

EDITORIAL COMMENTS

How credible is Community Law?

The fact that for several years Italy disregarded the judgment of the Court of Justice given against it in December 1968 for imposing an export tax on art treasures, and that judgment against it had to be given again in July 1972, was serious.

The fact that the Council has not up to now followed the opinion of the Court of Justice on the “understanding on a local cost standard”¹ is more serious.

The fact that the four larger Member States (France, Germany, Italy and the United Kingdom) took part in negotiations together with the USA and Japan on an informal agreement to limit export credits which, shortly after the opinion of the Court of Justice was delivered, were concluded by a “consensus” which was acted upon by each of the participants “independently”—and that the Council has not up to now been in a position to assume a Community stance on this “consensus”; all this is even more serious. In fact, the gravity of the situation cannot be overestimated.

It must be admitted that any discipline imposed on export credits affects solidly-based economic, financial and political interests of the Member States. The temptation to retain a free hand is therefore great. The following argument in particular militates in favour of doing so: in the field of exports, not only are the Member States of the Community competing, but all exporting countries. It therefore appears illogical for the Community to impose restrictions on its Member States while other States enjoy complete freedom of action. In addition, national rules and practices in the field of export credits are diverse and complex. Evasions and breaches of agreements cannot therefore be excluded; in fact they are even probable. The mistrust felt by all the parties concerned is correspondingly marked.

Account must be taken of these facts in any attempt to regulate export credits. The Community has not been particularly successful in doing so in the past. Although small successes have been achieved in peripheral areas, there has been a complete failure to deal with the main issue, viz. the periods for which credit is granted and rates of interest. The decisive factor here was the objection referred to above that a world-wide

1. See Professor Maas's comment on the Court's Advisory Opinion at p. 379 *et seq.* of this issue.

problem could not be solved by obligations assumed solely by the "Six" or "Nine" of the Community.

No matter how obvious this objection appears at first sight, there are good reasons for refuting it. However, the question whether the approach chosen was correct at the time need not be answered here. It is certain that the negotiations with the Community's main competitor Japan and the USA, have recently yielded some results, however meagre. Nevertheless, the Council does not feel able to approve these results on behalf of the Community. This is because one Member State, France, refuses to consent to the adoption of a Community stance at the present stage of the efforts to create an economic and monetary union.

The conduct of the Member States which are parties to the "consensus", but above all France's refusal and the resultant inactivity on the part of the Council, have created a situation which from the political viewpoint is extremely serious.

Nothing less than the credibility of the Community legal system is at stake. Following the opinion delivered by the Court of Justice on the local costs issue, it is indisputable that the Community has *exclusive* competence in the field of export credits. Plans for economic and monetary union do not alter this fact in the least. The conduct of the Member States which are parties to the "consensus" therefore contravenes Community Law, in particular a leading decision by the Court of Justice. The Commission has drawn the logical consequence of this in deciding to proceed against those Member States on the basis of Article 169.²

The Council's attitude is, however, more serious than this contravention alone indicates. The effect of the "Luxembourg agreements" is glaringly obvious: although a qualified majority exists in favour of adopting a Community stance, the Council remains inactive because one Member State dissents.

Is it any wonder that astute observers of the Brussels scene see a connection between the Council's attitude to the "consensus" and the absence of the Community in Puerto Rico?³

2. See *Agence Europe* of July 22 and 23, 1976, at p. 4.

3. See *Agence Europe* of June 24, 1976, at p. 4.