Community Topics 13

Where the Common Market stands today

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1. THE PATTERN OF ACHIEVEMENT

The first half of the Common Market transition period ends this year, and now, half-way through our endeavours to integrate Europe, we can take stock of the situation. In doing so we cannot fail to note that the European Economic Community has been an overwhelming success. We have met with difficulties and setbacks, but these cannot dim the lustre which radiates from the first six years of our Community. Certainly, our aspirations reach out beyond what has been achieved. This is natural and it is necessary. However, we may allow ourselves a moment of grateful reflection. How would European unity look today if the Treaty of Rome had not stood the test, both as an economic code and as the Community's constitutional charter? If the Institutions had failed? If the drive which animates them had been missing? Many factors – a conscious political will, devoted work, a little luck, and not least the work done by the European Parliament – have combined to enable us to see European unity taking shape in the stern reality of our days.

That integration has become part and parcel of the economic and political life of Europe, that it has come to stay, is the first and most important conclusion which emerges from a general survey of our work.

The Community's economic record

A few figures serve to illustrate the Community's progress: between 1958 and 1963 the Community's real gross product rose by 30 per cent, against 23 per cent in the United States and 16 per cent in the United Kingdom. During the same period industrial production rose about 40 per cent (in the United States 33 per cent, in the United Kingdom 23 per cent). How closely trade between the member countries has become interwoven even before the completion of the customs union can be seen from the 131 per cent increase in internal trade since 1958, with a growth rate of 17 per cent last year alone. The outside world has also profited by this rapid economic development of the Community. Between 1958 and 1963 imports from non-member countries rose by 53 per cent, and amounted last year to $24,600 million (by way of comparison, United States imports were $17,000 million).

Exports have not grown at the same pace: they have risen by only 36 per cent. As a result, in 1963 the Community, for the first time, had a trade deficit amounting to more than $3,000 million. This deficit will probably increase further in 1964.

We are often asked if the consumer in the Community benefits from all this. And when the question is answered in the affirmative, the incorrigible doubters take refuge in another question: is it certain that the European Community is really the cause of this unparalleled prosperity of an economic growth rate, which is already coming up against the limits of what the economy can bear?

The Commission has instituted inquiries into these points and some of the initial results are to be found in our General Report for 1963-1964. There the Commission gives thought to the question of special measures to ensure that the benefits of our policy reach the consumer. Meanwhile, however great our assurance that the upsurge we have experienced would have been impossible without the Common Market, the exact scientific proof of its influence on developments is a matter of equally great difficulty.

Psychological factors play a decisive rôle in the chain of causes. Who can compute how many managerial decisions – and of what importance – are motivated by conscious appreciation of the greater chances of the Common Market, and how many simply by inborn personal optimism or an enterprising temperament?

In addition, it is a basic and elementary truth of every-day life and of the economic system that every consumer is at the same time in receipt of income. Therefore it is not only prices but also the size of his income which determines his well-being. While wages and salaries per person gainfully

employed in the Community rose by 56 per cent between 1958 and 1963, consumer prices rose by only 16 per cent. The difference between these two figures reflects the benefit which the consumer derived from economic development. How else does one explain the fact that between 1960 and 1963 the number of private cars in the Community rose from 78 to 102 per thousand inhabitants ?

The hard-core problems

Admittedly all these gratifying experiences do not mean that things will go ahead automatically from now on. On the contrary, the nearer we come to the hard core the more apt is Max Weber's remark that "politics means boring away doggedly through thick planks." We shall have to be as vigilant in the further construction of the Community as we have had to be in the past.

A first source of danger for the future development of the Community lies in the fact that our Treaty has not laid down a hard and fast timetable in every sector. We cannot, however, afford any standstill in carrying out the Treaty and developing common policies, even in those fields where there is no timetable. It is more than ever true that if we stop we slip back. The issues on which this anxiety is strongest are the grain price question and the common external-trade policy.

A second source of danger is to be found in extreme economic developments in individual member countries. We must always be prepared for the danger that very grave economic difficulties in a member country may tempt people to act on the motto of "every man for himself". Although in the past year certain member countries had to cope with greater economic difficulties than before, this cause for anxiety has not generally been borne out in practice. The Community spirit and loyalty to the Treaty have always proved stronger than misguided reflexes of self-preservation. The Commission will exercise the constant vigilance which the Treaty imposes on it. It will insist on strict implementation of the Treaty, and at the same time allow full play to the precept of solidarity, which impels us to find Community solutions for the difficulties of individual countries.

A third danger for the development of the Community is grave disturbances whose cause is beyond the Community's control. In the past year we have been spared such perils. We are confident that this will also be the case in the period ahead of us. We must, of course, realize clearly that such dangers threatening the Community from outside need not always be in the blatant form of a dramatic crisis. They can also steal upon us silently, for instance in the form of a specious political union, an ill-conceived merger of the Executives or a systematic frustration of majority decisions.

