

# Britain, Europe and the law

---

Graham Child and John Evans  
young fabian pamphlet 34 60p



# young fabian pamphlet 34

## Britain, Europe and the law

---

contents	1	introduction	1
	2	community legislation	3
	3	extension of community legislation to the UK	10
	4	community law v national law	16
	5	the courts and the European Communities	22
	6	customs union	28
	7	agriculture	32
	8	free movement of labour	35
	9	right of establishment and freedom to supply services	41
	10	free movement of capital	45
	11	state aids	47
	12	competition rules applying to firms	52

---

this pamphlet, like all publications of the Fabian Society, represents not the collective view of the Society but only the view of the individuals who prepared it. The responsibility of the Society is limited to approving publications it issues as worthy of consideration within the Labour movement. Fabian Society, 11 Dartmouth Street, London SW1H 9BN. June 1973 ISBN 7163 2034 7

# 1. introduction

It is easy for lawyers to forget that laws are made in order to implement policy objectives of a non-legal nature. The way in which a legal system develops is determined in large part by the underlying social and economic assumptions and values of the society that it serves. Whilst it is true that the law may take on a life of its own and itself effect changes in society, its primary function is to implement rather than to create policy.

For this pamphlet we shall be looking at the impact that membership of the European Communities will have upon the law and constitution of the United Kingdom. In selecting the topics for discussion we have attempted to identify those that a non-lawyer may find of most interest. Our pamphlet inevitably has a high proportion of description, but we have endeavoured to link our discussion to the policies underlying the laws. We do not, however, enter into the argument of whether membership of the communities is or is not a "good thing." The communities were established within a capitalist framework. Institutional experience within the communities (as indeed elsewhere) indicates that it is difficult to make substantial changes to the broad thrust of generally accepted policies. The communities have marked up their most important achievements in the removal of existing barriers to the working of a free market in labour, capital and goods. Whether it is desirable for the United Kingdom to remain a member must depend upon an evaluation of wide economic and political considerations; the legal consequences of membership can only be of secondary importance.

The topics selected for this pamphlet fall into two categories. First, there are those which raise important constitutional issues. For example, in the second chapter we examine the manner in which community legislation, both present and future, is incorporated into the legal system of the United Kingdom. The fundamental point here is that membership of the communities involves a transfer of legislative powers from parliament to bodies that are subject to far less democratic accountability. In the fourth chap-

ter we consider the possible legal consequences of a conflict between an act of parliament and community law. This raises the basic question of the extent to which membership of the communities involves a surrender by parliament of its sovereignty. In the second category of topics are those involving changes in particular areas of substantive law, such as immigration, customs, competition and agriculture. The legislative scope of the communities is still confined largely to the regulation of economic activity; its impact upon the law as it affects people in other aspects of their lives is minimal. The bulk of our law, in such fields as crime, legal procedure, domestic relations, property and civil wrongs is unaffected directly by membership; but one consequence may well be to provide an additional impetus to law reform, for lawyers and judges will be brought into close contact with different legal systems. Work is being done within the communities to produce uniform laws on topics that are directly and incidentally connected with the primary activities of the communities.

Amongst the topics left out are taxation. It is well known that VAT is a community obligation, and although, had the government wished, it might have obtained postponement for the introduction of the tax, this has not been done. The fear is that in due course there will be pressure to harmonise the coverage of the tax and, possibly much later, the rates of the tax, with other common market countries. It is hard to tell when that pressure may come and how strong it will be. Pressure for harmonisation of company taxation will also come, but that will come first in the form of pressure for the harmonisation of systems with a requirement for harmonisation of rates probably coming much later. The Treaty of Rome does not contemplate harmonisation of direct personal taxation, but it is always possible that at some future date the commission may make proposals in the context of further economic unification.

We have omitted detailed discussion of the work concerned with the approximation of legislation. This important techni-

cal work is slowly bringing about a harmonisation of standards in various industrial fields, as for example the labelling and packaging of hazardous substances and the use of preservatives in food. Company law is the subject of harmonisation work, but for the most part there exist no more than proposals on which the British government will have its say in due course. Perhaps of most interest is the proposal that all public companies should have the two tier board system as first known in West Germany.

The proposal is that, where such companies employ more than 500 persons, workers should appoint one third of the members of the supervisory board. The board's powers include matters of particular interest to the company's employees, such as decisions on the closing or transfer of a factory, significant changes in the company's activities and the appointment of a management board; the day to day running of the company would be left with the management board. The TUC has given qualified approval to these proposals; but it has urged that the workers' representatives should be elected through the trade unions and that they should comprise 50 per cent of the supervisory board. The commission's proposal also takes account of the possible unwillingness of trade unions and their members to be involved in the affairs of the company in this way and offers, as an alternative to the one third representation of workers on the supervisory board, a provision whereby all appointments to that board may be vetoed by the employees.

Nor have we dealt with transport, except in connection with state aids. The dispute about lorry weights is yet unfinished. Whatever the outcome there remain other aspects of our law which will be affected. Drivers' hours will in due course be shortened and it will be necessary to introduce the tachometer ("spy in the cab"). Other matters not yet decided but already the subject of commission proposals include a uniform driving test; it aims to make wide ranging proposals for harmonisation of broader aspects of transport, particularly with a view to making users pay the costs of transport infrastructure in

accordance with their use of it. Much that is planned is far from realisation and the British government will have an opportunity of partaking in the formulation of policy. It will be particularly important to ensure that the full social and environmental costs of road transport are taken into account. The influence of the community in the wider areas of transport policy is nonetheless capable of making itself felt even now, so as to limit the freedom of choice open to national governments. When the West Germans proposed measures to transfer freight from their overloaded roads on to their under used railway system, they found in prior discussion with the commission that certain aspects of their plans were considered to distort inter-state competition in violation of the treaty; they made adjustments accordingly.

The implications of the proposed economic and monetary union are at present almost exclusively of a non-legal character and in any event future developments in this area remain speculative. The proposals have not therefore been discussed.

## 2. community legislation

The most important constitutional innovation that results from the United Kingdom's membership of the European Communities is the transfer of legislative powers over wide and important areas of economic and social policies to the organs of the communities. Parliament has also surrendered budgetary control to the extent that the finances of the communities will increasingly come from their own resources (that is, revenue raised in the member states from import levies or a small percentage of VAT) rather than from moneys contributed by national governments, subject to legislative approval.

Delegation of legislative powers has, of course, been a familiar device in the implementation of interventionist governmental policies over the last hundred years; but the most significant features of the powers given to the European Communities are their width, and the absence of political control by parliament over their exercise. The European Communities Act signally lacks provisions to ensure such control; the procedures whereby the House of Commons will scrutinise community legislation and proposals of the commission will be discussed later. In a pamphlet of this length it is not feasible to do more than indicate the principal characteristics of the legislative institutions and procedures of the communities and the scope of their powers. Attention will be focused primarily upon the European Economic Community (EEC), which is the most important and wide ranging; although all three communities, the EEC, the European Coal and Steel Community (ECSC) and the European Atomic Energy Community (EURATOM) now have common institutions, their legislative powers and procedures are still to be found in separate treaties. The methods employed in the European Communities Act to make community law enforceable within this country will be critically examined.

The treaties establishing the communities have two distinguishable facets. First, they are agreements binding upon the member states, as contracting parties, in international law. Second, they may be seen as the constitutional documents establishing an embryo supra-national

state with the governmental apparatus of an executive, legislature and judiciary as found in a nation state. This dual character is reflected in the terms of the treaties and the procedures that have so far been evolved by the community organs and the member states for the functioning of the communities. The fundamental issue that has divided the communities in the past, and which will also do so in the foreseeable future, is the extent to which the federalist character of the communities should develop, as an entity independent of the governments of the member states. The view taken by France, particularly under de Gaulle, has been that the communities are no more than an institutionalised and sophisticated instrument of international co-operation. The Benelux countries have been more federalist minded. This is the background against which the arguments about the organisation, powers and structures of community institutions are conducted. Despite the communities' trappings of statehood and the wishful thinking of Eurocrats, the truth is that the existence, success and future development of the communities depend upon the will of the governments of the member states.

This dual character of the community is reflected in the distribution of legislative powers between the commission and the council of ministers. The commission is the body entrusted with the protection and advancement of the interest of the communities. The council of ministers is the body at which the interests of the member states are represented by ministers from national governments. For, whilst the approval of the council is required for most community legislation, the council can generally act only on a proposal put to it by the commission. The council's power to initiate legislation is limited by the requirement that it can only amend a proposal of the commission by a unanimous vote, even though it could have approved it by a majority. Nevertheless, the council's power under article 152 to request the commission to undertake studies that it considers desirable to obtain community objectives and to submit appropriate proposals, can be used as an initiating in-

strument. The political reality is markedly different from the legal position, as the recent efforts of the EEC to reach agreement on agricultural prices shows. Where there is disagreement between the ministers in the council, the commission may withdraw its proposals in order to amend them so as to reconcile the ministers' differences. The whole process resembles international bargaining, with the commission acting as an intermediary on behalf of the "community interest."

The Treaty of Rome gave to the commission powers to legislate without reference to the council on some topics; for example, to draw up a timetable and procedure for the abolition by member states of existing equivalents to quotas (article 33 paragraph 7), to draft regulations setting out the conditions subject to which nationals of one member state may remain in another state where they have been employed (article 48, paragraph 3(d)). Under article 155, the council may delegate power to the commission to ensure the enforcement of rules adopted by the council. The commission has made many of the detailed regulations implementing the Common Agricultural Policy (CAP) by exercising powers delegated to it under article 155. Thus of the 2,149 regulations made between January and October 1972, 1,992 were made by the commission; most of them concerned agriculture and were of a technical nature and of short duration. The extent to which this article could be used to delegate legislative powers going beyond the detailed and technical matters for which it has so far been used is unclear. Despite its virtual legal monopoly of legislative initiative the commission, as representative of the community interest and independent of national governments, has found that the strength of national interests, as represented in the council, remains very considerable.

For example, when the commission exercises a legislative power independently of the council as a result of a delegation by the council, a constitutional convention has been developed whereby the council requires a management committee comprising representatives of member states to

be set up. Its function is to curtail the independence of the commission, by ensuring that it does not legislate in contravention of the interests of individual member states. Thus the council may provide that, whilst the commission can adopt measures that are to come into operation forthwith, if the management committee, voting by qualified majority, fails to approve the legislation, it shall be referred to the council who may within a month rescind or modify the measure. The council may limit the commission's power even further by providing that the commission's legislation shall not come into operation until approved by a qualified majority of the management committee. The interests of the member governments are also powerfully protected by the committee of permanent representatives to the communities. This body acts as a liaison between the communities and national governments and may meet as members of the council to decide technical questions.

The system of voting in the council in the exercise of legislative power also indicates the character of the community as in part a traditional international organisation and in part a supra-national state. Under the terms of the Treaty of Rome the council no longer needs to be unanimous, in order to exercise most of its legislative powers, although unanimity is still required on certain matters; for example, for a measure to harmonise the laws of member states under article 100 and to provide for direct election to the European parliament (article 138). Most legislative acts require a qualified majority of the ministers; the votes are weighted so as to reflect the size and political and economic importance of the member states. In practical terms this means that the council may legislate over the opposition of one of the big four (France, West Germany, Italy and the United Kingdom) but not over two. However, the Six agreed at Luxembourg in 1966 that even where the council was empowered to legislate without unanimity, if the matter affected the vital interests of member states, the council was to endeavour to reach, within a reasonable time, an agreement that could be unanimously accepted.

The most important aspect of the Luxembourg "agreement," however, was the sharp divergence of views that existed between France and the other members; for the French recorded a dissenting view that on the failure of the council to reach unanimity on a matter that, in the opinion of a member, adversely affected a vital national interest, the council should not act. The present British government has stated that it agrees with the French on this point, and throughout the debates on the European Communities Bill, ministers represented the veto as an essential safeguard for British interests and as a crucial modification to the legal powers of the council. That the council is rarely prepared to act on a basis other than unanimity has correspondingly weakened the position of the commission. In October 1972 the council is reported to have voted by majority on the question of whether the African associated states could export certain fruits and vegetables duty free to the EEC in the coming year. That the fact of a majority vote on such an essentially minor matter should have attracted attention indicates how deeply entrenched the practice of unanimity has become. This is a sharp reminder to committed "Europeans" that the terms of the treaty may go further towards establishing a supranational body that can act independently of the wishes of a single national government than is acceptable to at least two of the big four. (Whether the Luxembourg "agreement" legally alters the treaty provisions is very dubious.) Whilst the council may well be very cautious about pushing through a proposal that is strongly opposed by one member for fear of disrupting the community, the longer that the community lasts the more unreal a threat by a member to leave or to paralyse the community will in fact become.

### democratic control

The constitutional aspect of membership of the European Communities that has most troubled the original and the new members has been the lack of effective democratic legislative procedures within the communities. For, whilst the founders

of the Treaty of Rome were careful to attempt to strike a balance between the interests of the community, as an independent entity that could make legislation that was enforceable within the member states, and the interests of the member states as represented by their ministers, inadequate provision was made for directly elected representatives to take part in the legislative process, the budget or the evolution and implementation of policy. (A motion was in fact tabled in December 1972, censuring the commission for failing to present proposals to increase parliament's budgetary control.)

The European parliament (or assembly, as it was originally called in the treaties) plays no more than a consultative and deliberative rôle. Its approval is not required before community legislation is implemented, and it is unable to subject the text of a legislative proposal to the sort of scrutiny that the House of Commons does to any government bill in the United Kingdom. The commission is politically accountable to the parliament, which can dismiss the commission as a body on a vote of "no confidence" passed by a two thirds majority. Whilst the actual use of this power would cause a crisis of confidence within the community, its potential use gives something of an air of reality to the commission's duties to submit to the parliament proposals of a politically important nature for opinion, to provide information and to answer questions as required. Nonetheless, parliament would have no control over the composition of the new commission. The parliament has established specialist committees covering the principal areas of the commission's activities to facilitate the discharge of its functions; and it is through them that it is most likely to exercise influence. The council is also required by the treaty to submit certain matters to the parliament for its opinion and, since 1967, the parliament has claimed wide powers to be consulted by the council on all matters of political importance and all acts which may have an effect on policy. Due in part to the urging of the British delegation to the European parliament, the president of the council is to appear before the parliament once

a month for an hour to answer questions. A regular question time with members of the commission and speedier provision of written answers from the commission is also promised.

Neither the commission nor the council, however, is in any way bound by the assembly's opinion, and the secrecy of the council's deliberations makes it difficult to evaluate the extent to which the assembly effectively contributes to decisions made by the council. In April 1973, the parliament rejected some of the commission's proposals to increase the price of agricultural products. The precise nature of the vote, however, was a matter of fierce controversy amongst members and the parliament could finally manage no more than a resolution that the commission reconsider its price review in the light of the debate, in which a number of conflicting views were put forward. This resolution amounted to an opinion of the parliament and legally enabled the council to make a decision on the proposals. It has been doubted, however, whether the parliaments' rights to be consulted also includes a right to give an opinion before the council can act.

This incident in fact illustrates another source of weakness of the European parliament. For, at the moment, the commission only submits a copy of a proposal to the parliament at the time that it is sent to the council and after it has consulted with the interest groups affected. Parliament plays virtually no part in the process of formulating the proposal. However, since 1970, the assembly's powers of control over the free part of the communities' budget (that is, that which deals with the functioning of their institutions) have been strengthened, and from 1975 (when the entire budget is to be furnished from the communities' "own resources" and not voted by national governments) final decisions on this part of the budget will be taken by the parliament. Since only about 5 per cent of the budget falls within this part, it is difficult to see these powers as being in themselves important measures of democratic budgetary control, although they may be used to influence the council's decisions in other areas.

Whilst it is widely recognised that the European parliament does not adequately bring the public into community decision making, there is little agreement beyond this. The text of the Paris summit held in October 1972, contained no concrete proposals, although the Dutch pressed for a decision on direct elections and increased powers. The British view is that the powers of the parliament could and should be increased before the more difficult task of providing for direct elections is tabled. The influential Vedel report advocated that the parliament's powers should be increased in two stages. First, to give it a power to delay the implementation of council acts, with a power of co-decision in particular areas (such as external relations and treaties). In the second stage, the range of co-decision was to be broadened to include such matters as the harmonisation of laws and the appointment of the president of the commission. It is undoubtedly true that the problems of direct election are enormous. What size should the parliament be? What electoral form should be adopted? Should it be uniform throughout the member states? What should be the relationship between European and national elections and between the members of the European and national parliaments? For the next few years at least, it is likely that the more effective, if indirect, control over the council will be exercised at Westminster, when the minister responsible will be called to explain his position and to justify the council's decisions. Significantly, the European parliament has done relatively little to involve national parliaments in community decision making; for this tends to detract from the supra-national ideal of checking community action at the community level.

