all problems which may arise. The Commission is requested to present proposals for that purpose. The delegation of the Communities will be headed by the acting President of the Council, on ministerial level, and by officials of the State to which the President belongs, on lower levels. These heads of delegation will also act as principal spokesmen of the Communities; however, the Council may decide that members or officials of the Commission shall act as such, notably on questions regarding existing common policies.

These procedural provisions may indeed guarantee a better functioning of the negotiating machinery on the Communities' side than during the former negotiations. It seems doubtful, however, whether they will prove to be sufficient to prevent a recurrence of the curious course of events at that time due to long interruptions and tiresome waiting in draughty corridors. It is therefore of great interest that the Council also declared itself ready to give a mandate to the Commission to explore, together with the delegations of the candidate countries, the possibilities of a solution for certain problems. Provided that the Council is not sparing in giving such mandates, the Commission might very well be able to take a lead in the negotiations, and the frustrating "to and fro" between the negotiation rooms and Community headquarters could be limited to a reasonable proportion. It is quite clear that political intentions, goodwill and courage are far more important to a successful development of the negotiations than procedural conditions. Nevertheless it has been rightly observed that any serious delay will expose both parties much more to the influence of external events which might impede their efforts. *Periculum in mora est!*

The candidate countries

The result of the General Election in the United Kingdom, almost totally unexpected both by individual and computerised expert opinion, has been cautiously welcomed in the "Six". The new Prime Minister, Mr. Heath, is widely regarded as probably the most personally committed "European" of all major British politicians of the past decade. He has appointed Mr. Anthony Barber as Chancellor of the Duchy of Lancaster, who will have responsibility for negotiations with the Community. Mr. Barber, as the manager of the successful party machine, must be well aware that in the election campaign the issue of British membership of the

European Economic Community was neither widely canvassed nor widely ventilated. This, to be fair, was probably not the fault of Mr. Heath, under whose lead "the cause of Europe will revive, even though politically it may prove to be his most perilous fight" according to a leading political journalist. The negotiations are likely to be complex and protracted. In the new House of Commons there will certainly be a large and vociferous body of anti-Market opinion, cutting across traditional political loyalties; it will be interesting to see if this opinion finds a central spokesman, or platform, in the new Opposition. If the negotiations are to succeed there must be a clear indication from the new Government that a bold and imaginative attitude towards Britain's position in the uniting of Europe is being adopted; the onus is upon Britain to show that she means business, and more than business.

An unusual opportunity will occur for discussion of the principal legal problems of the candidate countries at a high-level international legal conference which is to be held in Dublin on October 1, 2, 3 and 4, soon after the first round of ministerial meetings have been completed between the Community and the candidate countries. This conference, which is being organised by the British Institute of International and Comparative Law with the support of the Government of the Republic of Ireland, and with the collaboration of the Faculties of Law of Trinity College, Dublin, and University College, Dublin, and of the *Fédération Internationale pour le Droit Européen*, has attracted wide interest from lawyers in industry, Government service, the universities and private practice, in the United Kingdom, the Republic of Ireland, Denmark, Norway and Sweden, and will also have strong participation from within the Community member countries. The themes for discussion which have been selected relate to particular areas of difficulty for the candidate countries and concern (i) Foreign and Regional Relations in the Community, (ii) The Courts and Community Law, (iii) Community Legislation, (iv) Company Law, (v) Transport and Agriculture, and (vi) Freedom of Establishment. Especial problems which will be the subject of background papers and working session discussions relate to the impact of Community law upon municipal courts and their resources for dealing with it, the parliamentary control of Community decision-making and the implementation of non-self-executing Community legislation in member States, the Community's status and powers in foreign affairs and the evolution of special relationships between member States and non-member States or territories, the development of a model European-type company, Community agricultural policy and the "third world", problems relating to migrant workers and rights of establishment in the liberal professions. A considerable number of background papers are being prepared by leading authorities in the candidate countries and in the member States of the Community; these, together with the reports of the working sessions, will be published and should constitute a very valuable collection of material which it is hoped

will be available at a time when the talks with regard to the expansion of the Community move into a more detailed stage of negotiation.