The balance sheet for 1963

To measure the progress made in 1963, the Commission's Action Program of October 1962 for the development of the Community provides a handy yardstick. Taking this as our criterion, it is clear that in certain fields the Community has not come up to our expectations, while in others it has fulfilled its program.

In the following fields progress was slower than expected:

- The additional measures needed to complete the customs union, such as abolition of charges having the same effect as customs duties, adjustment of government monopolies, and harmonization of customs legislation and regulations;
- Harmonization of company law;
- Unification of laws governing the exercise of particular professions or trades;
- Regional development policy;
- The right of establishment and freedom to supply services. In this field, however, the concentrated action begun by the Commission is beginning to bear fruit. Three directives have come into force, eight have been passed by the Council of Ministers and proposals for a further seven have been tabled.

In the following fields the Commission, despite special efforts, has not been able to make as much progress as it would have liked:

- Energy policy;

- Transport policy, where we are still waiting for the Council of Ministers to deal with the Commission's proposals of May 1963;
- Social policy;
- Anti-cartel policy;
- The common external trade policy, including a true Community policy towards developing countries.

In the following fields progress has kept pace with the Action Program:

- The customs union;
- The common agricultural policy, with the important exception of grain-price policy;
- The Community financing of the common agricultural policy;
- Preparatory work on harmonizing turnover taxes – a particularly important project since it means an attack on "tax frontiers". Lack of success in this field would mean that instead of a true Common Market, with the characteristics of a domestic market, a mere ill-defined preference area had been set up;
- The establishment of a European "medium-term economic forecast";
- The beginning of common economic and monetary policies;
- External relations: the new Association Convention with 18 African countries which is now in force, the association agreement with Turkey and the preparatory work for the Kennedy Round.

The rate of progress and the rôle of self-interest

The fact that integration has gone smoothly in certain sectors while there has been some hesitation in others is not, of course, entirely fortuitous. There are three main reasons for it.

The first reason is the Treaty itself. It is almost always untrue to say that in individual fields the terms of reference laid down in the Treaty are too narrow for its aims to be achieved. Proper interpretation shows us that the economic union set in motion by the Treaty covers the whole of economic policy. But these terms of reference in the Treaty are, however, often rather vague. This is particularly true of energy policy, regional policy and the adjustment of government monopolies, where the Commission – with the power to make recommendations as its only weapon – is expected to storm the strong and well-armed fortresses of government tobacco, oil, and alcohol monopolies. All these problems raise issues which must be kept in mind on the occasion of the merger of the Communities.

A second factor is the strength of the interests involved in the progress of the Community. This can be an individual interest. Such self-interest on the part of a member Government is in itself neither immoral nor un-European. The more the Community serves individual member's interests as well as its own, the stronger it is.

The energetic assertion of individual interests is welcome to us if it favours the progress of the Community. When these interests are present, Community activity is strong, even if also often shot through with controversy. Where they are lacking, Community life is often also faint and undeveloped and progress meagre and arduous. Each member country brings with it into the Community a number of individual interests which have to be defined precisely and which its membership of the Community serves. For example, the importance which one country attaches to the common agricultural policy, another may attach to the common trade policy. Naturally, the advance towards the full implementation of the Treaty is uneven, because more energy is expended in some sectors than in others. In order to avoid this piecemeal advance, the method known as synchronization – the amalgamation of various Community decisions in a single comprehensive decision – was tried out in 1963. Largely because of special circumstances, the results were reasonably good. The various Community decisions are indeed related, and to this extent it is legitimate that member countries should make use of such relationships in the Council of Ministers in a spirit of give and take. The danger with this method of *prior conditions* is, of course, that its negative effect – its restrictive effect – may predominate. For this reason the procedure adopted last year should remain an exception, and in principle the Treaty should be implemented without the reciprocal posing of conditions. The necessary overall balance will be achieved when the Treaty is fully implemented.

It can also happen that the self-interest of all member countries coincides with the Community interest. This is the ideal case. The most recent example, in an urgent and vital matter, is the struggle against inflation.

A third factor controlling the pace of integration is the number of staff which the Commission is able to employ. The right of establishment, the harmonization of laws governing the exercise of particular trades and professions, the completion of the customs union, and indeed the common trade policy, would have advanced further if the Commission had had the necessary staff. There is no question here of an imaginary shortage, or of bureaucratic "empire building", but of requirements based on the actual state of affairs and, indeed, on the Treaty, and which have already been reduced to a minimum. The fact that it is not possible to provide the Commission with this necessary staff, or even to discuss the matter factually in the Council of Ministers, leads to the conclusion that the present budget machinery does not work. The Commission will therefore continue to press for an improvement in the budgetary system.