The process of consultation also extends to interest groups, which are increasingly found represented in Brussels. To an extent the treaty has institutionalised this process, by providing, for example, for the establishment of specialist committees which the commission and council must consult before legislating on certain matters; the most important within the EEC is the Economic and Social Committee which is composed, *inter alia*, of national representatives of employers, labour, the



professions and small businesses. The members are appointed by the council, but are not bound by instructions from national governments or the bodies that they represent. The committee works through specialised sub-committees which have made significant contributions to the implementation of the policies for the free movement of labour and the right of establishment. The committee's opinion's do not, however, bind the council. In addition, representatives of certain professional and technical organisations are influential at a technical level in preparing legislation.

It has been argued that the consultative procedures through which legislative proposals pass, are comparable to those that exist in respect of delegated legislation in this country, and that the fact that legislative power does not ultimately rest with elected representatives of the people, should not be seen as a damning criticism of the institutional shape of the communities as they now exist. This argument overlooks, however, the enormous width and importance of the areas that fall within the legislative competence of the council and it is regrettable that the British government did not demonstrate in the European Communities Act an ability or willingness to increase, at least at the national level, the degree of parliamentary involvement in the community legislative process. Instead, the matter was left to be considered by parliamentary committees.

## the extent and form of community legislation

The early articles of the Treaty of Rome state the basic principles upon which the EEC is founded and the member states' objectives; namely, the harmonious development of economic activities, economic expansion, an improvement in the standard of living within the community and the development of closer relations between member states. These objectives are to be attained by the establishment of a common market in goods, labour, capital and services and the development of common policies and laws in relevant areas. Within this broad framework the treaty confers legislative powers upon the organs of the

community for specific purposes. In other words, community legislation will normally be justified by reference to a specific power contained in the Rome treaty. Often legislation may be made by reference to more than one article of the treaty. There is, however, in addition, article 235 which enables the council, on a proposal of the commission, unanimously to decide to adopt a measure necessary for fulfilling an objective of the community, although there is no relevant specific provision in the treaty empowering the council to take that measure. The new European company law is being formulated under this article.

Community laws fall essentially into two categories. Some become part of the domestic law of the member states and may create legal rights and obligations enforceable by individuals or firms within their national legal systems. Others operate at the level of international law, creating rights and obligations in member states. Articles of the treaty, and legislation made by organs of the community under the treaty, cut across this distinction. A principle, early established by the European Court of Justice, was that the fact that an article in the treaty created an obligation in international law (for breach of which a member state, as a signatory of the treaty, could be brought before the court at the instance of another member state or the commission) did not necessarily mean that the same article could not also create legal rights for individuals enforceable within national legal systems (*Van Gend en Loos*, 1963).

A provision of the treaties that has this effect is said to be "directly applicable." The development of criteria for determining which provisions are directly applicable lies within the jurisdiction of the European court as a matter of community law. In deciding this question, the European court, as on other matters of interpretation of the treaties, gives considerable weight to the spirit, structure and objectives of the treaty and less weight to the sort of textual analysis of the wording that English courts are more accustomed to using in interpreting acts of parliament; but then English judges have had relatively little experience in interpreting writ-

ten constitutions, although, as the experience of the courts in the United States and other Commonwealth countries shows, there is nothing in this flexible type of interpretation that is alien to the common law. In deciding whether an article in the treaty is directly applicable, the European court looks at the clarity and conciseness of the article, the degree to which it envisages further acts by the community or member states for its implementation and the degree of discretion given to member states in deciding how it should be implemented. Provisions in the treaties entered into by the community under article 228 may also be directly applicable. The articles of the Treaty of Rome, however, only set out the broad framework of community law. The bulk of community law is contained in legislation made by the organs of the community under powers conferred by the treaty.

## regulations

The most important characteristic of legislation by regulation is that it is, under the terms of article 189, directly applicable within the legal order of member states. No further action is required on the part of national legislatures or executives before regulations become operative within national legal systems. However, not all regulations which are directly applicable, in the sense that they automatically become part of the law of the member states, also create legal rights and obligations which are enforceable in national courts by those within their scope. They may be too general or incomplete; their direct effect upon individuals' legal position may then be confined to enabling a challenge to be made to some inconsistent municipal law. Since 1968 the community has increasingly resorted to the regulation as the standard legislative form, although the overwhelming majority of these have been confined to implementing the Common Agricultural Policy. From January 1972 to October 1972, 2,149 regulations, 303 decisions and 25 directives were made. The European court has taken the view that whether a particular piece of legislation is a regulation, is to be determined not so much by the label that the

draftsman attached to it but by its contents. The court has defined a regulation as, "in general, any measure that applies to objectively determined situations and having legal effects for groups of persons defined in general and in the abstract." Thus a measure that was not of application throughout the community to groups falling within the same broad categories would not be a regulation.

Many articles of the treaty leave the choice of legislative form to the community organ. Although the political, economic and social importance of regulations varies widely, the commission or council, will, when possible, choose to legislate by regulation where it is thought that the importance of uniformity of the rules throughout the community outweighs the advantages that can flow from using the special experience and knowledge of national governments in the implementation of community policy. The European court is the final arbiter of the validity and interpretation of community law, and although its application to the particular facts of a case is the function of the national courts, the existence of identical texts of regulations published in the official journal of the EEC in the official languages of the communities goes a long way to ensuring that regulations are given the same effect throughout the member states.

## directives

Article 189 provides that directives shall be binding upon the member states to which they are addressed, as to the result to be achieved, whilst the choice of the form and method of implementation is left to the discretion of the national authorities. This may be done by primary or delegated legislation or by changes in administrative practice. Where the treaty does not specify that a particular legislative form is to be adopted on a given matter, the relevant community legislative organ will normally legislate by directive, where it does not think that the measure should be applied throughout the community or where it recognises that the community interest in the uniform implementation of

community laws is outweighed by particular difficulties in tailoring the measures to fit the characteristics of the individual member states' legal, administrative or economic systems. For instance, measures taken by the council under articles 100 and 101 to eliminate discrepancies between the laws of member states which affect the working of the common market or distort competition must take the form of directives.

The degree of discretion, in the form of its implementation, that a directive leaves to member states varies according to the way in which the commission or the council has struck the balance between the community interest in uniformity and the practical difficulties that may follow from not drawing upon the expertise and local knowledge of the governmental bodies of the member states. Moreover, directives are more difficult to enforce uniformly than regulations, since the failure of a member state to implement a directive can generally only be remedied by cumbersome proceedings before the European court brought under articles 169 or 170 by the commission or another member state. On the other hand, an advantage of directives is that their use may enable the council to adopt and provide for the implementation of a policy which may be agreed at a general level, although there may be disagreements amongst member states as to its method of operation and uniform applicability. One final point is that because directives require implementation at the national level, it is possible to involve some form of parliamentary participation in the legislative process of the community.

Although article 189 of the Treaty of Rome only ascribes the characteristic of direct applicability to regulations, recent decisions of the European court in the cases of *Grad v. Finanzamt Traunstein* and *SACE v. Italian Ministry of Finance* (1970) have indicated that directives may have direct effect and thus create legal rights enforceable within the national legal order by individuals against the governmental authorities of a member state to which the directive was addressed, even though the directive has not been implemented at a

national level. The court used the analogy of its earlier decisions which had held that an article in the treaty could create rights for individuals, even though it also bound the state in international law. The court declined to draw the inference that since article 189 only provides that regulations shall be directly applicable, directives and decisions are only binding (at the international level) upon the member states to which they are addressed. Whether a directive will have direct effect within a national legal order and create enforceable community rights will depend, as with an article in the treaty, on whether it is clear, unequivocal and unconditional. For example, a directive that prohibited member states from maintaining or introducing a specified form of taxation after a particular date might well enable an individual, as a matter of community law, to maintain that he was not liable to pay and was entitled to a refund of tax paid under a national legislative provision that was inconsistent with the terms of the directive; even though the directive had not been implemented at the national level. Whether the court will go further in assimilating the legal consequences of directives and regulations, by holding that the former can also create legal rights in individuals enforceable against other individuals, remains to be seen. The important point to be noticed, however, is that the court by its decisions, can be an instrument of integration by increasing the degree to which community legislation can penetrate the legal systems of member states.

# 3. extension of community legislation to the UK

The British constitution vests the power to conclude treaties in the crown as part of the royal prerogative. The government may, therefore, enter into obligations enforceable in international law without obtaining parliamentary approval, although there is a constitutional convention that parliament should be able to consider the texts of treaties before they are ratified. However, the crown's treaty making power does not carry with it a power to change the law of the United Kingdom, even if this is necessary in order to comply with treaty obligations. To do this, legislation is necessary. British accession to the various treaties establishing the European Communities requires legislation for two principal reasons. First, because under the terms of the treaty of accession, the United Kingdom is required to make changes in its laws, in order to bring them into line with the existing laws of the communities contained in the treaties and in secondary legislation. Second, the treaties envisage that future acts of the communities will create rights and obligations which must be enforced by the courts of the member states. Without legislation, English courts could not give effect to community law. The European court has emphasised that community law is an independent legal order enforceable within national legal systems and not simply a part of the law of member states. The wording of the relevant sections of the European Communities Act is consistent with this view, although the only reason under British constitutional law why the domestic courts will pay any attention to community law is because parliament has told them to. This insistence that community law is not enforced as domestic law seems to have two objectives. First, it helps to ensure that judges will interpret it in accordance with the concepts developed by the European court and not their own. Second, it goes some way to ensuring that in some member states (including the UK) the legislature does not modify or repeal it in the same way as other domestic law.

The essential task of the European Communities Act is to give effect to the Treaty of Brussels, which sets out the terms of the United Kingdom's accession to the

European Communities, in so far as it requires present and future changes in the laws enforced within the United Kingdom. One of the principal points of criticism made during the parliamentary debates on the bill was that the government had failed to provide for adequate parliamentary scrutiny over future community legislation which would become enforceable in the United Kingdom. This general point can be applied to a number of specific aspects of the extension of community law to the United Kingdom. The government's stock response was that the purpose of the bill was simply to make the changes necessary in United Kingdom law in order to comply with community obligations. Procedures to ensure that parliament is adequately informed of, and has an opportunity to criticise, prospective community law that will require some modification of the law enforced within the United Kingdom, should, the government maintained, be studied by committees of the house. The House of Commons would then decide what procedures should be adopted. No doubt it was politically expedient for the government to produce as short a bill as possible (which was passed without amendment) and leave the "details" until after the legislation necessary for membership had been secured. Even if satisfactory arrangements for parliamentary consultation (within the limits possible under the framework of the treaties) are made, there is no doubt that the government has reserved for itself vast legislative powers subject to the minimum of parliamentary review. Under the act it is largely within the power of this and future governments to decide the type and number of legislative acts made necessary by membership of the communities that it will submit to any but the most cursory form of parliamentary scrutiny.

## what are the treaties of the European Communities?

Section 1 of the European Communities Act performs two functions. It identifies the treaties by which the United Kingdom, as a member of the communities, will be bound and under which the organs of the communities are now empowered to act.

Second, it provides for parliamentary approval of future treaties to which the United Kingdom is a signatory either with the communities or which are ancillary to any of the above treaties. Any treaty that falls within the scope of section 1 may give rise to legal rights and obligations enforceable in the courts of the United Kingdom, as the later sections in the act provide. This definitional clause is, therefore, crucial in delineating the operation of the later sections of the act that give legal effect in Britain to community law.

The government refused to incorporate into the act the terms of any of the treaties, on the ground that parliament had already approved the negotiated terms of entry. The government also decided that the debate on the act should be confined to the methods adopted for giving legislative effect to the obligations of the Treaty of Brussels, and should exclude another round of debates on the merits of the terms negotiated. The merits or demerits of this argument are now matters of political history. The treaties covered by section 1 include the treaties setting up the ECSC, EEC and EURATOM, the merger treaty which established common institutions for the communities, the Luxembourg treaty which gave the communities power to levy their own financial resources independently of contributions made by national governments, and the treaty of accession. In addition, a number of less important treaties concluded by the communities or by member states as ancillary to the treaties before 22 January, 1972, are now included in the definition of "community treaties," although the government did not feel sufficiently sure that it could identify them all to enable an exhaustive list to be compiled in the act. Despite the unattractiveness of this kind of "blind" legislation, the practical difficulties that might ensue from overlooking a community treaty and the relative unimportance of their subject matter, detract from the force of any criticisms.

Of much more importance, however, are the provisions made by the section for the inclusion of future treaties within its scope. The Treaty of Rome empowers the organs of the EEC to enter into treaties

of association with non-member states (article 238), to conclude treaties of membership with other states (article 237) and to enter into tariff and trade treaties with non-member states (article 113). In addition to the various specific treaty making powers, the European court has held that general powers in respect of the implementation of a common transport policy, under articles 74 and 75, include a power for the commission and council to enter into treaties with non-members on behalf of the communities. In a recent decision, *Re European Road Transport Agreement* (1970), the European court stated that not only may member states not be parties to treaties that are inconsistent with existing community treaties, but that member states lose their power to conclude treaties on subjects within the scope of a common policy. The court stated that "each time the community, with a view to implementing a common policy envisaged by the treaty, lays down some common rules, whatever form they may take, the member states no longer have the right, acting individually or even collectively, to contract obligations towards non-member states affecting those rules."

Section 1 (2)(b) of the act includes, within the definition of "community treaties," such future treaties as are entered into by the communities or entered into as a treaty ancillary to the community treaties by the United Kingdom. Section 1(3) provides that whenever, in the future, the United Kingdom is a signatory of a community treaty, a draft order in council shall be laid before parliament. Only when the order is affirmed, is the treaty to be included as a "community treaty." "Treaties" are defined so as to include any "international agreements" (a phrase of ambiguous width). This section could be criticised on three principal grounds.

First, a future treaty made by the communities, to which the United Kingdom is not a party either as a co-signatory or as the other contracting party, may create rights and also obligations enforceable by courts within the United Kingdom, without parliament's having had any opportunity at all to scrutinise its provisions. There is nothing in the Treaty of Rome

that requires member states to be co-signatories to treaties of association, even though these may, as for example those already concluded with Greece and Turkey, raise important and controversial political issues. Similarly, the trade agreements that have already been made with Spain and Portugal would not, under the terms of the act, have been subject to parliamentary consideration. Nor, indeed, is there anything in the act to ensure that the terms of any future treaty that the community may make with the Caribbean sugar producers at the end of the transitional period will be subject to parliamentary scrutiny. The government's answer to these criticisms has been that since, under article 228 of the Treaty of Rome, member states are bound by treaties concluded by the communities, it would be inappropriate (if not in actual breach of the treaty) to interpose a parliamentary stage between the making of the treaty by the communities and its incorporation into the body of community law in force within the United Kingdom. Throughout the debates on the bill, the government refused to incorporate into it any provision for parliamentary scrutiny of any community measures, whilst at draft stage.

Second, it is arguable that section 1(3) of the act prevents our courts from deciding whether a treaty, specified by an order in council as a treaty made by the communities under existing powers or entered into as a treaty ancillary to the treaties, is, in reality, within the scope of those words. For section 1 (3) states that an order in council "shall be *conclusive evidence*" that a treaty "*is to be regarded*" as a treaty as defined above. The courts have tended to give short shrift to similar attempts by governments to protect themselves against inquiries into the legality of quite different aspects of their conduct. The courts have been quite prepared to consider whether an administrative tribunal's decision was within its powers, even though the act establishing it provided that the tribunal's decision should be final and questioned in no legal proceedings whatsoever. Moreover, the Franks Committee's Report on Administrative Tribunals and Inquiries deprecated the use of such "preclusive

clauses." It is not possible to be sure whether the courts would treat this provision as simply providing evidence of whether a treaty was a community treaty or as removing any legal control over acts that a government chooses to perform under the cloak of the section.

