EDITORIAL COMMENT

The Single European Act again

In the editorial comment to the second issue of this year (above, pp. 249–252) we paid attention to the history of the Single Act. Now it seems certain that the Act will have a future as well. At the time this issue went to the printer, the last ratifications were expected and the Act was likely to enter into force, perhaps with some delay, but close to January 1987. We considered it appropriate to devote an issue to the Single Act but not having all articles available in time and also wanting to offer our readership some variation, we finally decided to spread our attention to the Single Act over a number of issues. In the present issue articles will be devoted to the history of the negotiations culminating in the Single Act, the position of the European Parliament, external relations and European Political Cooperation and, finally, the status of the declarations attached to the Final Act.

In the next issue articles will be published on: the internal Market, the impact of the Single Act on the institutions, a Danish perspective and one view, in the form of a general critique, of the Single Act as a whole.

During 1986, the Single Act was discussed in the national parliaments and received attention from the press which offers us a picture of the kind of attention given to it. This picture varies considerably between the different Member States. In most of them the attention was for national rather than for European reasons. The Danes, the British and to some extent the French worried about a possible sacrifice of sovereignty. As Lord Denning put it in the House of Lords: "Gone is the concept of national sovereignty – to be replaced by European unity". He did not mention the calamities brought to the European peoples by the concept of national sovereignty. Had he paid more attention to the question what national sovereignty has actually achieved for the

peoples of Europe, he might have applauded the Act more loudly. The fear of losing national sovereignty made it impossible for the Danes just to incorporate the Act in the Danish legal order. In the law of incorporation an express provision was adopted with the purpose of "maintaining the 1966 Luxembourg compromise". None of the other Member States went that far but the French Prime Minister, Chirac, declared in the French Parliament that the "Luxembourg compromise" was not affected by the Act. The French Minister of European Affairs, Bosson, mitigated this by the suggestion that the "Luxembourg compromise" should be limited to meetings of Ministers. Civil servants should not any more be entitled to invoke it. As, so far, the compromise has been invoked more than 240 times by civil servants as against only ten times by governments, this might mean a useful limitation in practice.

Only in Ireland was much attention paid to Title III of the act (Foreign policy). The fear of losing their neutrality made many Irish reluctant to accept any rules on political cooperation.

The Federal Republic's main worry was the fear of its *Länder* that their competences would suffer from the Single Act. The problem is how to be European and remain at the same time German as well as Bavarian.

Particularly in Ireland and Denmark the debates were not so much on the pros and cons of the Single European Act as on membership of the Communities in general, but to some extent the advantages and disadvantages of membership played a role in all debates.

In the Benelux countries, in Italy and also in Spain the Act was debated more on its own merits, which led to the general agreement that it did not go far enough.

Finally, all national parliaments approved the Act. In Belgium, Spain, Portugal and Luxembourg there was virtually no opposition. Most other parliaments adopted the Act with large majorities. The only really close vote was in Ireland where the Dail voted 73 in favour with 71 against. In Denmark the parliamentary vote was dominated by the referendum in which 56% of the population had voted in favour. For Greece no results were known as of December.

In the previous editorial comment we concluded that the Act was the only politically possible step forward and that we should try to make the

best of it. Nonetheless, several good Europeans deplore it. In the articles which this law review will devote to the Act, there will be critical notes and there is much reason to regret that no more could be achieved. The results fall far short of the Spinelli project and in several respects the Act does not offer more than was already provided for in the original Treaties. But we maintain our view that a rejection of the Act would have been detrimental to Europe. In practice, not only the texts of the Treaties count. What actually happens is more important and in many respects actual progress had stopped because of a gradual change of mentality. The Commission, which stands for the general European interest, lost powers to the Council dominated by national interests. And within the Council the ideals for European unity weakened considerably. Civil servants do not go to Brussels anymore for the sake of Europe. Their primary aim is not to promote the interests of the Community and its citizens, but rather to get the most out of negotiation for their own State. This means that decision-making is not so much guided by the large common interests as by the marginal interests of each of the Member States. Compromises are made at the fringe of the problems, meetings are dominated by details which often prove to be insignificant later. Actual life in the Community is much less European than the Treaties suggest. Basing itself on the original texts of the Treaties the Court of Justice defends and promotes the European cause, but its means are limited and a supranational court in an intergovernmental Community will inevitably lead to tensions. European integration badly needed a new impulse, a new sign of the political will to make progress. And such a sign the Single Act is. However insufficient, the Act is a commitment of the Governments to go on and to take at least the internal market seriously. It is a sign to the civil servants that they should work for a European cause and it legitimizes the need for them to pay more attention to the European aspects of the problems. To the peoples of Europe the Act indicates that European union is still an aim which is being strived for. That psychological aspect of the adoption of the act must help to give some new momentum to the Common Market.

In Ireland, Mr. Raymond Crotth filed an interlocutory injunction, restraining the Irish Government from depositing any instrument of ratification of the Act. On 24 December 1986, Mr. Justice Barrington

of the High Court granted that injunction. By the end of January 1987, the merits of the substantive action had been argued before three judges of the High Court. Pending the outcome of this case, the Irish ratification and with it the formal entry into force of the Act is delayed.