I also blame the Statute of Service in its present form for the inadequate staffing of the Commission. Certain parts of this Statute, in particular the arrangements for recruitment, are unworkable and need overhauling. Unfortunately, the Commission's proposals for improvements have so far been bogged down in inter-Executive procedures.

The Commission's three tasks

Whatever the rate of progress in the various sectors, however, the Commission last year fulfilled the threefold task which the Treaty lays upon it as guardian of the Treaty, arbitrator between the interests of the member States and of the Community, and initiator of the Community's development.

As guardian of the Treaty, the Commission instituted proceedings in 21 cases against member Governments which, in its opinion, had infringed Community law. It has brought three cases before the European Court of Justice. In one of these it was able to withdraw its plea because the member Government concerned had meanwhile rectified the position; the others are still pending. For last year, too, I am able to draw the same gratifying conclusion as in earlier years – that the member Governments, despite occasional irregularities, are abiding by the Treaty in the letter and in the spirit, and that differences of opinion are fairly evenly spread over all the member countries.

The Commission's activity in its rôle as an arbitrator between member countries is difficult to express in figures. Of the 113 regulations, directives and decisions which the Council of Ministers adopted in the year under review, a great number would doubtless never have seen the light of day if the Commission had not striven constantly for compromise. The arbitrator's rôle naturally does not mean agreeing at any price. Where the responsibility for the Community interest and practical requirements have made us consider it necessary, the Commission has continued to press for the acceptance of its proposals even after the Council of Ministers, or a part of it, has arrived at other opinions. I am thinking, particularly, of the debate on grain prices of June 2, 1964.

In its rôle as the prime mover in the Community, the Commission has submitted to the Council 125 formal proposals and 53 other communications during the year under review. The Commission itself has also issued 77 regulations, 2 directives, 98 decisions and 17 recommendations.

The supremacy of Community law

I conclude these general remarks with a glance at the highly important legal aspect of our situation. With the progressive establishment of the Common Market, Community law is assuming an ever greater and more conscious rôle. The increasing number of cases in which national courts have to apply Community rules and in which they find themselves obliged to seek an interlocutory judgment from the Community Court of Justice as to the validity and interpretation of Community law is an obvious illustration of this development. For the Commission, too, which was entrusted by the Rome Treaty with the task of watching over the observance of Community law, this again brings up the basic question of the proper relationship between Community law on the one hand and the national law of the member countries on the other.

The European Court of Justice, which has the last say in legal questions concerning the Community, has called the Community a "new legal system". In fact it can be defined as a system of legal principles complete in itself and exercising independent and final authority in its allotted sphere. I hardly need to point out that such a system of law is as little at home within the confines of traditional international law as in the national legal systems. This new system, with its field of application extending beyond the individual national territories and the potential impact of the acts within its competence affecting citizens of all the member countries, can be understood neither as an appendix to the national legal order nor as merely a bundle of inter-state arrangements. All this has been said before, but ideas on what this Community legal order means in detail have found less complete and uniform acceptance. The Commission's opinion on this point can be summed up as follows :

First : the legal acts of the Community bodies can be defined, examined as to their validity and interpreted only in terms of Community law. Trying to fit them into national legal systems involves the danger of misunderstandings and wrong conclusions. Thus it is obviously misleading to describe Community regulations as derived rules of law applied on the strength of authority delegated from the real lawmaker.

Secondly, the Community's legal system is, on the other hand, dove-tailed into the law of the member countries in a great variety of ways. Official bodies, administrative authorities and courts in the member countries are increasingly applying rules of Community law. This interplay of two legal systems is not without precedent. Federal associations of various types and degrees offer examples of it. Here the rule that each part can lay down valid law only in the sphere of competence allotted to it, or which it has retained – a rule which also applies to our Community – avoids constant conflict between different legal systems. If, however, an overlap of competence should sometimes arise and there should be a clash of valid rules apparently requiring equal respect, it necessarily follows from the character of the merger that the law of the superior association takes precedence – but, I repeat, only in its sphere of competence.

Thirdly, this order of precedence means two things above all : that the rules of Community law come first, irrespective of the level at which the conflict occurs; and that Community law not only invalidates previous conflicting, national law but also debars subsequent national law. Both these rules of conflict are part of that solidly entrenched body of law applied in comparable cases. Without them, to acknowledge the supremacy of Community law would be no more than a courteous gesture, carrying no obligations. In practice, member countries could do with it what they liked.

Fourthly, and in support of the above, the order of precedence we are discussing must be a single comprehensive one, valid for the whole of the Community. Any attempt to define the order of precedence severally, to take account of the idiosyncrasies of individual member countries, their constitutions and political structures, runs counter to the whole process of European integration, and thus to the fundamental principles of our Community. The Commission regards this question as crucial.