Third, in so far as the act does provide for parliamentary consideration of treaties to which the United Kingdom is a party, by requiring that draft orders in council be laid before parliament and approved before the treaties can become "community treaties," it is inadequate. For, under this provision, treaties could be included which amend the existing community treaties and go further along the road to an economic and monetary union and a political federation. For measures of this importance, the 90 minutes of debate normally available on orders in council is, of course, quite derisory. The government answer here was that it recognised that it would be desirable to effect important changes by act of parliament and that, in any event, the whole question of adopting suitable procedures to facilitate parliamentary scrutiny should be left to a parliamentary committee; but, since both here and in section 2, the government did provide for some parliamentary scrutiny by specifying that orders in council and legislation were necessary to implement some community obligations, it can hardly argue that such matters were outside the scope of the act. Whilst the difficulties of drawing a line between those measures which should be introduced after the full legislative procedure of an act of parliament and those that could be dealt with by subordinate legislation, should not be minimised, the act leaves the question entirely to the choice of the government of the day.

### extension of existing community law into the UK

It was at one time thought that any government responsible for introducing the legislation required to extend community law into the United Kingdom would do this by setting out *in extenso* the body of community law existing at the time. Given the bulk of community legis-

lation already in existence, however, (contained in 42 volumes) and the technical and detailed nature of much of it, the government's decision to do this primarily by a single section and a schedule of consequential amendments to and repeals of existing legislation, is justifiable. Moreover, the government's approach is supportable in view of the fact that parliament approved the terms negotiated by the government on the basis that, subject to modifications of a largely transitional nature, community law would be accepted as a body by the United Kingdom. No doubt there will be some initial uncertainties amongst lawyers and the courts as to the effect of community law on existing domestic law. Moreover, some inconsistencies between community regulations and domestic statutory provisions will be eliminated by administrative action. For example, the Immigration Act 1971, which came into force on 1 January, 1973, is not amongst the scheduled list of amended acts; yet, in so far as it empowers immigration officers to exclude non-patrials (including, of course, nationals of EEC countries) seeking to enter the United Kingdom, it is in contravention of the EEC legislation implementing the community's policy of free movement of labour. Immigration rules contain provisions to ensure that the powers are not used so as to infringe community legislation. Although official translations of all community regulations were not available during the passage of the bill, they were by the date of entry. These practical difficulties are inherent in any attempt to incorporate a bulky and fast moving body of law into the United Kingdom quickly. The act incorporates expressly the most important changes in domestic law that are necessary in order to comply with existing community directives, such as the sections relating to company law; but how accurately has this been done?

### **extension of future community law into the UK**

The extension of future community law into the United Kingdom poses important alternatives to the government. Its choice will be a matter of continuing constitutional significance. In this context the dis-

inction between different types of community law is important. Under article 189 of the EEC treaty, regulations are directly applicable in member states, in that their validity and incorporation into national legal systems does not depend upon any further act by individual governments. Articles of the founding treaties may also be directly applicable, in the sense of creating rights enforceable within national legal systems. Directives and decisions, when addressed to governments, normally only create rights and obligations enforceable by individuals before national courts when they have been implemented by the states' public authorities; but sometimes they may have a limited direct effect on people's legal rights even without implementation.

In relation to directly applicable laws, section 2(1) provides that all such community rights, powers, liabilities and obligations that arise *on entry or in the future* are to be given legal effect within the United Kingdom without further enactment and shall be recognised and enforced accordingly. This would include not only regulations but also articles of the treaties and directives to the extent explained above. The intention of the government that such community laws shall prevail over existing acts of parliament, delegated legislation or common law with which they may conflict is embodied in section 2(4). The crucial point is that the act empowers a body over which parliament has no significant influence to change the law enforced in the United Kingdom over areas of economic and social policies of great width and importance, without providing for any form of parliamentary participation or control. In his valuable comparative study of the rôles played by the national parliaments of the Six in the making and scrutiny of community legislation, Mr. Niblock points out that the West German act of accession to membership of the communities required that their parliament must be fully informed about community activities and that information about any prospective community act which involved a change in West German law or which was directly applicable, must be made available to parliament before

the council acted. The federal parliament subsequently adopted a procedure to implement these provisions.

It was argued by Enoch Powell that article 189 only required that the substantive provisions of community regulations should be enforced within member states; this did not rule out the possibility of the Westminster parliament's debating and voting on them before they were enforced in the United Kingdom. "Directly applicable," he maintained, did not mean "without further enactment." This argument was rightly rejected by the government, but probably for the wrong reason. The government argued that such a procedure would be in breach of the treaty because of the possibility that parliament might disapprove the regulations; but if followed to its logical conclusion this argument would involve ensuring that parliament could *never* legislate in deliberate contravention of community law or fail to implement a directive, and it was the retention of this possibility that, the government insisted, showed that membership of the communities did not derogate from the ultimate sovereignty of parliament! However, the government thought that, in order to clarify the effect of directly applicable community law on existing domestic law, the law commissioners could be entrusted with the task of compiling an annual list of consequential changes. The better explanation is that it is the intention of the treaties to create an independent legal order, and that community regulations should be enforced because of their promulgation by a community organ from the time of their publication in the official journal. Certainly no other legislature within the communities makes the enforcement of community regulations dependent upon its approval of them.

The most substantial arguments, which were, however, rejected by the government, were that provision should be made in the bill for imposing a duty upon governments to inform parliament of prospective community legislation whilst still in draft form and for setting up machinery for keeping MP's informed about developments in the communities, eliciting from

ministers their views and enabling them to make known to the ministers the views of members. In an interim report published in February this year, the Select Committee on European Secondary Legislation proposed some basic guidelines on these matters. The government accepted its recommendations that MP's should be informed by the government of proposed community legislation and be given details of its general effect, the ministers responsible, the policy implications, the effect on UK law and the date at which the council was likely to decide.

The government was more reluctant to accept the committee's other recommendations. First, that the Chancellor of the Duchy of Lancaster (as minister primarily responsible for community affairs) should make a statement in the Commons together with a list of topics likely to be discussed at the next meeting of the council of ministers. Second, that ministerial statements should be made and debates arranged after the month's meeting of the council, should the subjects warrant it; but the government now appears to have agreed to them, at least for a trial period. The committee still has to report on the detailed procedures for implementing their proposals. A number of questions need to be answered. How soon in the community legislative process will MP's learn of the proposals? How may amendments be made? Will the details be submitted to a select committee that covers the whole of community affairs and then channelled into the appropriate specialist division? Or will membership of the communities revive interest in a system of specialist committees covering areas of governmental activity? Such committees would consider both the domestic and community aspects of the subject: this system has been successful in West Germany, Belgium and the Netherlands. A European affairs committee might be set up to maintain a general overview of the effects of membership upon the UK. Will committees also orally examine the minister responsible about a prospective council decision, in order to influence him and make the views of the house known? Will a committee orally examine a minister after the council has reached a decision? Experi-



ence in other member countries shows that it is almost impossible for a national legislature to dispatch a minister as a mandated delegate to the council. The exigencies of political horse trading within the communities requires the minister to have a lot of room for manoeuvre. Moreover, the unavailability of official reports of the debates of the council will make it difficult to hold the minister responsible.

Community legislation that in fact is not directly applicable (notably directives) will normally require some act by the government before it is enforceable in the United Kingdom. Section 2(2) empowers the government to implement such legislation by statutory instrument, even though this might repeal an existing act of parliament. The actual wording of section 2(2) is drafted widely, enabling delegated legislation to be made by the government for purposes not only of "implementing any community obligation of the UK" but also of "*dealing with matters arising out of or related to such obligations or rights to be enjoyed by the UK under and by virtue of the treaties.*" The delegated legislation is to be made by order in council or by ministers or departments designated by order in council for such purposes. It also extends the scope of enabling powers in existing acts so that they can be used for this purpose, by providing that persons entrusted with existing powers to make delegated legislation may have regard to community objects and obligations and rights. Thus the powers under the Exchange Control Act 1947 could be used to implement directives on the free movement of capital. In its report for 1971-72 the Joint Committee on Delegated Legislation recommended that the existing Statutory Instruments Select Committee could handle the extra work load created by membership of the communities. Of 2,900 community instruments made in 1971, only 65 would have required UK subordinate legislation. In order to catch up with community legislation in force at the date of entry it has been estimated that, in 1972-73, 16 instruments will be made under section 2(2) and 25 under existing enabling acts as amended by schedule 4. The act does contain some limitations upon this vast increase in the executive's power to

legislate with a minimum of parliamentary control. Thus an act of parliament will be needed to implement a community obligation involving the imposition of a tax, retrospective operation, the conferral of powers to sub-delegate legislative power, or the creation of any new criminal offence punishable with more than two years' imprisonment or more than three months on summary conviction. Section 2(4) provides that only a future act of parliament can abolish or reduce the scope of this safeguard.

The government here, also refused to incorporate any new scrutiny procedures into the act. It conceded that some directives should be implemented by act of parliament, but insisted that this must be a matter for the government of the day to judge. It cannot be argued that the community treaties in any way dictated the manner of implementation. That the government has chosen to take powers to legislate subject to the minimum of parliamentary supervision is a matter of concern. Instead of the entry of the United Kingdom being the occasion for an impetus to the introduction of democratic control over community legislation, the European Communities Act suggests that the British government proposes to reduce even further parliament's control over legislation. In view of the feeble nature of the European parliament, Westminster is likely to remain the focal point for the pressures of British MP's; even though their influence over the working of the communities will only be indirect.

# 4. community law versus national law

Opponents of the United Kingdom's membership of the European Communities have relied heavily on the loss of sovereignty thereby involved. This umbrella argument covers a number of quite distinguishable issues. First, membership does not mean that the United Kingdom will cease to be an independent state, in the sense that it will lose its personality in international law and will be unable to contract international obligations and rights; but it would clearly be in breach of the obligations under article 5 of the Treaty of Rome for the United Kingdom to enter into an international treaty that conflicted with some provision of community law. For this article provides that member states shall "abstain from any measure which could jeopardise the attainment of the objectives of the treaty." The European court's decision in the ERTA case further limited the member states' treaty making powers, by holding that when the community has laid down common rules in the implementation of a community policy, the community has exclusive competence to enter into agreements with non-member states that affect the rules. Second, membership of the communities involves a transfer of law making, executive, judicial and budgetary powers to bodies outside the United Kingdom, over which the Westminster parliament can exercise only indirect influence through the responsibility of the relevant minister. Third, it is the duty of the governments of member states to ensure that community legislation is enforced within their jurisdiction. This includes providing for the incorporation and supremacy of community legislation within national legal systems.

As a matter of international law, it is clear that the British government would be in breach of the treaty, if it failed to comply with this principle. There is also a non-legal aspect of the argument about loss of sovereignty. Even if a future parliament wished to repudiate fundamental community obligations (and that as a matter of British constitutional law this was still possible) the political, economic, industrial and financial inter-dependence of the member states within the communities would virtually eliminate such a

course from the realm of practical politics. The more significant aspects of the problems of conflict between community law and national law may be considered from three angles; first, the views that the community institutions have advanced on this problem; second, the attitudes that have been adopted by the courts of the original members of the communities; third, the ways in which the European Communities Act 1972 deals with the problem and the constitutioned implications of British membership.

## the community level

The European Court of Justice has held that no provision in the constitutions or legislation of member states can affect the validity or the interpretation of directly applicable community law. Thus the legality of community regulations and decisions depends solely upon whether they have been made in accordance with the terms of the treaties and any other relevant provisions of community law.

Similarly, failure by a member state to implement a community directive may be excused only by reference to community law, and not by reference to the constitution or other legislative provision of the defaulting member. However, whether a member state has effectively implemented a community directive may depend both upon whether it has acted in compliance with the terms of the community obligation, and whether it has complied with the requirements of its own constitution and relevant laws, as to the manner of changing the law enforceable within its jurisdiction; but, if both these conditions have been satisfied, the validity of the ensuing act is not affected by another conflicting provision in its law. Community law, the court has held, should be regarded as an autonomous legal order enforceable within member states as law, and existing side by side with national law, rather than being a *part of national law*. Unlike a supreme court in a federal system of government, however, the European court's jurisdiction does not include a power to pronounce upon the validity of the internal laws of member states. Its

jurisdiction is limited to determining the validity and interpretation of community instruments. When a question involving community law is referred to it by a member state it does not go on to apply its interpretation to the particular facts of the case. Still less does it tell the judges of the national courts whether, as a matter of their own national law or constitution, they should enforce the community law in question.

Nonetheless, the European court has clearly asserted that its functions in respect of community law are unaffected by conflicting national laws or constitutions. It stated that, "the imperative force of the treaty, and of the acts issued in implementation of it, could not vary from state to state by the effect of internal acts, without the functioning of the community system being obstructed and the attainment of the aims of the treaty being placed in peril" (*Walt Wilhelm v Bundeskartellamt*, 1969). Thus in *Stork v High Authority* (1958), the court rejected the argument that it could hold invalid a decision made within the European Coal and Steel Community (ECSC) on the ground that it conflicted with the economic and occupational freedom guaranteed under the basic law of the West German constitution. In the leading case of *Costa v ENEL* (1964), the court refused to consider the validity of an Italian law nationalising the electrical industries, by reference to certain articles of the Treaty of Rome. "The rights created by the treaty" it stated, "cannot be judicially contradicted by an internal law . . . without losing their community character and without undermining the legal basis of the community." A refusal by a national court to give precedence to a directly applicable community law would render the government of that state in breach of its treaty obligations. In this event the commission, or another member state, may institute proceedings before the European court to determine whether there has been a breach of the member's obligations. These proceedings resemble international law litigation; the European court has no means of enforcing its judgment against the defaulting member state.

There are indications that the institutions of the communities realise that the uncompromising position adopted in cases like *Stork v High Authority* and *Costa v ENEL* may not be sufficient to ensure the survival of community law in the face of conflicting national constitutions and legislation. It is asking a lot of a national court to prefer community law to the national constitution, certain provisions of which may be immune from alteration by national legislation. The basic problem is that the founders of the communities did not establish a bill of rights to protect the freedom of individuals from infringement by community institutions; but it has become evident that important aspects of the political, social and economic rights of individuals and firms may be adversely affected by community acts. For example, in *Stauder v City of Ulm* (1970), it was argued that provisions of the community law, whereby a person was only entitled to be sold subsidised butter on producing to the retailer proof of his identity and evidence that he was in receipt of public assistance, violated the protections of human dignity in West German basic law. The case was decided on a point of construction, but the court showed its sensitivity to the problem by stating that even though complying with the express terms of the relevant treaty, community law will be invalid if it jeopardises "basic individual rights implicit in the general principles of community law which the court ensures shall be observed." Such "general principles" are to be found in the "constitutional traditions common to member states" (*Internationale Handelsgesellschaft* case, 1970). The court has thus sought to avoid conflicts between community law and national constitutions, by discovering unwritten principles within community constitutional law itself, and not by direct reference to the specific provisions of national constitutions, for these may vary from state to state. It would undermine the uniform application of such parts of community law as are intended to be applied in all the member states, to allow a regulation to be applicable in West Germany to the extent allowed by the West German constitution and in Italy to the extent allowed by its constitution.

No doubt the contents of these vague standards will be amplified by the European court as future litigation arises. (If France were to ratify the European Convention for the Protection of Human Rights, its provisions might be adopted by the European Court of Justice as embodying the community members' common constitutional traditions.) In any event, however, in order to safeguard the uniform enforcement of directly applicable laws, the court will have to ensure that its standards are no lower than those of the member state that gives to its subjects the greatest constitutional protection from governmental activity. For it is difficult to imagine that national courts will allow community law to override rights that are protected from violation by national law. In April 1973, the commission stated that it was anxious to avoid conflicts between community acts and the fundamental rights of individuals. A resolution of the European parliament (which was acting upon a report of the legal affairs committee) was passed, asking the commission to submit its proposals for avoiding conflicts between community law and the protection of human rights given by national constitutional law.

