EDITORIAL COMMENTS

How much action in the social programme?

The concrete achievements of the Community in social policy have been largely limited to: (i) matters affecting migrant workers and their dependants; (ii) upward harmonization of rules as to working conditions in transportation and certain other sectors; and (iii) the role of the European Social Fund and of funds made available under the ECSC Treaty in helping to meet the cost of temporary unemployment or under-employment, retraining, resettlement and rehousing.

Outside these limited but important fields, the notion of a European social policy has been largely mere aspiration. At the Paris Summit there was political recognition that this was not good enough. The far reaching impact of the Community on trade and competition and the extension of its role in the fields of money management and taxation policy had, it was felt, to be paralleled by developments of something of the same order of significance in the social field. Does the Social Action Programme submitted by the Commission to the Council provide for such developments?

The legal basis for a Community Social policy has until now been too limited to permit them. The Action Programme contains proposals whose adoption would broaden this legal basis in certain directions. The draft directive on harmonizing legislation dealing with dismissal of workers for reasons not relating to individual behaviour is a most valuable measure of this kind. If adopted it will quicken and clarify the enhancement of employee status which is a feature of the evolution of labour law in a number of Community countries. The obligatory notification and consultation procedures and the opportunity for intervention of an appropriate public authority envisaged in the directive would be notable steps away from the arbitrary and secretive, and towards the open, continuously intercommunicating style of management-labour relations. There may, however, be a need to go further and provide express rights to information and discovery of documents in certain situations of this sort.

For the law of industrial relations in the United Kingdom—at its present formative stage—the directive has the further advantage of introducing the very concept of rules (other than those created by the contract of employment itself) governing dismissal for reasons not relating to individual behaviour. This category of dismissal embraces both unfair dismissal (as conceived in the Industrial Relations Act 1971) and the redundancy situation (in the much litigated definition set out in the Redundancy Payments Act 1965). Indeed the directive will cover dismissals which might well fall into neither of these categories (such as those which result from requirements that the same work be done, for reasons of greater efficiency, at different times or by different types of employee than formerly). As the directive provides for a basic procedure common to all dismissals

other than those relating to individual behaviour it may be hoped that its adoption could lead towards the disappearance of some of the refinements and limitations which characterize the present United Kingdom law as to unfair dismissal and redundancy.

Other significant extensions of the legal framework for Community social policy provided for in the Action Programme are: a directive to protect workers hired through private employment agencies; a directive to protect workers' interests, particularly their accrued rights, in merger situations; and a directive to implement the principle of equal pay for equal work between men and women. The last mentioned is, indeed, long overdue, as the failure to give effective enforcement to Article 119 of the EEC Treaty has been the scandal of the stunted development of the social aspect of the Community. It is to be hoped that this directive on equal pay (and indeed the other two mentioned with it) will be adopted in a form which will ensure that rights enforceable by individuals in the courts of member states are created so that employees and their trade unions may make use of community law to speed social advance.

The Action Programme is much less impressive, however, in the fields of industrial democracy and collective bargaining. Previous proposals as to increased worker participation in industry generally and for provision for such participation in the statute for the European Company are reiterated but there is no general presentation of legal requirements as to such participation, adoption of satisfactory collective bargaining procedures and the provision of specified information to employee representatives to make such participation and procedures fair, real and effective. In this respect it seems that Community thinking as to the development of social policy has still to take the measure of the power and resources of multinational business enterprise and the legal instruments required to provide the employee interests with an effective role in regard to it.

Finally—partly by reason of the idiosyncrasies of Community legal growth and of the structure of the Commission—the impact of the Community upon tax policies and prices, though of capital importance as to its social policy in practice, does not figure in the Action Programme at all. The old, the sick, the handicapped, and lower income groups generally can hardly be expected to applaud a Community policy in the social field which does not, as one of its primary concerns, weigh the relative impact of different forms of taxation and the effects of economic management on prices. The Community has, of course, already a direct and important role in both fields through its adoption of VAT as a basis for its own revenue and for harmonization of indirect taxation and through its programme for economic and monetary union. Had social considerations been uppermost, it is difficult to believe that the choice of such a socially regressive and inflationary tax as VAT would ever have been made.