EDITORIAL COMMENTS

Current information on the negotiations

Ever since its inception in 1963, one of the principal purposes of this *Review* has been to pay attention to legal developments in the European Communities which are of interest to readers, not only inside the Common Market, but also to those outside it. This purpose has also been reflected in its structure—a joint venture of the British Institute of International and Comparative Law in London and of the Europa Instituut in Leiden—and in the composition of the editors and of the publishers. Throughout this period the relationship of the European Communities with third countries, and especially with Great Britain, has had our special interest, and has been evidenced by a number of contributions.[1] In this way we hope to have made some contribution to a better understanding of the process of legal integration in Europe and the difficulties which have to be overcome.

The current negotiations for expansion of the Communities have increased considerably the practical significance of this. The Editors have therefore decided to inaugurate a new section to be called " Current Information on the Negotiations for Expansion of the European Communities ". In this section the broad political and the specific legal problems will be closely followed as they arise during the negotiations and will be presented in a systematic way.

In the section published in this issue the negotiations with Britain receive special emphasis. To start with, a brief review is given of the main developments between January 1963—when the first round of negotiations was broken off—and the Hague summit meeting of December 1969, which made a new start possible. This introductory part is followed by information on the preparations for the negotiations on both sides, a summary of the speeches held at the beginning of the negotiations and the organisation of the negotiations.

Finally some information is given on the renewed requests for adhesion of Denmark, Ireland and Norway. Also the main elements of the pronouncements made by their respective Foreign Ministers are summarized.

Once again: legal problems of British entry into the Common Market

During 1970 the number of regulations made by the Council or the Commission and published in the *Official Journal* of the European Com-

[1] *E.g.*, Hunnings, " Constitutional implications of joining the Common Market ", VI, 50–66; Martin, " The accession of the United Kingdom to the European Communities: jurisdictional problems ", VI, 7–49; Mitchell, " What do you want to be inscrutable *for*, Marcia?", V, 105–111; Simmonds, " The British Islands and the Community. 1—Jersey ", VI, 156–169; " 2—The Isle of Man ", VII, 454–466; Cochrane, " Implications for Ireland of membership of the European Communities ", VII, pp. 336–341.

munities amounted to exactly 2,700. The bulk of these acts, which are binding in their entirety and take direct effect in each member State, contain implementing measures to the basic regulations on common agricultural market organizations and have lost their interest within a week's time of enactment. Nevertheless a considerable number, either establishing new rules or amending older ones, will last longer. At the moment of the realization of the U.K. membership of EEC, a complete set of all Community regulations in force within the Community should be available in the English language, which at the time will become an official language of the EEC. One may ask whether the competent official bodies on both sides are fully aware of this requirement and have taken all necessary steps to prepare for its fulfilment? At all events in the beginning of January 1971 it appeared impossible to get hold of even an unofficial English translation of the Convention amending the budgetary provisions of the Treaties setting up the European Communities signed in Luxembourg on April 22, 1970! Bearing in mind that it will not only suffice that English texts of all existing Community provisions are prepared but that these texts should be accepted by all parties in an official way, we may once more [2] stress the urgent necessity of tackling this grave problem.

Apart from this cumbersome task, there is another one to be performed and completed before an agreement on admission can be drawn up in its final form: the technical amendment of the secondary Community law—either for institutional and financial reasons or because the contents of certain acts must be adapted to the conditions of the enlarged Community to which they shall apply. It seems that in this field progress is being made.

All this work is also of importance for the preparation of the internal legislation to be enacted in the new member States. Whether or not this legislation should only be drawn up for the implementation of Community law which does not take direct effect in the member States, is a matter of legal policy. It has been suggested recently (see *The Times*, December 11, 1970) that even regulations should pass through both Houses of Parliament in the shape of consolidated Acts and that any decisions likely to affect the United Kingdom might be published in the form of statutory instruments.

When one considers this problem it should, however, be borne in mind that even those provisions of Community Law which are to be considered as directly applicable create relations between the citizens and their national authorities which do not depend on their national implementation but on the Treaty itself. This is true for certain provisions of the Treaties and of Community regulations, and it might even also be true for provisions laid down in other Community acts binding upon

[2] Compare 6 C.M.L.Rev. 1968–69, 208–209.

a member State such as directives or decisions, as will appear from the following part of the editorial comments.

A major break-through in the effect of Community legislation

The acts that are most characteristic of the originality of the legal structure of the Community are the regulations of the Council and of the Commission, which, according to Article 189 " apply generally ", are " binding in their entirety " and " take direct effect in each Member State ". From this last provision it follows that by their own nature they apply immediately within the internal legal order of member States without any transformation or adoption by national authorities being necessary. Furthermore they can create direct rights and obligations for private parties in their relationships with the Community. In addition to this, the Community institutions can issue directives and take decisions. A directive is described as an instrument which is " binding as to the result to be achieved, upon each member state to which it is directed, while leaving to national authorities the choice of form and methods ". A decision is binding on the addressee only. Decisions directed to member States can be distinguished from directives in that they are " binding in their entirety ", *i.e.*, in principle they leave no margin of discretion to the member States in the manner in which they have to execute their obligations.

Until recently it was assumed by the prevailing current of legal doctrine and practice that Article 189 precluded these other forms of Community legislation from having a similar legal effect to regulations.

Yet in a preliminary ruling of October 6, 1970 (*Grad* v. *Finanzamt Traunstein*, Case 9/70) the Court of Justice held that a particular provision of a transport decision addressed to the member States could create direct effects in the relations between these States and their subjects and grant the latter the right to invoke the provision before a municipal court. The Court based its judgment mainly on two sets of arguments. In the first place it denied that an *a contrario* reasoning could be deduced from the fact that Article 189 stipulates only for regulations that they " take direct effect ". Secondly, it referred to the need for an adequate and effective legal protection for private persons who could be affected by decisions addressed to member States. In this connection the Court also referred to Article 177 which permits municipal courts to request the Court to render preliminary rulings on the validity and interpretation of *all* Community acts. Although the holding of the Court refers only explicitly to decisions addressed to member States one may assume from the Court's reasoning that it applies also to directives.

It is not too bold to say that this judgment constitutes a major break-through in the effect of Community legislation. In line with its consistent case law concerning provisions of the Treaty itself (*cf.* most recently the *Salgoil* case, 6 C.M.L.Rev. 1968–69, 478 *et seq.*), the Court

has now also affirmed that the direct effect of a Community act depends solely on " the nature, the organization and the wording " of the provision in question. This judgment does not imply that the large majority of decisions addressed to member States and of directives will not continue to need now and in the future implementation by municipal legislation. It does imply, however, that there is, in principle, no objection that these acts, when they need no implementation, can be directly applied by municipal courts.

From the viewpoint of legal policy these conclusions must be welcomed. By preferring a progressive, teleological interpretation to an historical one, the Court has torn down another legal barrier which separates the legal system of the Community from those of the member States. Thereby it has demonstrated once more that the Treaties' aim of legal integration is to create a Community of citizens and not of States.