### experience in the Six

With their different constitutional backgrounds, it is not surprising to find that the courts of the Six have not displayed a uniform approach to the problem of conflict between community law and their own national law. It is enough to note that there has been a strong move amongst their courts to apply community law, in preference to a subsequent national law, when they conflict; but the position cannot be regarded as finally settled in Italy or France, where the *conseil d'état* refused to apply a community law that subjected Algerian semolina to duty under the common external tariff, in the face of a subsequent French law allowing it in duty free. (*Syndicat Général de Fabricants de Semoules* case, 1968.) Whilst some members have amended their constitutions to ensure the supremacy of community law within their jurisdictions, it is far from clear whether the West

German constitutional court will decide that community law can be enforced in the Federal Republic, in the face of conflicting provisions of the basic constitution. The experience of the Six is of only limited relevance for the courts of the United Kingdom. For whilst we have no written constitution in which civil liberties are entrenched and protected from infringement by ordinary legislation, the fundamental legal rule of our constitution, that there are no legal limitations upon the legislative powers of parliament, may prove difficult to reconcile with the obligations of the United Kingdom as a member of the European Communities.

### the position in the UK

During the parliamentary debates on the European Communities Bill, the government advanced two propositions that are, on the face of it, incompatible. First, that the bill secured supremacy for directly applicable community law over conflicting acts of parliament. Second, that nothing in the bill deprived parliament of its ultimate authority to legislate in contravention of community law. Indeed, the government conceded that it was constitutionally impossible to prevent a future parliament from deliberately so legislating. If this were ever to be the clearly expressed intention of parliament, our courts would apply the act in the teeth of international law and any section in an earlier act that purported to withdraw this power from future parliaments. This, after all, is precisely what the legal doctrine of parliamentary sovereignty means.

It is, however, possible that, at some time in the future, a court might recognise that the ultimate source of legislative authority within the British constitution has changed. So that it would no longer be true that what the queen in parliament enacts is law; but that, in the areas covered by the community treaties, what is contained in the treaties, and what the organs of the European Communities enact in accordance with their constitutional provisions, would become law in Great Britain. An admittedly imperfect analogy is found in judicial suggestions that the

Westminster parliament can legally no longer legislate for former colonies that have been given independence. More to the point, as an analogy, is the shift in the allegiance of the courts, after the 1688 revolution, from the parliament of James II to that of William III. The source of ultimate legal authority is determined by the source of ultimate political authority. Moreover, there are provisions in the European Communities Act which could be used to justify such a conclusion; but a lot of water has got to flow under the constitutional bridge before it can be predicted, with any assurance, that our courts would reach it. So great is the probable impact of membership of the communities upon the ways in which British judges will approach questions of statutory interpretation, that it is worthwhile specifying the types of conflict between British legislation and community law that our judges may have to resolve. Membership of the communities will require that our judges develop techniques familiar to judges of countries with written constitutions that have greater legal authority than ordinary laws.

What if there is a conflict between a directly applicable community law, which has a direct effect upon private individuals within the United Kingdom, and an act of parliament that was passed before 1 January, 1973? Section 2(1)(4) of the European Communities Act makes it clear that community law, whether made before or after the date of the British entry, shall prevail over any inconsistent act of parliament passed prior to our entry. The act contains a list of statutes that are amended or repealed in order to bring British law into line with existing community law; but section 2 ensures that even if an act has been omitted from the list, community law prevails to the extent of an inconsistency. The Immigration Act 1971 is not one of the listed statutes, but the immigration rules make clear that its provisions will not be applied in contravention of the community law on the free movement of labour. The law commissioners might well be entrusted with the function of publishing an annual list of amendments to statutes as a result of new community law. This would, however,

be no more than a useful tidying up exercise; the European Communities Act ensures that the very existence of such directly applicable community law would reduce the scope of existing legislation to the extent of any inconsistency.

What if there is a conflict between delegated legislation, made under section 2(2) of the act, in order to implement a community obligation, and any act of parliament passed before 1 January, 1973? Again section 2(4) gives supremacy to the legislation made in pursuance of the community law. For it provides that such delegated legislation may include "any such provision as might be made by act of parliament." In other words, prior inconsistent statutes may be repealed by the provisions of such delegated legislation, just as if they were contained in a statute. It is an essential consequence of the doctrine of sovereignty of parliament that a statute repeals earlier legislation to the extent of inconsistency; but parliamentarians and lawyers have always rightly been very suspicious of conferring a power upon governments to make important changes to existing acts of parliament by means of delegated legislation, because it is subject to much less parliamentary scrutiny. Section 2(4), however, makes it clear that directives on some subjects may only be implemented by act of parliament. A community directive or a decision that imposes a clear and unconditional obligation upon the government will also give rights to the individual against the state, even if it has not been implemented, and despite any existing conflicting statute. The act amends statutes which conflict with some existing directive. Again, it would assist lawyers if the law commissioners published a list of legislation amended or repealed in consequence of the implementation of community legislation that was not directly applicable and had no direct effect.

What if there is a conflict between a directly applicable community law made after the date of entry and a prior act of parliament, but one that was passed after 1 January, 1973? Section 2(1) clearly provides that future directly applicable community legislation shall be enforced in the

United Kingdom. Section 2(4) states that "any enactment passed or to be passed" shall be construed and take effect subject to the earlier parts of the section; that is, that future community legislation shall prevail. In addition, section 3(1) states that the courts shall determine the "validity, meaning and effect of any community instrument . . . in accordance with the principles laid down by, and any relevant decision of, the European court." The supremacy of directly applicable community law over conflicting national laws has been clearly affirmed by the court. The point to note here is that the European Communities Act does not simply confer law making power upon the communities and so turn community legislation into British delegated legislation. For the ordinary rule of statutory interpretation is that delegated legislation that conflicts with a prior act passed after the empowering act is invalid. The reason is that the later act is regarded as reducing the scope of the powers contained in the enabling act, to the extent of any inconsistency. If the later act expressly stated that it was to be applied irrespective of any conflicting community law, made or to be made, a British judge would probably enforce it in preference to the community law. The argument advanced here is that the European Communities Act may require parliament to state expressly that it is legislating despite community obligations. What is at issue is the proper form that an act must take, not a limitation upon the subjects within the scope of parliament's legislative competence.

By its careful choice of words and faithful reproduction of the nature and community law as an autonomous legal order, the government may well have found enough constitutional space to ensure the supremacy of directly applicable community law in this situation. The same may not be true of delegated legislation made under section 2(2), in implementation of a community obligation contained in, for example, a directive. For this will clearly be delegated legislation made by the executive under a power conferred by act of parliament; even though the delegated legislation was enacted in discharge of an international obligation. It is true that

there is a presumption of statutory interpretation that parliament does not intend its acts to conflict with the obligations of the United Kingdom under international law; and the community treaties require that valid community obligations shall be discharged by the member states. This is only a presumption, however, and if by its express terms or necessary implication the later act is clearly capable of conflicting with future delegated legislation made under the European Communities Act, it may well prevail. It is also true that the 1972 act states that such delegated legislation may include any provision that an act may contain. It is doubtful whether the courts, if faced by the problem in the near future, would hold that it was constitutionally possible for parliament to modify, in this context, the rule that if a later act, by necessary implication, conflicts with an earlier one, the earlier act is to that extent repealed. It is, of course, open for our courts in the future to decide that membership of the communities has, in this respect, worked a fundamental change upon previous constitutional rules. Section 2(4) of the European Communities Act could be used to show that this is just what parliament intended.

These difficulties could be mitigated by entrusting a parliamentary committee with the task of scrutinising acts of parliament for potential conflict with future community law. Where this was a possibility, a clause could be inserted, to the effect that it was to be construed subject to the provisions of the European Communities Act 1972. Indeed, this might be a standard formula in all future acts of parliament. The existence of a conflicting statute might well provide a powerful reason for the government's choice of an act of parliament as the appropriate instrument to implement an EEC directive.

What if a future act of parliament were passed which conflicted with the directly applicable community legislation? The European Communities Act appears to provide that, even here, acts of parliament must give way to community law. However, the government conceded that it was not now constitutionally possible for the 1972 act to deprive a future parliament of

its power of expressly repealing it, if the United Kingdom decided to leave the communities. Nor could parliament be prevented from deliberately legislating in contravention of specific community legislation. Even though such measures might lead to proceedings before the European court, their validity could not be questioned in British courts. It would, presumably, only be in situations where the government felt national interest to be in grave jeopardy that such measures would be passed. An adverse judgment of the European court would be a comparatively trivial aggravation of an already serious political and economic position.

The more likely problem, however, is that of a conflict between a future act and existing directly applicable law, but where the act does not expressly provide that it is to prevail over community law. The courts may be able to avoid some inadvertent conflicts by reference to the presumption that parliament does not intend to legislate in contravention of community law in the absence of express words or necessary implication. Extrajudicial devices designed to avoid inadvertent conflicts include a parliamentary committee to examine bills and to draw attention to a possible conflict; a formula inserted in all acts to the effect that they do not derogate from directly applicable community law; and the passing of an annual act asserting the supremacy of community law. What would the courts do, however, if faced with a clear conflict that had slipped through the scrutiny net and did not expressly state that it should be construed subject to the provisions of community law? It is not possible to predict the result with any degree of assurance at this stage. The arguments advanced in favour of community law have less force here. For the act would have been passed when a conflict with the community law actually existed; in the earlier situation the conflict was only potential.

Much would depend on how soon after 1972 the courts were faced with the problem. For the longer that the United Kingdom remains a member of the communities the more likely is it that the courts will recognise that the British con-

stitution has undergone a significant development. The terms of the 1972 act certainly contain words that the courts could use as showing parliament's intention that community law should prevail. The courts of the Six have, in the main, already accepted that subsequent legislation does not prevent them from enforcing directly applicable community law; and it could still be argued that the sovereignty of parliament was intact, in that it was free, under the British constitution, to legislate on any subject that it chose. The effect of the 1972 act would be to require parliament to insert into any future legislation an express provision when it intended to legislate in contravention of community law and the government's international obligations under the treaties.

# 5. the courts and the European Communities

The principal changes in the administration of justice in the UK that will follow from our entry into the European Communities will take place at two levels. First, the British government or a British national may become involved in legal proceedings before the European Court of Justice. Second, British courts will be required to apply, where relevant, community law to disputes before them and to accept the final authority of the European court on questions of community law. Perhaps the most important consequence of all for British courts, at least in the long run, may be the influence that European law and legal concepts may have upon the development of many branches of our law. British lawyers and judges have in the past tended to be insular in outlook and reluctant to draw on the experience of Commonwealth and American law, much less upon the alien civil law of the continent.

## the European Court of Justice

From its position of relative isolation from community politics and the rivalries amongst the member states and the commission, the European Court of Justice has shown itself to be the most avowedly "community minded" of the institutions. From the outset, the court was the judicial branch of the EEC, ECSC and EURATOM, and it thus identified itself with the overall development of "the community." On the other hand, the court recognises that the effectiveness of its judgments depends largely upon the willingness of national courts to accept them and national governments to enforce them. There is no doubt that the court plays, and will continue to play, an important part in developing attitudes towards the communities, and in particular the extent to which its supra-national, rather than its international aspects become accepted. As with the legislative organs, the founders of the communities created a judiciary that has some of the characteristics of a federal court and some of an international court. In addition they divided the functions of adjudicating disputes involving community law between the community court and national courts.

There are now nine judges of the court and four advocates general. The UK has nominated one member to the court. (He is Lord Mackenzie, a former judge of the Scottish Court of Session. It may have been thought that a Scottish lawyer would find European legal concepts, which like those of the Scottish system derive originally from Roman law, easier to master than an English judge with a common law background.)

Although a judge's term of office lasts only six years (with the possibility of re-appointment) there is little evidence that this has not effectively insulated them from pressure from national governments. The office of advocate general is quite unfamiliar to English lawyers and is closely modeled on French practice. His function is to present publicly and impartially reasoned *conclusions* upon cases submitted to the court. Although he is not a judge, his opinion often carries considerable weight with the court. The judgments of the court tend to be short, whilst the *conclusions* of the advocate general often spell out at greater length the detailed reasoning of the decision. In predicting future decisions of the court, lawyers pay close attention to what the advocate general said.

The Treaty of Rome provides that it is the duty of the court to ensure that the terms of the treaty are observed. The court clearly takes seriously the part that can be played by the judiciary in advancing the "community idea." It regards the treaties as constitutional documents establishing a legal framework within which the communities can develop. It adopts the attitude of other courts entrusted with the interpretation of written constitutions, by emphasising the objectives and general principles of the treaties, as much as the precise words used in them. The level of generality at which much of community law is drafted allows the court to attribute a dynamic quality to its interpretation. This is in marked contrast to the more restricted rôle that British judges, in the absence of a written constitution, are used to playing; for them a close textual analysis of individual words and phrases is the key to statutory interpretation.



In a number of decisions the court has shown that the judicial branch of the communities is capable of advancing the movement towards European integration contemplated by the founders. The treaties provide ample opportunities for the court to shift a balance, imprecisely struck, between the powers of the community and those of member states. For example, it has established that articles of the Treaty of Rome, and indeed directives, may create legal rights enforceable by individuals in national courts. The treaty, however, only expressly provides that regulations shall be directly applicable. The court has also asserted the supremacy of community law over inconsistent national laws and constitutions. The court's reasoning has no doubt been an important factor in shaping the attitudes of the courts of the member states to the problem of conflicts between community and national law. This is clearly shown in the recent judgments of the Belgian courts in the *Fromagerie Franco-Suisse* case. However, sensitivity to the provisions of national constitutions may have persuaded the European court to modify its earlier rulings by implying into the treaties an amorphous area of protected civil rights, into which legislation made by the communities may not penetrate. The effect of these decisions is to advance the uniform application of community law within member states; but the court has no jurisdiction to declare national laws invalid, unlike, for example, the American supreme court which does nullify state laws that violate the us constitution.

In the ERTA case the court has indicated that the community may have an exclusive treaty making power, in an area where it has formulated a common policy on a subject; the effect of this is that a member state may not enter into a treaty with another state or organisation on that subject, irrespective of whether it conflicts with an existing community treaty. Whilst the European court has not yet been openly defied by a member, not all national courts are ready to accept to the full its almost crusading zeal. The courts of France, West Germany and Italy cannot be said to have accepted completely the implications for their own constitu-

tions of decisions such as *Costa v ENEL*. The French have also refused to refer questions of community law to the European court under article 177, when they have regarded the answer as obvious: this is the *acte claire* doctrine. The European court has recognised the threat that this could pose to the uniform application of community legislation and has disapproved all but its most limited use.

The principal heads under which the court may assume jurisdiction are as follows. First, the court may adjudicate upon an alleged infringement of a treaty obligation by a member state; but proceedings may be brought only by another member state or the commission, and not by an individual. The treaty, not surprisingly, provides no machinery for enforcing a judgment of the court against a member state. A member state may be in breach of the treaty, even though the government had done what it could to ensure compliance. Thus a refusal by parliament to approve subordinate legislation required to give effect to a directive, or a failure of a British court to give priority to a community law over an act of parliament, could lead to an adverse judgment against the United Kingdom in the European court; unless the government was able to comply with its treaty obligations in some other way, for instance, by securing the enactment of a statute in the terms of the community law. The government's ability to bring the United Kingdom back into line would, of course, depend upon the state of political opinion then prevailing.

Second, the court also acts as the constitutional and administrative court of the communities, pronouncing upon the powers of the organs of the communities, their legal liability on contracts (for instance, with their employees) and in respect of torts committed by them or their officers in the performance of their duties. Under articles 173 and 175 the court has jurisdiction to determine the legality of any act or omission of a community organ. This is the equivalent of the supervisory jurisdiction of the high court in England, to review the legality of subordinate legislation, the exercise of discretion and of judicial powers by

government departments and administrative tribunals. Under the treaties, one organ of the communities can also challenge the legality of an act of another and so prevent it from upsetting the balance of powers within the communities intended by the treaties; but only the council or commission, not the parliament, may take proceedings under article 173.

There are, however, important limitations upon the court's power. Individuals and firms may only challenge the legality of community regulations that are of "direct and individual concern to them." British administrative law also requires a person to show some special interest in the measure challenged (*locus standi*), but the European court has defined *locus standi* more narrowly than British courts currently do. Second, the act must be challenged within a mere two months of its publication or notification to the complainant. However, when proceedings are brought against an individual in the court for breach of a regulation, it will be a successful defence to show that the regulation was unlawful, even through the two months' time limit has expired and he would not have had *locus standi* to support a challenge to the regulation under article 173. If the defence succeeds, the court will not declare the regulation null and void (as it does in successful proceedings under article 173) but will merely hold it to be inapplicable to the defendant. The effect of this is to keep to a minimum the administrative disruption that would be caused by generally invalidating a regulation that might have been in operation for some time.

