*Form and structure of the Accession Documents*

Once the outcome of the negotiations had been settled, the question of the form and structure of the various accession treaties had to be solved. In principle it would have been possible to draft twelve separate treaties (four candidate countries each acceding to three Communities). But for obvious practical reasons this solution was rejected. Preference was given to one single treaty which would apply to all new member States at the same time. This posed the problem, however, of the different adhesion procedures in Articles 237 of the EEC Treaty (205, Euratom Treaty) and Article 98, ECSC Treaty, respectively. The former procedure provides for an international treaty between existing and new member States; the latter stipulates a decision by the Council and the deposit of an instrument of accession by the applicant State. This then explains the form of accession which was finally chosen: the actual conditions of accession and adjustment to the treaties were laid down in a separate Act of no less than 161 articles (together with 11 Annexes, 30 Protocols, an exchange of letters, 5 common declarations and 6 declarations). Together these texts are preceded by two short, practically identical documents: the Treaty of Accession to the EEC and Euratom and the Decision on the Accession to the ECSC. These are the "two hats" providing for the actual membership of the candidate countries and of which the Accession Act etc. forms an integral part.

According to Article 1, para. 1 of the Treaty of Accession, the four countries will become *members* of the Communities and *parties* to the original Community treaties as amended or supplemented. This implies that they will, in principle, participate in the decision-making process as fully empowered members as from January 1, 1973. Accession to the ECSC has been linked indissolubly to accession to the other two Communities. Furthermore, whenever the institutions of the Community adopt measures or establish guidelines during the interim period between the signature of the accession documents and their entry into force, an information and consultation procedure has been agreed to in order to safeguard the interests of the acceding member States in view of their future membership.

Because of the form chosen, a problem could arise where the Treaty of Accession is not ratified by all new member States before January 1, 1973. In the event of such a situation the Treaty provides for an interesting procedure. Should this happen, the Treaty will enter into force for the other States who have deposited their instruments of ratification, but the Council of Ministers (then composed of 7, 8 or 9 members!) is then empowered by a unanimous vote to make a number of necessary amendments to the Treaties. When the negotiations for accession were opened at the conference in Luxembourg on June 30, 1970, two basic principles were put forward by the Community. The first was that the applicant States should accept the Treaties and their political objectives as well as all decisions taken since

their entry into force; the second was that problems of adjustment should be solved by the establishment of transitional measures and not by any change of existing rules. This stand adopted by the Community from the very start of the negotiations is clearly reflected in Articles 2 to 4 inclusive of the Accession Act.

In the first place, from the date of accession, the provisions of the original Treaties and the acts adopted by the institutions shall be binding on the new member States. Rather than summing up explicitly in the Act all existing Community legislation (more than 10,000 pages in the *Official Journal of the European Communities*) a general formula was preferred. Adaptations and exceptions both of a permanent and of a temporary character are specified in a number of Annexes.

In the second place, the new member States also accede to all decisions and agreements adopted by the Government representatives meeting in the Council (the so-called " framework " decisions). To this end a list of these decisions and agreements had been sent by the original signatories to the candidate countries, which is reputed to include the so-called agreement of Luxembourg on unanimous voting. In this connection are also explicitly mentioned the additional Conventions under Article 220 of the EEC Treaty to which they have undertaken to accede. The new members will also be in the same situation as the original member States in respect of declarations, resolutions or other positions adopted by the Council or by the member States. Finally, they will also accede to the international agreements concluded by the original member States. As indicated, all these measures will apply as of January 1, 1973. A number of exceptions have been provided for *e.g.*, in Articles 109, 114, 150–152 and 154 of the Accession Act.

