

## EDITORIAL COMMENTS

*Differentiation of rules and policies in a newly enlarged Community*

At the time of writing of these comments, the Commission and the Council are engaged in formulating certain guidelines for solving the general problems raised by a possible accession of Greece, Spain and Portugal to the Community. One of the many intricate problems raised by such a new enlargement will be that of maintaining the Community's capacity to make progress towards the accomplishment of its aims after accession.

A Community of Twelve, even more so than one of Nine, risks being doomed to immobility by the sheer number of the parties having to agree on the measures to be taken. But a strengthening of the institutions and a streamlining of decision-making by expanding the practice of qualified majority voting, if attainable at all, might not be of much help.

Even if one shares the optimistic view that after a fairly long transitional period of five to ten years the new Member States will have gained sufficiently in economic strength to apply present Community Law and to participate fully in present Community policies, it is clear that during the transitional period, and probably thereafter, they will be very reluctant to assume new obligations while still struggling to fulfil the existing ones.

Inevitably, therefore, the enlargement of the Community will entail a renewed discussion of the desirability and feasibility of making more room for differentiating Community rules and policies according to the sometimes widely divergent situations in the Member States. Any such discussion is encumbered by the highly unfavourable reception of the idea of a Community "at two speeds", as originally proposed by ex-Federal Chancellor Brandt and taken up by the now nearly forgotten Tindemans Report. That idea was launched at a time when a further enlargement of the Community was still a matter of speculation. On more emotional than rational grounds it was rejected because it was thought to introduce into the Community a distinction between first and second class Member States.

Irrational as they may be, such susceptibilities should be borne in mind. Nevertheless, one may wonder whether it is not about time to face the fact that a new enlargement will heavily accentuate disparities of a structural nature in an economic Community with a membership ranging from the Federal Republic of Germany, one of the strongest industrial powers of the world, to Portugal which, even in world terms, qualifies as a developing country.

Moreover, the idea of differentiation according to regional or national economic and social situations is less revolutionary than it is sometimes believed to be. The various activities of the European Investment Bank, the Social Fund, the Regional Fund and the Agricultural Fund (structural policy section) are proof of that, as is the regime of State aids for the economic development of certain areas that is applied under the Articles 92 and 93 of the EEC Treaty (see also the Declarations on the economic and industrial development of Ireland, annexed to the Final Act of Accession of 1972).

Furthermore, the rules of the common market sometimes take into account the special problems of individual Member States. The Protocol on the Grand Duchy of Luxembourg is a case in point, as it permits a different treatment (which by now has come to an end) of this Member State in the field of agriculture and the freedom of movement for workers. But also quite a number of agricultural market regulations allow temporary derogations or provide for special rules in order to meet particular problems in one or more Member States or parts thereof.

Therefore, the issue is not whether differential treatment of Member States in a Community of Twelve is admissible, but whether the flexibility already allowed by Community Law as it stands should not be increased. Whatever decision is made, it may in any case be advisable to incorporate in the Accession Treaties certain principles and procedural rules to be observed when differentiations are made, in order to preserve the necessary cohesion of the Community and the ultimate aim of fully integrating the lesser industrialised Member States into it.

The main issue will be under which conditions and with regard to which subject-matters Member States should be free to commit themselves to stricter rules or heavier obligations than the others are able to accept. Or, putting it differently, to what extent Member States may decide—with, of course, the approval of the Community institutions—not to be bound by such rules and obligations without preventing their being binding on the others.

Much ingenuity will be required to avoid a number of pitfalls on the road to more differentiation within the Community. A few of the most important should be mentioned.

Firstly, differentiation should not lead to a Community “*à la carte*” in which Member States are free to choose whether or not to participate in new activities. Such a choice should be left only to those of them who can show objective and convincing reasons for not participating, deriving from the weakness of their economic and social structure.

Secondly, a permanent division of the Community into two blocks of weaker and stronger countries should be ruled out. Non-participation

should be of a temporary nature only; agreement should be reached by all on the goals to be attained and in each case specific measures should be taken to enable the non-participating Member States to catch up with the others.

Thirdly, the unity of the common market itself should be preserved. That means that infringements of the basic rules of the customs union and of the freedom of movement for persons and services should be eliminated not later than by the end of the transitional period set out in the Treaties of Accession.

These few observations are only of a tentative nature. They are meant to break a lance for a dispassionate and careful search for the solution of a problem that will loom large over the future of a newly enlarged Community.