If these articles provided the only means of asserting legal control over the community organs, they would be quite inadequate and unacceptable to any state that aspired to subject governmental agencies to the rule of law; but the legality of a community act may also be considered by the court on a reference to it by a national court as a result of litigation started in that court.

Just as British courts review the legality rather than the intrinsic merits of a governmental act (although the two may

often merge into each other), so the European court may quash an act of a community institution on a limited number of specified grounds. It will, for example, examine whether the correct procedure has been followed. Under this head the court could quash a decision of the commission against a firm for breach of the laws against restrictive practices, if it failed to give enough information to the firm to enable it to conduct a proper defence. Similarly, a regulation, directive or decision of the commission or council may be quashed, if it is not accompanied by a full, reasoned explanation. An act which infringes an article of the treaty, or some other relevant piece of community legislation, is invalid. The other important ground upon which validity of an act can be challenged is that it was a *détournement de pouvoir*. This roughly corresponds to the English doctrine that a governmental agency may not lawfully use a power given to it for one purpose, in order to achieve another. The court exercises a fuller power of review over the imposition of fines by the commission for breach of the anti-monopoly laws. Finally, in determining whether an act does contravene community law, the court draws upon those legal principles common to the member states, thus creating a community law of judicial review that is independent of national laws. In fact French law has played a dominant part in the development of community administrative law; but in order to ensure respect for the court's ability to evolve adequately legal controls over the commission and the council, it is important that its standards do not fall below those in force in any of the member states. In the absence of adequate parliamentary supervision of the communities' organs, the legal control of the court is particularly important.

Third, the most frequently invoked source of the court's jurisdiction has been article 177 of the treaty, which provides that where a question has arisen before a national court, concerning the validity or interpretation of acts of the community, the national court may refer it to the European court. Where there is no right of appeal from the decision of the national court, a reference is compulsory. The

purpose of this article is to ensure throughout the communities a degree of uniformity of judicial decisions concerning the validity and interpretation of community acts. However, it is the function of the national courts to apply the European court's interpretation to the particular facts presented in the litigation.

To British lawyers it seems artificial to distinguish between the interpretation and application of a legislative act. When a court has to decide whether a provision in a statute covers a particular set of facts, the processes of interpretation and application will frequently merge. Article 177 attempts to strike a balance between the community interest in uniformity and the interests of member states in retaining ultimate control over the enforcement of laws within their own legal system. In a fully fledged federation, federal courts have ultimate authority over the interpretation and application of federal laws; but the blurred dividing line between interpretation and application does leave the European court room to expand its control over the development of community law, particularly when the national court provides the detailed factual background from which the disputed point arises. On questions that raise sensitive political issues, however, the court is likely to narrow its "interpretation," and leave the national court plenty of scope to apply it to the particular case. Conversely, national courts may attempt to exclude the European court. When a national court does not refer a question, over which the court has jurisdiction, the European court is often prepared to reformulate the question so as to confine it to a point of interpretation or to whether a community act is valid.

## the effect on the English legal system

The most immediate consequence for the courts, as a result of entry into the European Communities, will be that the courts will be called upon to apply directly applicable community law when relevant to litigation before them. Although there will be official English texts of community acts, it will be a novel experience for the

courts to apply legislation that originates both in substance and in form from a source outside the United Kingdom. Second, the House of Lords will no longer be the highest court in the land; for it will be obliged to refer questions of community law to the European court, and will be bound by its rulings on the validity and interpretation of community law.

Only a small part of the law administered by the courts will be directly affected by community law, although it may be expected to increase as the community develops. The British courts will not lose jurisdiction over the trial of criminal offences; but the commission and the European court have jurisdiction over the imposition of penalties for breach of the communities' restrictive practices laws. An incidental consequence of entry may well be an intensification of the current interest in reform of the law. For under articles 100 and 101 of the Treaty of Rome, the commission and council may issue directives harmonising the laws of the member states, so as to foster the working of the common market and remove distortions of free competition.

Most harmonisation has been on fairly technical subjects, such as standards of purity of food and the technical requirements of cars; but the scope will widen so as to produce harmonised qualifications to practise professional skills. Under article 220 member states may enter into conventions to harmonise legislation outside the normal ambit of community subject matter; under this power a European patent law has been worked out, and so has a uniform code for the recognition of foreign judgments on particular topics.

Section 3(1) of the European Communities Act, 1972 enacts the substance of the power or obligation of British courts to refer questions of community law to the European court. The act also provides that when no reference is made, community law shall be interpreted by British courts, in accordance with the principles laid down by, and any decision of, the European court. As a result of this wide and vague provision, British lawyers will have to become acquainted with the judgments

and lines of reasoning of the European court; indeed, the European court's interpretative techniques are rather different from those used by English courts. Moreover, the form taken by the directly applicable articles of the treaties and other community instruments is often markedly different from that of British statutes. The former is often lapidary, whilst British draftsmen attempt to cover every contingency by including a mass of complicated detail; there is much to be said for the style of the communities here.

Membership of the communities will present our courts with a number of different types of legal problem, some involving questions of national law alone and others of community law. For example, the courts may have to decide whether conduct by government or individuals is in breach of a provision of the treaties or other community instruments. They may also have to decide whether a community instrument has made an earlier act of parliament inoperative in so far as it conflicts with it. This will involve interpreting both pieces of legislation to see if there is a conflict, and then deciding whether the European Communities Act requires the court to apply the community law. This will force the courts to examine a type of constitutional problem with which they have little experience.

It might also be argued, in the course of litigation, that a piece of subordinate legislation that had been made by a minister to give effect to a community directive, was invalid. If the attack was made on the ground that the subordinate legislation was invalid, because it imposed taxation (and therefore should have been contained in an act), this would raise a question of national law. However, if the attack was on the ground that the treaties gave no power to the community organ to make that directive, this would raise primarily a question of community law. If the attack was on the ground that the subordinate legislation did not give effect to the directive, this would involve an interpretation of the directive (a question of community law) and an interpretation of the European Communities Act (a question of national law). Part of the

national courts' function in applying community law is to provide a remedy for its violation; this is a question of domestic law. For example, if a local authority discriminated against nationals of EEC countries by refusing to put them on the housing list on the same basis as British born applicants, the court could issue an injunction, or grant a declaration that their refusal was unlawful, as being in breach of a community regulation.

Whenever litigation in England raises a point of community law, the court will have to consider whether to refer it for a preliminary ruling to the European court under article 177. The House of Lords, as the final court of appeal, will be required to do so; other courts may also be required to refer, where leave to appeal depends upon consent and the consent is refused, or statute bars a further appeal. Thus, in bankruptcy matters, the court of appeal is the final arbiter; but courts from which an appeal lies may refer to the European court. Whether inferior courts, such as magistrates or county courts, should be allowed this power has been disputed. Lord Diplock has suggested that courts below the level of the court of appeal should not be allowed to refer points to the European court. His argument is that lower courts may be inexpert in drafting appropriate questions and that it would place an unnecessary financial burden upon litigants. Judge Pescatore has spoken strongly against the imposition of such a filter; the spirit, if not the letter of article 177, requires discretion on whether to entertain a reference to be exercised by the European court, not national legislatures. He also thinks it important that judges, at all levels of the court hierarchy, should be involved in community judicial decision making. In 1971, only eleven of the 37 preliminary rulings made by the court, were made on references by final appeal courts. Some crucial decisions of the European court (such as that in *Costa v ENEL*) have been made on references by inferior courts. It is also true that it may be more expensive to allow the point of community law to be argued right up to the court of appeal level, before an authoritative ruling is obtained. For,

under a statutory instrument made last year, power was given to the crown courts and the criminal division of the court of appeal to refer to the European court.

Although the European court is not bound by its previous decisions, it normally follows them. It has conceded that a national court of final appeal is not bound to refer a point of community law to the European court, if that same point has already been the subject of a decision by the court; although, if there were reason to believe that the court would change its mind, a reference could properly be made. The court has said that a frequent use of the power to refer will enable community law to develop and establish uniform legal standards. On the other hand, litigants may well feel aggrieved that decisions are being delayed and extra costs incurred in the interests of the development of community law. The costs of references will normally be borne by the party who loses the litigation in the United Kingdom.

Finally, membership of the communities may encourage closer relations (if not actual fusion) between barristers and solicitors. The continental members do not have a divided profession and have found ours difficult to understand. As a result of an agreement between the Law Society and the Bar Council, a barrister who has conducted a case in a British court will be entitled to argue it orally and help with the written submissions before the European court; but in other circumstances a solicitor (who has no right of audience before superior courts in the United Kingdom) will be able to present an oral argument before the European court. In accordance with European legal practices a case is argued in writing and orally. The Law Society and the Bar Council have, in the interests of co-operation amongst community lawyers, relaxed their professional rules to allow solicitors to share their fees with foreign lawyers and to authorise barristers to enter into partnership with European lawyers. Whether the confidence of City firms of solicitors that they will corner a substantial share of community commercial legal work is well founded, we shall have to wait and see.

# 6. customs union

Consideration of the substantive changes in our law arising from membership of the European Communities must begin with the provisions bringing about the elimination of barriers to the free movement of industrial goods and the creation of a "common front" in commercial policy to the outside world. Tariffs and quantitative restrictions between ourselves and the other members of the communities are to be removed and a common external tariff established. Goods will be allowed to move freely within the enlarged community, provided that they either originate in a member state or are otherwise entitled to free circulation. Our trading relations with non-member countries, including the Commonwealth, will be governed by community rules. A significant restriction of our freedom of action is entailed in these provisions.

## free movement of goods within the Nine

The abolition of tariffs between ourselves and the other members of the community will be phased over a period of four and a half years, while quantitative restrictions on the movement of industrial goods between the member states were, for the most part, abolished on 1 January, 1973. Quantitative restrictions on exports as well as imports disappear, except that it will be lawful to prohibit imports or exports for certain reasons of a non-economic nature which are usually granted in bilateral trade agreements and which are similar to the provisions of GATT; for instance, public morality, public security and protection of the health and life of humans, animals or plants. Once the tariff duties on goods moving between member states have been reduced or abolished, there can be no reinstatement of those duties. If, during the transitional period, difficulties arise which are serious and liable to persist in any sector of the economy, or which could bring about serious deterioration in the economic situation of a particular area, the British government may apply for authorisation to take protective measures in order to rectify the situation and adjust the sector concerned. No protective measures can be taken, however, without the clear consent of the

commission (under article 135 of the accession treaty). Further, during the transitional period it will be possible, with the approval of the commission, for the British government to introduce anti-dumping duties, where appropriate, against dumping from other members of the community. Once the transitional period has ended, however, any unfair trading practice by another member state will not be capable of treatment by an anti-dumping duty, or other protective measure, but the general provisions of the treaty relating to unfair competition will apply (provisions relating to restrictive practices, abuse of a dominant position, or state aids).

## continuation of excise duties

The abolition of tariffs on the import of goods into the United Kingdom from other members of the community does not mean that such items as spirits, wine, beer or tobacco will cease to have duty charged on importation. Duties which apply equally to community and home produced goods are compatible with community obligations (article 38 of the accession treaty). Excise duties will continue to be levied by the United Kingdom government, although there are provisions and proposals for harmonisation of the rates of duty. For valid social reasons, rates in the United Kingdom are high. Harmonisation in the community will require our agreement, and is unlikely to be achieved quickly. Whenever it does come about, however, it would appear likely to involve a reduction of our rates, which are generally above those in force elsewhere in the community.

## common external tariff and its future alteration

The abolition of tariffs and restrictions on the movement of goods between members, found in EFTA as well as the European Communities, is, in the case of the European Communities, accompanied by the raising of a Common External Tariff (CET). During the four and a half year transitional period we will be required to raise tariffs against countries in the Com-

monwealth previously given tariff preferences, subject to any special arrangements which may be made. For the most part, it will not be necessary to raise barriers against former EFTA partners who have not joined the communities with us, as special trading agreements have been made. At the same time, the application of the Common Agricultural Policy (CAP), will require the imposition of levies on agricultural products, most of which previously entered free of all charges or duties. From the outset there will be certain permanent exemptions; such as tea, wood pulp and newsprint. As is well known, only temporary exemption was obtained for sugar and New Zealand dairy produce. The United Kingdom is authorised to import from New Zealand certain quantities of butter and cheese for the five years to 1977. It is authorised to import from the countries covered by the Commonwealth Sugar Agreement quantities of sugar in accordance with the agreement, until 1975.

Subject to the exemptions mentioned, we shall be obliged to impose on all products coming from non-member states the same duties, if any, imposed by all member states. Any variation of those duties will only be possible by community decision, either in the form of an adjustment to the CET rate applicable in all member states, or alternatively in the form of a special derogation for a particular member state. A member state may not unilaterally waive or partially waive the applicable duties; however, it may call upon the commission to grant tariff quotas at a reduced rate of duty or duty free. Only in very limited circumstances is the commission obliged to grant or to propose to the council the granting of tariff quotas, and this is only rarely done.

## commercial policy

The CET and CAP, in so far as the latter concerns imports and exports, are part of a wider commercial policy concerned with all aspects of the community's trading relations with non-member states. The treaty provides that there is to be a common commercial policy which is to be

“based on uniform principles, particularly in regard to changes in tariff rates, the conclusion of tariff and trade agreements, the achievement of uniformity in measures of liberalisation, export policy and measures to protect trade such as those to be taken in case of dumping or subsidies” (article 113). Logically, such a commercial policy will lead to a situation where all goods imported into and exported from the community, wherever they enter or leave, receive identical treatment. At present this is partially but not entirely the case as, for example, in the field of quotas there is only partial uniformity. Cotton yarn has been a subject of particular concern in the United Kingdom in this respect. Although the United Kingdom has generally been rather more liberal in its textiles quota policy towards developing country producers, this was not the case with cotton yarn whose import into the Six, on the other hand, is quota free. The accession treaty did not satisfy the legitimate fears of British interests at the prospect of imports becoming quota free: but an early settlement does appear likely.

## trade negotiations

The CET and CAP constitute a single set of trade barriers in relation to the outside world, and it is logical that the community should act as a unit in conducting trade negotiations. In the last two major trade negotiations, the Dillon Round and the Kennedy Round, the commission negotiated on behalf of the community. The treaty provides that the commission should act on a mandate from the council. Our membership of the community will, of course, prevent us from negotiating unilaterally in any future trade negotiations within GATT or elsewhere (articles 110 to 116 of the Treaty of Rome, especially article 113). By becoming members of the community we become party to the community's existing agreements with Mediterranean countries, including Greece (now frozen), Turkey, Morocco, Tunisia, Spain, Israel, Malta and Egypt, each of which provides for the reduction by both contracting parties of trade barriers concerning specified ranges of goods,

differing in content and extent in each case. The community is party to the Yaoundé convention, initially entered into with ten African states which were former French or Belgian colonies. The convention gives free access to the community for exports from these states, other than goods covered by the CAP (even some of these goods get preferential treatment), and the countries obtain aid under the convention. Some of the African countries grant the community free access for industrial goods, although such provisions for "reverse preference" have been greatly criticised and are likely to be dropped in future renewals of the convention. Kenya, Uganda and Tanzania have a similar association agreement; but covering slightly fewer products and excluding aid provisions.

## the Commonwealth

The independent Commonwealth countries in Africa, the Caribbean, the Indian Ocean and the Pacific will be offered association under a renewed Yaoundé convention, or, alternatively, other forms of commercial agreement. They will not need to make their choice immediately and the present trading arrangements between the United Kingdom and these countries will continue until 31 January, 1975. British dependent territories, other than Gibraltar and Hong Kong, will be offered association on terms much the same as those available under the Yaoundé convention. Gibraltar is covered by that article of the treaty which provides that the treaty provisions should apply to the European territories for whose external relations a member state is responsible. However, Gibraltar has requested that it should not be included in the customs territory of the enlarged community. Hong Kong, which differs from the other dependent territories in that it is a substantial manufacturer, will not be offered any agreement with the community, but will be included in the scheme of generalised preferences which the community has implemented for the benefit of certain developing countries; under which the community admits quotas of manufactures at preferred rates of duty.