In its evaluation of the enlargement the Commission noted: " So far from merely acceding to treaties under traditional international law, the new members are being accepted and integrated into Communities with a legal system and institutional structure of their own." [1] As essential features of this legal system, the Commission had indicated in its opinion on the accession, prescribed by Article 237 of the EEC Treaty (205, Euratom Treaty) " that certain of the provisions of the Treaties and certain Acts of the Community institutions are directly applicable, that Community Law takes precedence over any national provisions conflicting with it, and that procedures exist for ensuring the uniform interpretation of this law. . . . " [2] To what extent have these principles been incorporated in the documents of accession? No express provisions on these points have been made; there is only a reference to the overt applicability of Community Law in Article 2 of the Accession Act, that the Community Treaties and the acts of the institutions do not only bind the new States but shall also apply in those States under the conditions of the original Treaties and of the Act. This silence may prove to be a wise solution in view of the risks which would have

[1] 5th General Report (1971), § 95.
[2] Opinion of the Commission of 19 January, 1972, J.O. 1972, L 73/3.

arisen, should too restrictive formulas have been used. Indeed, much is to be said for leaving the development of the constitutional principles of the Communities to the case law of the Court of Justice. In such a way more gradual steps are possible as can be demonstrated by the Court's decisions in *Costa* v. *E.N.E.L.*,[3] later followed by the firm confirmation of " the principle of supremacy of Community Law " in *Walt Wilhelm*.[4] And, after all, these judgments of the Court of Justice can certainly be included in the *acquis communautaire*, which the new member States are supposed to have accepted. . . .

*Revision of the Treaty of Accession*

In the legal order of the Communities, the accession documents, of which the provisions of the Act form an integral part, will have the same status in law as the Treaties of Paris and Rome. Consequently, revision of their provisions will, in principle, only be possible in accordance with Article 96 of the ECSC Treaty, Article 236 of the EEC Treaty and Article 204 of the Euratom Treaty. This principle is confirmed by Article 6 of the Act which reads: " The provisions of this Act may not . . . be suspended, amended or repealed other than by means of the procedures laid down in the original Treaties enabling those Treaties to be revised." One exception to this principle has already been mentioned *supra*: the Council of the Communities may make a number of necessary amendments to the Treaties if all candidate States have not deposited their instruments of ratification and of accession in time. There are also other exceptions.

In so far as provisions of the Act are to be substituted for provisions of the original Treaties, the principle indicated above can easily be accepted. However, the Act provides also for a great number of amendments to acts (regulations, directives and decisions) of the institutions of the Communities. A number of these amendments are effected by the Act itself (see Article 29 and Annex I). For many others the Act only indicates the nature of the adaptations which shall be drawn up by the proper authorities, *i.e.* either the Council or the Commission, according to which of these two institutions adopted the original act, and which shall enter into force on accession (see Article 153; see also Article 30 and Article 62 of the Act).

In the absence of a special rule, it could be argued that those amendments, although incorporated in acts of the institutions, would have acquired Treaty status and, therefore, could never be revised other than by means of the revision procedures laid down for the Treaties themselves. That is why the contracting parties, recognizing this argument, have expressly stated that provisions of the Act, the purpose or the effect of which is to repeal or amend acts adopted by the institutions of the Communities, shall have the same status in law as the provisions which they repeal or amend, and shall be subject to the same rules as those provisions (see

[3] *Recueil* X (1964), 1143, 2 C.M.L.Rev. 1964–65, 197.
[4] *Recueil* XV (1969), 1, 6 C.M.L.Rev. 1968–69, 488.

Article 8 of the Act). In other words: adaptations of those acts effected by or in pursuance of the Accession Treaty *cum annexis* are exempted from the application of the procedure of treaty revision.

However, the same Article 8 excludes the amendments made by way of a transitional measure. Evidently the Communities and the acceding States have intended to prevent the granted transitional measures from being revised by a simple act of the institutions, in order to secure those measures.

Nevertheless, this guarantee does not ensure that, during the transitional period which will terminate at the end of 1977, acts to which the transitional provisions laid down in the Act relate may never be revised by the institutions. Article 7 of the Act admits expressly that those acts shall retain their status in law and, in particular, that the procedures for amending those acts shall continue to apply. That is to say: a transitional measure cannot indeed be suspended as long as the system of the act to which it relates is maintained, but such a measure can be rendered inoperative by a simple decision of the proper institution, revising the system itself. In such a case the competent institution may provide for any special treatment which might be necessary for a new member State taking into account the circumstances of the case.

This rather complicated body of provisions of the Act enables community policy and legislation in the years to come to be developed further without encroachment on the rights of the new member States so laboriously obtained during the negotiations.