On strengthening the European institutions

During the Council session of April 20 and 21, 1970, the Ministers of the Six at last decided to sign the treaty which, when approved by their national parliaments, will strengthen the control of the European Parliament over the budget of the Communities. In a final, combined attempt the Commission and the European Parliament urged the Council to accept an interpretation of this Treaty, which would accord the Parliament not only the right to amend the administrative expenses (some 3 to 4 per cent. of the total budget), but which would empower it also to reject the budget *in toto*. Even though not used every day, the mere existence of such a right would be politically significant. It would provide the European Parliament with a grip on the operational expenses which follow from legislative decisions by the Council and on which the Parliament would otherwise exercise no influence. The reaction of the Council was characteristic of the state of prudent optimism at present prevailing in the Communities where confidence has to be restored by gradual steps taken after deliberation. The Council refused to express itself either positively or negatively, according to the French Foreign Minister, M. Schumann, "in order to leave developments on this point to further practice". The Council was only prepared to record a declaration in its minutes to the effect that it would be prepared to consider new proposals in this respect by the Commission, which this institution would present within two years after ratification of the Treaty. This would be done "in the light of the debates on this treaty in the national parliaments, the development of the European situation and the institutional problems posed by the expansion of the Communities". Although by no means a concrete promise of firm action, this statement can be read as a green light for those who are concerned about the lack of democracy in the Communities, to continue to press their demands. When this is done, the position of the Commission should not be forgotten. So far, and also according to the new Treaty, it remains a mere onlooker in the discussion on the budget between the Council and Parliament. It is essential for an even balance of power that the Commission should enjoy similar budgetary rights as it already enjoys in the legislative process. Whether any further results will be achieved, however, is largely dependent on the way in which national parliaments will encourage the European Parliament to interpret the Treaty in the same way as it has done. In this eventuality the European Parliament will then have enough political support to attempt a constitutional battle with the Council over the control of the budget. In this battle the text of the Treaty is unclear enough to provide Parliament with legal arguments, even if these are not definitive in themselves.

It should be noted that an eventual dispute cannot (and ought not!)

be fought out judicially. Should the European Parliament decide to interpret its rights under the Treaty widely, the Council cannot bring this question before the Court in Luxembourg. Unlike parliamentary decisions under the ECSC, acts by the European Parliament under the EEC are the only ones not subject to review by the Court of Justice.

The month of May witnessed another institutional development. On May 11 the Foreign Ministers decided that the new Commission of the European Communities will consist of only nine members as of July 1, 1970, instead of the present fourteen. This decision must first of all be welcomed as a sign that the Six have shown the political courage to take their obligations under the Merger Treaty seriously. Only by way of a real legal *tour de force* could this treaty be interpreted so as to permit the maintenance of a Commission of fourteen. But, furthermore, the decision to reduce the size of the Commission to nine members has alleviated the fear that the Commission would grow still further to unmanageable proportions after the new members had acceded to the Communities, with a resulting loss in political strength and effectiveness. Undoubtedly the present decision poses serious problems for the administration. The twenty-six Directorates-General created in 1967 to achieve a fair distribution of responsibility over the fourteen Commissioners, will now have to be redistributed, and again upon the accession of new members. But there are also advantages in this process, in that an end can be made to some clear discrepancies and duplication in the organizational set-up. To cite just two examples: the Directorates-General for External Relations and for Foreign Commerce can now be merged, as well as Internal Market and Competition.

Apart from a decision as to its size, the Six have finally reached agreement over the new personnel of the Commission. And in this respect as well the balance is positive. The political character of the Commission has in particular been maintained by new appointments of the present Italian Minister Signor Malfatti as President and the German Under-secretary for Foreign Affairs, Herr Dahrendorff, as member. It may be considered particularly fortunate that Mr. Mansholt has been renominated. Although this nomination seems to have been achieved less by an imaginative political decision based on his reputation as a great European statesman, than by an accidental shuffling of political cards in the Benelux countries, the result should now be welcomed positively. Mr. Mansholt can be expected in particular to make an important contribution during the coming negotiations with the candidate countries, not only in the difficult field of agriculture, but also in the political arena in general. The departure of the President, M. Jean Rey, who has seen the Communities through the most difficult phase of their existence, is to be regretted. His forced resignation is a clear sign that the nomination procedure for the Commission leaves much room for improvement.