There is no offer of a preference trade agreement for New Zealand, Australia, Canada or for the Asian countries of the Commonwealth. As far as New Zealand is concerned, the temporary measures described above will expire in 1977. The treaty of accession provides that in 1975 the council shall "review the situation," and further provides that "appropriate measures to ensure the maintenance, after 31 December, 1977, of exceptional arrangements in respect of imports of butter from New Zealand . . . shall be determined by the council . . . in the light of that review." The council is to act unanimously. However, it is expressly provided that the exceptional arrangements laid down for imports of cheese shall no longer be retained. The treaty of accession also provides that the community shall "continue its efforts to promote the conclusion of an international agreement on milk products so that, as soon as possible, conditions on the world market may be improved." The community has also undertaken to pursue "a trade policy which will not frustrate New Zealand's efforts to diversify its trade." The obligations here are political rather than legal. As far as India, Pakistan, Ceylon, Malaysia and Singapore are concerned, a joint declaration of intent annexed to the treaty states that the community is "inspired by the will to extend and strengthen the trade relations with" these countries, and that it is ready "to examine with these countries such problems as may arise in the field of trade, with a view to seeking appropriate solutions, taking into account the effect of the generalised tariff preference scheme and the situation of the other developing countries in the same geographical area." The declaration goes on to say that the question of exports of sugar from India, after the expiry of the Commonwealth Sugar Agreement on 31 December, 1974, must be settled by the community "in the light of this declaration of intent, taking into account the provisions which may be adopted as regards imports of sugar from" the other independent Commonwealth countries.

For the majority of Commonwealth countries, therefore, the legal position is not very satisfactory, and, in particular, the



absence of any legal long term guarantees for the sugar producers must cause concern. The temporary guarantee runs out in 1975, and the offer, for some of the producers, of participation in the Yaoundé convention is no substitute. The community is under strong moral pressure to help the sugar producers of the underdeveloped world, but there is also considerable pressure from EEC producers.

## further points on commercial policy

The existence of the customs union and common commercial policy logically requires considerable harmonisation of legislation. For tariff purposes, it will be necessary to align with community provisions our rules for many matters, such as the classification of goods, the calculation of values and the operation of bonded warehouses. Our policies with regard to export credit will require to be aligned. Money collected by way of customs duties will, subject to the overall limits relating to our financial contributions, be paid over to the community. A ten per cent deduction will be made for administrative expenses, and, of course, all administration will continue to be carried out under the direct control and responsibility of the British government and courts. The treaty does not provide for a European customs service, nor for a total harmonisation of the rules, and knowledgeable traders can occasionally benefit from a careful choice of the port of entry for their goods.

## conclusion

The existence of international trade agreements has for long placed legal constraints upon our overseas trade policy. A major legal change is that any unilateral protectionist action is likely to be capable of challenge by the aggrieved citizen in our own courts and by appeal to a legal order higher than any of the United Kingdom legal systems, namely community law. The Wilson government introduced an import surcharge, even against goods from EFTA countries; a similar move now might be open to challenge in our courts. In any event such a move might be more difficult

in the closer atmosphere of the community. A further limitation is that we have handed over to the community power to conduct trade negotiations with countries outside the community. These include not only members of the Commonwealth, but also the communist countries, towards whom, previously, national foreign policy may have been strengthened by the freedom to embrace trade policy. In the future we will have to adopt a common negotiating position with the other members of the community, which may give strength when agreed, but will probably prove even more difficult to agree than was the case in a community of six.

# 7. agriculture

When the pre-accession series of English texts of the secondary legislation were published, early in 1972, no less than 28 out of the 42 volumes concerned agriculture and agricultural products. Yet, despite, or perhaps because of, the amount of legislation in force, considerable uncertainty remained, at the time of accession, as to matters of detail and those are only slowly being clarified. The main lines of the legal effects of the Common Agricultural Policy (CAP) are, however, clear, and since they have already been treated in many publications (including recent Fabian pamphlets by Eric Deakins and Harry Walston) this pamphlet will be relatively brief on the subject.

## free trade

A primary result of implementation of the CAP is the abolition of the barriers to the movement of agricultural products between member states. The tariff applied by the existing community against our producers has, in some cases, been as much as 20 per cent. On the other hand, some of our producers have looked to the United Kingdom tariff for protection against continental producers, for example those in horticulture. At the end of the five year transitional period applicable to agricultural products, the only barriers which will remain to trade in most agricultural products in either direction will be the few barriers created by veterinary and hygiene regulations, and possibly the compensatory taxes which were introduced at the time of exchange rate changes. During the transitional period, the effect of the former barriers is to be gradually removed and the introduction of new barriers to trade is prohibited. Thus, any attempt to control UK food prices by export prohibition would be in breach of community obligations.

## price support

Well known is the requirement to replace traditional agricultural support policies by a system relying largely (though not wholly) on offering the farmer guaranteed market prices aimed to be high enough to

provide a reasonable living. Under the CAP the level of prices for the main agricultural products is maintained in two ways. First, levies are imposed on imports at a rate varying almost daily so as to ensure that the price of imports is kept up to a fixed minimum price, usually called the threshold price. Second, the internal market is supported by intervention by the community's agricultural fund. The fund buys surpluses at an intervention price, which is fixed slightly below the threshold price. The same agricultural fund compensates community exporters when they sell to non-member countries at prices below community prices. Dairy products, cereals and sugar are covered by such systems (although the details vary according to the commodities concerned) and pig meat, poultry products and veal are partially covered. Our own traditional method of support for farmers did not involve their obtaining their entire returns from the market. However, the Tory government began, in 1971, an import levy system and with our membership of the community our system of deficiency payments and production grants will be phased out. Threshold and intervention prices have been introduced, but effectively at a level lower than the full community level. The prices will be gradually increased by six steps over the five years of the transitional period.

## administration

Administration of the CAP in the United Kingdom will not be in the hands of the commission, but of the intervention board for agricultural produce. A similar board exists in each member state and its function is to collect levies, and to deal with the funds as required by community regulations, using them for support buying or subsidising exports and to some extent paying them over to Brussels. Member states have steadfastly refused to allow the commission to give administrative directions to individual boards, and this accounts in part for the very considerable amount of community legislation relating to agriculture. In turn the existence of so many detailed and complex regulations, and the need to deal with every develop-

ment by legislation, probably facilitates some of the frauds upon the agricultural fund which do occur.

## state aids

As far as the competition rules are concerned, agriculture presents its own particular problems. The prohibition against state aids applies to virtually all agricultural products, but this sector has been the subject of more action by the commission under the state aid provisions than any other. Aids granted by member states, by agreement with the commission, or on the basis of council directives, are fairly common. The latest council meeting has agreed in principle to the introduction of further rules which will enable aids to be granted to hill farmers, a group about which the UK has been particularly concerned. Nonetheless, the state aid provisions are a significant example of the legal constraints of our membership. Control of food prices, for example, would, on the face of it, be possible where such control did not lead to a lower market price for producers than could be obtained by sale to the intervention board at the intervention price. If one takes a commodity such as beef, where the intervention price is much lower than the current market price, it is possible to see how the state aid provisions could be a hurdle to food price control. If beef prices were, say, to be frozen at current prices, this would not conflict with EEC rules in principle. Exports could not be prevented, however, and any subsidy to UK producers in support of price control would almost certainly come into conflict with community rules. This conflict might be avoided, but probably only in the unlikely event that equivalent subsidies were given by the UK to importers of food from other community countries.

## other competition rules

The rules prohibiting, in so far as trade between member states is affected, restrictive agreements between producers and traders apply in the field of agriculture, but subject to exceptions. The rules are

not to apply to agreements which the commission considers to be necessary for the fulfilment of the objectives set out in the treaty as being the objectives of the CAP. These objectives include such potentially contradictory objects as the provision of a fair standard of living for the agricultural community and the requirement that supplies reach consumers at reasonable prices. They also include the object of stabilising markets and assuring availability of supplies.

In the light of these rules, there was an inevitable uncertainty at the opening of negotiations as to whether an organisation such as the Milk Marketing Board could continue, given that the rules for the common market organisation for milk were known to prevent its continuance in its previous form. The board has provided stability to the market, and one of its functions has been, to a certain degree, to equalise prices between seasons and to pool financial returns for various types of products. If this function were to continue, then it would appear a pre-requisite that those producers choosing to join the scheme should agree to limit their sales other than through the scheme. Any form of price equalisation is unlikely to work if the producer is free to sell outside the scheme at the time when the market gives the highest returns. Any such commitment by a producer would appear to be in conflict with the rules of competition, unless it can be argued that trade between member states is not affected to a significant extent as British producers would not, in any event, sell liquid milk in quantity to buyers outside the United Kingdom.

The provisions of community law here are so vague as to have little meaning until a practice of enforcement has developed. The outcome of the negotiations was that a declaration attached to the treaty of accession was agreed with the community stating that "... a non-governmental producer organisation, provided it acts within the provisions of the EEC treaty and of secondary legislation deriving from it, is free, by its own decisions, to commission milk wherever it chooses in order to get the best return for its members, to pool its financial returns and to remunerate

ate its members as it wishes." A declaration which contains a proviso about the provisions of existing law, when it is those provisions which it ought to be seeking to clarify, appears to beg the question. The Tories, however, stated confidently in the white paper that the Milk Marketing Boards "are expected to continue their essential marketing functions." In fact, there is now under examination in the community a proposal to facilitate the setting up of producer organisations. Such organisations are thought to enable producers to establish a countervailing market force in the face of the buyers who are often so much larger than the individual producers. Presumably such organisations will be exempted from the competition rules, on the grounds that they are "necessary for the fulfilment of the objectives set out in the treaty, as being the objectives in the CAP." As far as concerns sugar, the previous geographical division of the market in the UK must end.

Finally, it is necessary to mention the community fishery policy. The prime difficulty which the United Kingdom found with the community policy, concerned the provision for free access of fishing vessels from member states to territorial waters. The agreement finally reached is that, for an initial ten year period, a six mile fishing limit will apply through out the community, so that only nationals of the member state concerned will be able to fish within that limit. For certain coastal areas where the local economy is primarily dependent on fishing, the limit will extend to twelve miles. As to what will happen after the end of the ten year period, the minutes of the negotiations contain an assurance that the review to take place at the end of the period will take special account of those areas where the population is largely dependent on fishing. Such an assurance has, of course, no legal effect but will be relevant in the bargaining between member states which can be expected to take place at the time of the review of the fisheries policy.

British interests in respect of hill farming and milk marketing were left by the treaty of accession in a weak legal position, but there are hopes that this may be remedied.

The future of areas largely dependent on fishing, also left in a weak long term position, does not come up for reconsideration for some years. A more general point is that the requirements of free trade in agricultural products, and the state aid rules, are a significant legal constraint and would, in particular, present legal difficulties in the way of any unilateral UK action to control the price of a food commodity which is selling at a price determined purely by market forces (for example, beef which is currently selling at a price well above the intervention price). Where the price of a commodity is kept up because of the market control mechanism, then any unilateral UK control on the sale price which makes it more economic for the producer to sell to the intervention board at the intervention price is clearly self defeating.

# 8. free movement of labour

The EEC has been very successful in creating the legislative framework essential for the implementation of the Treaty of Rome's objective of establishing a common market in labour throughout the community. The founders saw this as an important way of removing distortions of competition, and for increasing the living standards of the people living within the community. The generous provisions of community law compare very favourably with the old legislative restrictions upon aliens contained in British legislation, and the reduction over the last ten years of the freedom of access to the United Kingdom labour market that was previously enjoyed by all citizens of the United Kingdom and Colonies and of independent Commonwealth countries. No doubt with an eye upon the implications of membership of the European Communities, the governments by the Immigration Act 1971, continued and rationalised the process of assimilating the immigration and employment position of Commonwealth citizens to that of aliens. Significantly the act came into operation on 1 January, 1973.

The free market for labour within the communities has not eradicated the social problems caused by regional under development and unemployment. In some ways it has aggravated them. Within the last decade a million people from southern Italy have migrated to those areas within the communities which have had a labour shortage. The emigration of the more enterprising workers does little to advance the development of the region from which they migrate; the remittances of the migrant workers to members of their families left behind may have an inflationary effect upon the regions to which they are sent. Most of the migrant workers employed within the communities in fact come from non-member countries, particularly the Balkans, Turkey and North Africa. The social problems created in the immigrant country have been considerable, in particular, the degree of employers' exploitation, ghetto housing, and job insecurity. (For details of these problems, see *Immigrants in Europe* (ed) Nicholas Deakin, Fabian research series 306, 36pp, 40p.) For many the "free" movement of labour has meant the freedom to leave

conditions of appalling poverty for the almost equally unenviable position of a migrant worker doing a menial job in a foreign country, under conditions unacceptable to the workers of that country.

In his report to the European parliament of February, 1973, Dr. Patrick Hillery, commissioner responsible for social affairs, stated that the commission was convinced that a regional policy that located employment in areas of unemployment was essential for the creation of a socially just community. A regional policy of this type is not inconsistent with allowing freedom of movement for those who genuinely wish to migrate; but the creation of a free market in labour and capital can hardly be said to have achieved social justice amongst the regions of the communities. The volume and pattern of the migration of workers is dependent largely on the prevailing social and economic conditions within member states at any given time. Ironically, at the time that the community was liberalising its legislation, the numbers of migrating workers dropped because of the turn down in the economies of the hitherto prosperous industrial regions, particularly in West Germany. There are currently about seven million migrant workers within the member states, of whom well over two million are in West Germany. The extent to which the communities are to be regarded as outward looking may, in part, depend upon the way in which they satisfy their manpower requirements. How far will the emphasis shift from attracting workers from under developed regions of the communities and elsewhere to the creation of employment opportunities in places where they are needed? Will the communities extend free movement of labour to workers from Africa and Asia on the same terms as apply to nationals of members?

## employment legislation

Community regulations prohibit member states from preventing, by legislation or administrative action, nationals of EEC countries from taking employment there. A community worker is to be admitted into a member state on the production of

a passport or identity card and a certificate from an employer. Moreover, a worker is to be admitted, even though he has not already arranged employment before arriving and is normally given three months within which to find work. The slow progress made to date upon the harmonisation of educational standards has restricted the practical effect of the legislation for professional or technical employees. There are also some legal limitations to these rights. First, member states are allowed to retain legislation or administrative practices that limit employment in the public service to their own nationals. The meaning of "public service" is a question of community law, to be interpreted in the last resort by the European court. It is not clear how far it extends to manual, industrial and technical jobs in central government departments, the nationalised industries or local government. Second, a member state may refuse to admit a community worker, on the grounds of public policy, national security or public health. Here "public policy" is not to include economic considerations, but is limited to the behaviour of the particular worker. Whilst the existence of a criminal conviction is not in itself a justifiable reason for refusal, conviction for a serious crime or repeated convictions may be. Third, a member state may request the commission to suspend the regulations, because disturbances in the labour market threaten the employment situation and the standard of living in the area. A refusal by the commission to accede can be referred to the council of ministers.

Community legislation also provides that community workers shall have equality of opportunity to join trade unions, with full voting rights. Terms of collective agreements that discriminate against non-nationals on matters of pay, conditions of work and dismissability will be inapplicable to community workers. A number of legislative provisions are designed to facilitate the employment of workers on a community basis. For example, employment exchanges are to offer their services to all community workers and government run training facilities are to be available to community workers. The European co-ordination bureau for matching job offers

and applications disseminates and collates information supplied by the various agencies. National employment agencies are, in turn, informed of vacancies within the community that cannot be filled from the domestic labour market. Once a vacancy has been circulated, it generally may not be offered to non-EEC labour for 18 days after receipt in the member states circulated. Much non-EEC labour is still directly recruited by employers without going through these cumbersome procedures. For example, the legislation allows them to be short circuited when there is not enough community labour to fill the relevant vacancies, or when an employer wishes to recruit homogenous teams of seasonal workers.

In an attempt to bring more workers into the European labour market, the European social fund has spent considerable sums of money on training for industrial work, particularly amongst the unemployed of southern Italy. The fund, administered by the council with the assistance of a specialist committee of the economic and social committee, has paid to member states 50 per cent of the cost of relocating and retraining workers. The fund has, to date, spent \$166 million on retraining 500,000 coal and steel workers faced with redundancy; \$280 million have been advanced on reconversion work for the creation of new jobs in the coal and steel regions. The budget of the fund has been increased for 1973, in an attempt to create a common employment policy by the diversion of money to helping workers directly affected by the execution of community policies. The efficiency of these measures will depend upon the overall scope of whatever regional policy is established. The success of the scheme has, however, been limited.

## residence legislation

In addition to abolishing work permits, community legislation prevents member states from protecting their labour market by requiring community workers to satisfy onerous conditions, in order to get a residence permit. Thus, on producing a passport or identity card and an employers' certifi-

cate, a national of an EEC member will be issued with a residence permit valid for five years. The permit is automatically renewable, although a first renewal may be limited to twelve months if the worker has been unemployed for the last year. Renewal may be refused to a worker unemployed through his own fault. A residence permit may not be withdrawn solely on the grounds of involuntary unemployment, but it may be withdrawn for reasons of public policy, national security or public health, provided that the disease or disability did not occur after the initial permit was granted. A worker who has reached the retirement age after living in a member state for at least the last three years, and who has been employed for the last twelve months, has a permanent right to reside in that state.

A community worker also has a right to bring with him his spouse, parents and children, but subject to a proviso that adequate housing is available for them. This proviso is followed, however, by a statement that it shall not lead to discrimination between national and non-national workers. It is difficult to make any sense of the contradictory provisions of this obvious compromise. The spouse and children under 21 of a community worker are free to take employment within the state where they reside. Generous rights of residence are also accorded to the family of workers who have acquired a permanent right to reside. Member states may not discriminate against community workers and their families in the provision of housing, education and employment training. The fear of losing social security benefits is another obstacle to establishing a common market in labour. The community has made voluminous and complex regulations implementing the principle contained in the treaty that in determining eligibility for and quantification of such benefits, a worker shall be entitled to aggregate his periods of employment in any member state. The regulations apply to sickness and maternity benefits, old age pensions, disability benefits, unemployment benefits and family allowances. In the administration of social and tax benefits, member states may not discriminate.

The community legislation relating to the free movement of workers applies to the United Kingdom as a member of the communities. How it will affect the patterns of migration between the UK and EEC countries is difficult to predict, for much must depend on future economic and employment trends. There are about 20,000 British workers employed in West Germany, but many of these are former members of the British Army on the Rhine (BAOR). It is hardly surprising that initial figures of labour movement for the period following entry show the smallest of trickles to and from the United Kingdom. Nonetheless, the legislation represents a distinct departure from immigration policy followed by British governments since 1914 and accords far more legal protection and security to foreign workers in the United Kingdom. Although the community cannot legislate to prevent immigration into the UK from Commonwealth countries, the current policy of the Department of Employment and Productivity (DEP) is to restrict the granting of work permits to non-EEC nationals to the minimum. Apart from seasonal workers in the hotel and catering industries, the United Kingdom is essentially only interested in well qualified immigrants in areas of labour shortage. Moreover, under community legislation, nationals of EEC countries will enjoy far more favourable conditions of residence than Commonwealth citizens who enter after 1 January, 1973. However, Commonwealth citizens resident in the UK enjoy full civic rights, for example, franchise, jury service and eligibility for election to public office. EEC nationals, as aliens, do not.

## who are UK nationals?

The free movement of labour provisions in community law apply to "nationals" of member states, but it was far from clear who was a "national" of the United Kingdom. Until 1962 any citizen of the United Kingdom and Colonies and of any independent Commonwealth country was, as a British subject, free from UK immigration control. The position of citizens of the Republic of Ireland was peculiar in that, whilst they were not British subjects,

they were not regarded as aliens either. The Commonwealth Immigrants Acts of 1962 and 1968 removed the right of free access into the United Kingdom from many citizens of independent Commonwealth countries, and from certain categories of citizens of the United Kingdom and Colonies, notably East African Asians. However, Commonwealth citizens who were admitted for employment under the voucher scheme, were admitted on a permanent basis and were free to change their job. Aliens were admitted to do a specific job and for a limited time, with possibilities of renewal or variation.

The 1971 act has continued the process of assimilating in a downwards direction the immigration status of Commonwealth citizens and aliens. It purports to distinguish between those Commonwealth citizens (including citizens of the UK and Colonies) who "belong" to the UK, and others, Commonwealth citizens and aliens alike, who do not. The former, called in the act "patrials," are free of all immigration control on and after entry into the UK, and the latter are not. The most significant change made by the act is that, in future, non-patrial Commonwealth workers will not be admitted for permanent settlement, but only if they hold a work permit issued to a particular employer in respect of a specific job that he could not fill from the domestic labour market. The permit will be valid for one year, renewable if the worker is still employed and has a good record. The consent of the DEP is necessary to enable the worker to change jobs.

Without going into the complexities of the 1971 act, patrials, broadly speaking, are citizens of the United Kingdom and Colonies who were either born, adopted, registered or naturalised in the United Kingdom, or whose parent or grandparent acquired United Kingdom citizenship in one of these ways. As a result of Tory back bench pressure, the government amended the immigration rules to allow Commonwealth citizens with a UK born grandparent to enter the UK to work without a work permit. Citizens of the United Kingdom and Colonies who have been settled in the UK for five years are also patrials. In a declaration annexed to the

treaty of accession, the UK defined nationals, for the purposes of the community treaties, as citizens of the UK and Colonies who were free from immigration legislation, in other words patrials. The declaration also states that Gibraltarians are to be regarded as nationals. As a result the position is that not all those who have a legal right to enter the United Kingdom have a right of free travel within the community (for example, Commonwealth citizens with a UK born mother) whereas Gibraltarians who did not have a legal right to enter the UK under the 1971 act, do have freedom of movement within the community. One other oddity is that although patrial, Channel Islanders and Manxmen who do not have a parent or grandparent born in the UK, or who have not resided here for five years, are not nationals under the terms of the declaration annexed to the treaty of accession.

## Commonwealth immigration

The most significant category of people who fall outside the definition of nationals are citizens of the new Commonwealth who are already settled within the United Kingdom. For, although they are not patrials under the act, they are entitled to stay indefinitely, are free to change jobs and may bring their wives and children to join them here. It is known that both West Germany and the Netherlands expressed fears that British membership of the communities would result in a large scale migration of non-white labour. The Netherlands provides an interesting analogy with the United Kingdom, in that legislation has there been proposed to curb the right of Dutch citizens from Surinam and the Antilles to enter the Netherlands. Even the much vaunted benefits of colonial status prove worthless when actually claimed. The racist overtones of the compromise accepted by the British government may well be more sinister and alarming than the practical effects of its terms. For Commonwealth citizens can, after five years' residence, acquire patrial status by registering as citizens of the United Kingdom and Colonies. The children of Commonwealth immigrants who are born in the UK are



citizens of the United Kingdom and Colonies by birth, and thus come within the definition of nationals. However, the widening of the UK labour market on entry to the EEC will tend to reduce the number of vacancies to be filled by Commonwealth labour, the British government will not be bound rigidly by the provisions for ensuring a preference system for community labour. For the regulation is stated not to affect the obligations of member states arising out of special relations with certain non-European states, based on institutional ties between them existing at the time of the regulation.

## Northern Ireland

Because of the serious unemployment problem of Northern Ireland the Six allowed the UK to continue, for a transitional period until December, 1977, the existing protection of the Northern Ireland labour market contained in the Safeguarding of Employment Act, 1947. Ulster Unionists have expressed concern as to the impact upon Northern Ireland of the application of free movement to Northern Ireland, not only because of the unemployment problems there, but also, perhaps, because with the entry into the communities of both the UK and the Republic of Ireland, free movement of labour northwards across the border could well create a situation in which the prospects for a re-united Ireland become closer, even on the terms currently accepted by the British government.

In addition to the provisions in the community legislation enabling a member state to request the suspension of the free movement laws during a period of high unemployment in an area, a joint declaration in the treaty of accession could be used by the United Kingdom to solve this difficulty. For it states that, "the enlargement of the community could give rise to certain difficulties for the social situation in one or more member states, as regards the application of the provisions relating to the free movement of workers. The member states declare that they reserve the right, should difficulties of that nature arise, to bring the matter before the in-

stitutions of the community in order to obtain a solution to this problem." These vague and cryptic references to "certain difficulties" may also, of course, reflect fears of an anticipated migration of non-white labour from the UK throughout the community. It would be intolerable for any future British government to acquiesce in any attempt by the institutions of the community to restrict employment opportunities for nationals of this country according to colour.

## implementation of community law

Although acceptance of community legislation on free movement of labour makes a nonsense of the distinction between patrials and non-patrials, by creating a large group of non-patrials with substantial legal rights to enter, remain and work in the United Kingdom, the government has no immediate intention of amending the Immigration Act, 1971. The government has given effect to the rights of community workers to enter the United Kingdom by a new set of immigration rules. Given both membership of the communities and government policy on immigration, it was no matter for surprise that the rights of entry or the conditions of staying in the United Kingdom were greater for EEC nationals than Commonwealth citizens (including non-patrial citizens of the United Kingdom and Colonies). The government was defeated on the rules that it initially introduced to take into account community law, by an alliance of anti-marketeters, champions of the white Commonwealth "kith and kin" argument, and those who thought that the rules were inhumane and racially biased. The government purchased the support of the second group by amending the rules so as to allow in more white Commonwealth citizens.

If the Home Secretary purported to issue a deportation order against an EEC worker who had, under the relevant community regulations a right of residence, then an English court would test the validity of the order, not against the wide powers contained in the immigration act but against the terms of community law.

This might involve a reference to the European court to interpret any point of community law in dispute. Similarly, a decision by a local authority to refuse to put an EEC worker on its housing list, because not a British subject, would be unlawful; for the statutory powers conferred upon the housing authority will be superseded by community law by virtue of the European Communities Act.

# 9. right of establishment and freedom to supply services

The Rome Treaty contemplates that persons who are nationals of any one member state shall ultimately be free to enter into any type of business or professional practice in any country of the community. This is what is meant by the "right of establishment." By "freedom to supply services" the treaty contemplates that ultimately firms and persons who, by way of profession or business supply services, and who are established in any one country of the community shall be free to provide their services from that country to any other country of the community. The persons to benefit are not only individuals from member states but also companies. Companies will benefit if they have their central administration or their main place of business in one member state. If they have no more than a registered office in a member state, then they will not benefit, unless they have an "effective and continuous link with the economy of a member state," a phrase which suggests that there must be at least a place of business within a member state. The fact that the ultimate shareholders are outside the community does not prevent a company, otherwise qualified, from benefiting.

## prohibition and discrimination

The type of restrictions against which these provisions of the treaty are aimed are, for example, the rule in the UK which used to limit the issue of licences for oil and natural gas exploration to persons who are citizens of the United Kingdom and Colonies and are resident in the United Kingdom, or who are bodies corporate incorporated in the United Kingdom. Another example is provided by the rules in various member states that, in order to be a member of certain professions, it is necessary to be a national, as for example in England where solicitors were required to be British subjects. A further example is the power which the British authorities have had to prevent the take over of a British concern by foreign capital. The treaty aims to remove these total prohibitions based on nationality, and also to remove discrimination falling short of total prohibition. Thus, for

example, if freedom of establishment has been implemented in a particular sector of business (for it is on a sector by sector basis that implementation is taking place) it will be illegal to permit discrimination against community business men in that sector, in respect of their access to credit facilities. The British authorities under the exchange control legislation used to restrict the borrowing of money in the United Kingdom to British companies and British branches controlled by foreigners. This is an example of discrimination which the treaty aims to remove to the benefit of nationals of member states, and indeed the UK substantially relaxed its restrictions prior to our accession.

In connection with supplying services, discrimination can take many forms. For example, it is a common practice of public authorities in member states, and indeed it has often been a requirement of law, that tenders for contracts are only accepted from contractors of the nationality of the state concerned. Another example of restriction on the supply of services is found in the field of insurance, where several member states, though certainly not the United Kingdom, maintain restrictions on their residents in respect of insurance, so that there are certain types of insurance which residents may only obtain within that country.

## recognition of qualifications

Restrictions on the supply of services or on establishment by foreigners, which perhaps come to mind more quickly than many of the examples mentioned above, arise in connection with the professions; for one will rarely find a French lawyer appearing in a British court, or a German doctor practising here. However, the restriction on foreigners in the professions is almost always found, at least in the United Kingdom, to be based on absence of recognised qualification rather than a prohibition based on nationality. Thus, for example, a French lawyer could not appear in the rôle of a barrister in the English court, unless he had also qualified in England as a barrister (there is no nationality requirement in the profession).

A German doctor or dentist could not normally set up in practice in the United Kingdom, although again the prohibition would not be on account of his nationality but on account of the fact that his German qualification would not normally be recognised. It is particularly apparent in the example of the professions that it is not enough merely to abolish discrimination based on nationality. If the spirit of the treaty is aimed to be complied with, there must be overall harmonisation of regulations; in the case of the professions this would take the form of an agreed mutual recognition of qualifications.

### further harmonisation is necessary

The requirement of harmonisation has application in other areas. In the field of insurance, for example, some continental countries control persons carrying on insurance business in a manner quite unknown in the United Kingdom. If insurers, established in any one country of the community, were to be free to solicit business from persons in other countries of the community where they did not have any branch office, there would clearly be a serious distortion of competition between insurers whose home country was the one with severe restrictions and insurers based in countries with more liberal legislation. In the field of insurance, in particular, the provisions for freedom of establishment and freedom to provide services can only be implemented in conjunction with a substantial harmonisation of the rules governing the operation of insurance business within the countries of the community.

### immediate effects of accession

What then will be the legal effects in this field for the United Kingdom? Clearly, upon accession to the community it will be necessary to comply with the community's directives in those sectors which have already been the subject of legislation. The community has progressed on a sector by sector basis and most aspects of commerce and industry, including craft industries and the provision of agricultural

services, have been liberalised. Accordingly, in the sectors where freedom of establishment has been introduced, the British authorities will no longer be able to prohibit nationals of other member states from taking over existing UK businesses. This is of major importance. In 1972 there was an overture towards ICL by an overseas company; a takeover could, in the last resort, have been prohibited under existing powers. An injection of government money was, in this case, sufficient to prevent the takeover. The power of last resort in sectors where freedom of establishment has been introduced (which includes computer manufacture and supply) should have been relinquished with our accession. Individual nationals of member states and companies established in member states (whatever the nationality of their ultimate shareholders) should be free to take over companies here. Government may well find means of delaying the event, or be able to encourage the British management to resist the takeover; but the power of injecting funds for this latter purpose may be restricted under the state aid provisions (articles 92 and 93).

Of less significance is the change of law or practice which will be required in such matters as the issue of licences for oil and natural gas exploration. Foreign capital could always circumvent this requirement by setting up a British company. Also, there is the matter of the access of foreign controlled UK businesses to credit in the UK. In addition, modifications will be required in connection with the film industry. A clause in the European Communities Act provides, for example, for the films of other member states to count for the purposes of the screen quota system, a system which previously provided a degree of protection to the British film industry.

As far as concerns liberalisation in the field of public works contracts, this will take effect in the United Kingdom in July 1973, when government, local authorities and many statutory bodies will be prohibited from discrimination against contractors from other member states in the award of many types of construction con-

tract. However, as with liberalisation in the field of the professions, something positive is required beyond the mere prohibition of discrimination based on nationality. Therefore, in this case, not only is discrimination prohibited, but also a directive sets out a compulsory procedure for advertising calls by public authorities for construction tenders throughout the community, where the contract is worth more than £400,000. Detailed rules are laid down for the award of contracts the subject of compulsory advertising. They concern matters such as the personal criteria, for example credit worthiness, on which individual tenderers may be rejected, and are designed to reduce the scope for hidden discrimination. In view, however, of the considerable scope for dispute as to whether the spirit of the directive is being complied with, a committee is established consisting of representatives of member states, presided over by the commission, with a duty to look into the operation of the directive, including the complaints of particular tenderers. The aim is clearly to bring about compliance by public examination and discussion.

Not only will we be required upon accession to implement existing legislation in those sectors which have already been the subject of liberalisation, but also the Treaty of Rome itself will put upon us an obligation not to introduce regulations or practices which discriminate against nationals of other member states, where such regulations or practices did not exist at the time of accession. This provision is directly enforceable by individuals and is wide in its implications. For example, not only would it prohibit us from introducing a rule to the effect, say, that all barristers must be UK citizens, but it could also effect a public competition. If a competition were opened, for example, for the design of a new building, it would be in breach of the terms of the treaty for that competition to be open only to UK citizens and not to citizens of other community countries.

So much for the effects which will be seen immediately in our law and practice upon accession to these provisions of the Treaty of Rome. The United Kingdom

has been traditionally liberal in this field and the provisions of the treaty, to the extent so far implemented, will not require great adjustment from us and certainly less than many of the existing Six have been required to make. Our main adjustment will be matched by adjustment in other member states to our advantage. Their adjustments will, of course, facilitate both investments of British capital on the continent and the supply of services from the United Kingdom.

### future developments

It remains to consider sectors where liberalisation has not yet taken place. Progress for the professions has been slow. Professions such as architecture which are, of their nature, less concerned than some with national boundaries, have already been the subject of substantial proposals for mutual recognition of qualifications, but as yet proposals submitted by the commission have not been adopted as directives. It will undoubtedly be very many years before measures will be taken in all professions and therefore many years before continental doctors and dentists are likely to have the same facility for practising here as do Commonwealth doctors and dentists.

The insurance sector cannot be dealt with merely by a prohibition of discrimination based on nationality. (Banking and transport are other sectors which have their own special difficulties and where, as with insurance, little legislation has been adopted.) The insurance sector is worth considering, in view of its importance as a foreign currency earner for the United Kingdom and also as an example of a sector in which implementation of the treaty provisions for freedom of establishment and freedom to supply services presents considerable difficulties. Much continental insurance business is regulated in a manner unknown in the United Kingdom. Although, following the collapse of the Vehicle and General Insurance Company, closer regulation is now contemplated in the Insurance Companies Bill, the type of regulation commonly found on the continent is not necessarily the type

of regulation which would find favour here; and yet free access to the markets of member states, where regulation is severe, cannot be given, or is not likely to be given, for so long as a serious distortion of competition is likely to result. The opening of the markets of the countries where there are severe restrictions, therefore, is dependent upon a certain balancing out of the level of the restrictions between the more regulated countries, but the more liberal countries are also expected to play their part by tightening their regulations.

One example alone from the present proposals of the community will suffice to show the difficulties for British insurers. One of the community proposals is that an insurer should keep a certain proportion of his funds in each country where persons have taken out insurance with him. The practice of British insurers is to place their funds wherever they consider best. Suppose that an insurance company has insured persons in both country A and country B and has investments in both those countries. If substantial liabilities arise in country A, it may happen that the resources in country B are more easy to liquidate than those in country A, and it is in the interests of efficient insurance practice that the insurer be free to use the resources from country B to meet the liabilities in country A. If, however, he is required by the legislation to retain in country B resources in proportion to the risks insured in country B, then clearly the insurers' flexibility is reduced. Of course, the argument in favour of this localisation of reserves is that national authorities have a greater control over the insurance companies.

Another sector in which directives have been drafted but not adopted (except for one) is the pharmaceutical industry. Even the one draft adopted eight years ago had, until recently, only been implemented by one member state. One of the drafts would, in effect, require each retail chemist's shop to be owned by the chemist who is the dispenser on those premises. Although this clearly reflects the position on the continent, it is totally at odds with our own structure of retail chemist chains.

The difficulties raised by existing draft directives in certain fields not yet liberalised, and the fears recently expressed in public by certain professions that mutual recognition of qualifications might lead to a reduction of standards, brings up the question of what control we will have, as members of the community, in respect of future developments. Decisions in these fields are to be taken by the council by qualified majority with certain vital exceptions. Matters concerning the exercise of banking, credit, pharmaceutical and medical and allied businesses and professions require unanimity. So too do any matters "which are the subject of legislation in at least one member state" (article 57). If a proposed directive will require an amendment of British legislation (as opposed to administrative practice) then British consent will be required. It can be concluded that accession to the establishment and liberalisation of services provisions of the Treaty of Rome, to the extent that they have already been implemented, will have certain legal effects which will not be particularly unpalatable. However, the sectors on which work is currently in progress or on which work will in due course be undertaken, being the more difficult areas such as the professions, the pharmaceutical trade, insurance, banking and transport, may well call for greater sacrifice in the interests of compromise, although ultimately the power of veto usually remains in law as well as practice.

It should finally be pointed out that the freedom of establishment and freedom to supply services provisions are qualified, in that governments retain the right to impose restrictions for reasons of public health, public welfare or public order. This power of national governments is similar to that retained in the field of the free movement of wage and salary earners. Further, there is no obligation on governments to liberalise activities which include, even occasionally, the carrying out of public duties. This latter provision of the treaty could probably be interpreted so as to exclude a profession such as the legal profession if it were required to take advantage of the exception. The British legal profession is not, however, taking this point.

# 10. free movement of capital

Accession to the Treaty of Rome will involve a relaxation of exchange control restrictions on the movement of capital between the United Kingdom and other countries of the community. The required relaxation only affects movements of capital to other member states, and there is no requirement for a relaxation of controls affecting movements to other countries. As far as non-member countries are concerned the treaty requires the commission to propose to the council "measures for the progressive co-ordination of the policies of member states in respect of movement of capital between those states and third countries" (article 70). The objective of the commission proposal is to be to "attain the highest possible degree of liberalisation." No proposition has yet been made to the council, and the council requires unanimity to accept any proposals made by the commission.

## scope of relaxation generally

The type of controls which will be affected fall into three broad categories: first, personal capital movements, such as rules applicable on emigration or purchasing real property abroad; second, direct investment, such as setting up an overseas subsidiary; and third, portfolio investment, such as purchasing foreign currency securities. On the other hand, the control which, for example, prevents a Frenchman from obtaining an overdraft from a British bank, to enable him to finance his current requirements in France, and the similar rules preventing a British resident from obtaining an overdraft from a French bank, for the purposes of financing his needs in Britain, is the type of restriction which will not require to be relaxed.

## emigration and real estate

Within 30 months of our accession many capital movements of a personal nature will require to be liberalised between the United Kingdom and other member states. Thus a United Kingdom resident emigrating to say the South of France will be freed from the previous restriction, where-by he could only take up to £5,000 with

him on emigration, but usually had to delay for four years the removal from the United Kingdom of the remainder of his resources. He will no longer be required to wait before taking sums above that limit. At the same time the control affecting the purchase by United Kingdom residents of real estate in other member states will be removed.

## direct investment

As far as businessmen wishing to establish branches or subsidiaries in other member states are concerned, the practice was, until shortly before accession, to restrict the ease with which foreign currency could be obtained for this purpose. Currency was more readily available where the investment could be shown to be of particular advantage to the United Kingdom balance of payments. An overseas office, whose sole function was to solicit orders for the export of goods from the United Kingdom, is an example of an investment which found favour, because its costs to the balance of payments could be quickly compensated for by increased orders. With our membership of the community, however, direct investment in other member states, including the establishment of branches and subsidiaries, will require to be freed of restrictions within two years of accession. Substantial relaxation in fact took place in this field, in anticipation of accession. It is now possible to obtain official exchange of up to one million pounds per project per year.

## portfolio investment

Restrictions on the type of investment known as portfolio investment, where the investment is in quoted shares, may be retained; but only for a period of up to five years from the date of our accession. Currently any United Kingdom resident wishing to convert sterling into foreign currency, for the purpose of buying foreign currency shares, is required to obtain consent, which is normally given, provided that the investor purchases "investment currency." Investment currency is foreign currency, originating mainly

from the sale or redemption of foreign currency securities, owned by sterling area residents. Because there is only a restricted pool of such currency, it normally changes hands at a premium which can make overseas investment cost as much as 25 per cent more than it would otherwise have cost if the investment had been allowed at the official exchange rate. As an alternative to going through the investment currency market, the current practice of the Bank of England is to allow overseas borrowing subject to certain conditions.

Our treaty obligation is to liberalise within five years investment in quoted shares, but the provision of the relevant directive does not require that persons wishing to invest overseas must be permitted to obtain the necessary currency on the same market as that on which importers or persons travelling abroad obtain foreign currency; a separate investment currency market may be operated. Where persons wishing to invest overseas are required by the member states to go through such a market, then the liberalisation directive provides that the member state "*shall endeavour to ensure that transfers are made at rates which do not show appreciable and lasting differences from those ruling for payments relating to current transactions,*" (my italics). For some time certain countries of the original Six have run a parallel market for capital transactions, where the rate of exchange varies in accordance with supply and demand on that particular market. The premium in operation in those countries has never been anything like as high as is common in the United Kingdom investment currency market, and has probably never exceeded 5 per cent.

### **restrictions not requiring removal**

There are, however, various types of financial transaction, in respect of which regulations will not be required to be relaxed. An example is the one mentioned above of a UK resident or French resident seeking an overdraft to finance current needs, say the family car. If the British resident were unable to obtain the overdraft from local banks it is open to him

to approach a bank in any other part of the United Kingdom, but it is not open to him to approach a bank on the continent, even though interest rates might be more attractive there. This type of restriction will not have to be removed.

### **capital movements to non-members**

Relaxation of the controls affecting movements to other members of the community may well make it difficult for the British authorities to retain stringent controls as regards the rest of the world. However, machinery can be retained to verify the authenticity of transactions, and parliamentary assurances have been given that it will be. Moreover, the treaty permits a member state to "take appropriate measures" to overcome possible evasion of the rules of that member state, concerning the movement of capital to or from non-member countries. It is not clear whether "appropriate measures" might in certain circumstances include a reimposition of controls between Great Britain and other members of the community.

### **powers in emergency**

Under both article 73 and article 109, the treaty allows a member state in difficulties to take unilateral action. So far use has been made of article 109 only; this provides that, where a sudden crisis in the balance of payments occurs, and the council have not taken measures of mutual assistance, then the member state concerned may, as a precaution, take the necessary protective measures. The commission is not empowered to take any action to bring to an end measures taken under article 109. Only the council may do that, acting by qualified majority. In practice, the council does not take majority decisions against the wishes of a member state which considers its vital national interests affected.



# 11. state aids

The provisions of the treaties concerned with competition can be divided into those applying to undertakings or firms, and those concerned with aid measures provided by the state. The rules applying to the conduct of firms (including the nationalised industries) are discussed in the next section; in this section we are concerned with aids and subsidies granted by governments and government agencies to private companies and nationalised undertakings. We refer specifically to articles 92 to 94 of the Treaty of Rome, but analogous provisions are contained in the coal and steel treaty. We do not deal with the commission's recently prepared guidelines for co-ordinating national regional policies and for the setting up of a regional development fund. The guidelines have been prepared in response to a resolution of the October summit; but details of the proposals, including the vital matter of the size of the fund, have not yet been the subject of commission proposals. The implications for the moment are speculative and political much more than legal.

## purposes of articles 92 to 94

Provisions were made to control state aids, because it was thought that measures taken on a national basis could threaten the economic advantages to be obtained from the establishment of the common market. The purpose of that market was to bring about free movement of goods, persons, services and capital. Subsidies to industries, on a national basis, tend to impede this freedom of competition. State aids are, however, extremely important in all member states. The treaty provisions are accordingly broadly drafted, leaving a great deal to interpretation by the commission, subject to a degree of control by the European court and by the council. A certain number of rules have been made in the field of agriculture and transport; in other sectors there have been decisions on individual cases, but only refusals of consent require formal decision and publication. There have been less than two dozen formal decisions, but there are frequent discussions and negotiations between the commission and the member

states, about particular measures which one or the other member state may wish to introduce. Of a general nature, the one major achievement has been the adoption, in 1971, of guidelines concerning the so called central areas of the Six. The United Kingdom is to comply with those guidelines by 1 July, 1973, by when it is expected that agreement will have been reached as to what parts of the United Kingdom are to be considered central areas in the community context. In the remainder of this section we consider the meaning of the prohibition on aids, the extent of the exemptions (including the guidelines on regional aid) and the effect of non-compliance by a member state.

## the prohibition

Article 92(1) provides that any aid granted by a member state or through state resources, in any form whatsoever, which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between member states, be incompatible with the common market. The commission has taken a view that the word "aid" includes all types of subsidy, exemption from tax, duty or levy, grant of special interest rate, the making available of rent free or low rent factories or warehouses, the provision of goods or services at preferential rates, the covering of operating losses, as well as every other measure of equivalent effect.

The aid need not relate to the supply or production of goods but could relate, for example, to the provision of services. Not every aid, however, is of a type which affects trade between member states, and therefore not every aid falls under the prohibition of article 92(1). Aids to export, or aids to the production of import substitutes, usually affect trade between member states. On the other hand, an aid to the production of goods of a type which are not easily and cheaply transportable may not affect trade between member states. An aid to a service industry or profession might affect the provision of services to one member state by residents of another and thereby affect inter-state

trade. This might be the case with an aid to international engineering contractors or consultants, for example, but not, say, an aid to the hairdressing profession.

## permissible aids

The provision of article 92(1) is qualified by exemptions contained in article 92(2) and (3). Certain aid is automatically permitted. The important types are, first, aid to make good the damage caused by natural disasters or other exceptional occurrences, and second, aid having a social character, granted to individual consumers. It is a precondition of exemption for this second type, that the aid is granted without discrimination relating to the origin of the products. The scope of the exemption is therefore very limited. Aid of this type which does not discriminate according to the origin of the product, will often not fall under article 92(1) anyway.

Certain other aid *may* be compatible with the treaty, including regional aid, and if it is compatible then it is exempt from the prohibition. It is for the commission to decide precisely what aid is compatible with the treaty. The council retains a power by unanimous vote to authorise an aid measure, notwithstanding that the commission may have found it prohibited by the treaty. Since the council is *entitled* to authorise such a measure, this is not a process of appeal against a decision of the commission. (An appeal may be made to the European court against a decision of the commission, but this is probably of very limited practical significance.) It is, therefore, something of a safety valve, allowing a green light for a measure in a politically delicate situation, where the commission is bound by its obligations under the treaty to apply the treaty in accordance with its terms; only on very rare occasions has it, in fact, been used.

## regional aids

There are two provisions concerning regional aid. Aid to facilitate the development of certain economic areas may be

considered compatible with the treaty, where such aid "does not adversely affect trading conditions to an extent contrary to the common interest" (article 92(3)(c)). Alternatively aid may be considered compatible, where it is to promote the economic development of areas, where the standard of living is abnormally low, or where there is serious under employment (article 92(3)(a)). In the latter case the aid does not fail to qualify simply because of an adverse effect on trading conditions contrary to the common interest. In practice, the second provision is unlikely to offer the United Kingdom any greater scope than the first. The commission must pronounce on the applicability of each provision and, in practice, it lays little emphasis on the textual differences. In any event, by community standards, there are areas, for instance in Italy and Ireland, where the standard of living and level of under employment is probably much worse than in any part of this country.

The commission has discussed with the members states scores of regional aid schemes operated or proposed by one or other state and has used its influence to bring each scheme into line with what it sees as required by the community perspective. Few schemes have been the subject of prohibition and formal decision. Possibly the most important development was the one measure of an across the board nature, namely the communication to the council of June 1971, about the level of aid in certain areas. A serious problem has been the tendency of member states to seek to outbid each other in an attempt to attract investment. The corresponding escalation in aids has been a windfall for the investor, but of limited benefit to regions in need.

The commission's communication to deal with this matter referred primarily to the so called central areas. These areas are defined as virtually all of the territory of the Six, excluding the area adjoining the eastern border of West Germany, the South of Italy and the West and South West of France. The points made by the commission were the subject of a declaration of intent made by the representatives of the member states meeting together in

the council (a procedure not covered by the treaty, and frowned upon by certain observers, who consider that it detracts from the treaty and the strength of its institutions). The principle enunciated by the commission, and endorsed by the member states, is that the level of regional aid given to any one project in the central areas should not, except in exceptional circumstances approved by the commission exceed, after tax, 20 per cent of the cost of the project. This level was set for 1972 and 1973, but no figure has been decided on for later years.

Certain other principles for aid in central areas were laid down by the commission, but those are, for the most part, in accordance with normal British practice, for example the requirement that aids are to be calculated in accordance with the type, seriousness and urgency of the problem which they aim to resolve. An aid such as the regional employment premium, however, would not be acceptable to the commission. It is an operational aid, considered conservationist and not necessarily helping the creation or conversion of a plant or industry capable of becoming viable without the aid. The obligation to comply with the precepts contained in the commission's communication to the council, and the member states' agreement, is imposed upon the United Kingdom with effect from 1 July, 1973 (article 154 of the accession treaty). Before that date is reached, the nine will have had to agree as to what parts of the United Kingdom are included in the expression "central areas," and the definition of that phrase is crucial to those areas of the country now receiving regional aid. Although assistance currently granted may not be much more than the community limits allow, the 20 per cent figure may well be reduced in future. So far there have been no detailed proposals aimed to limit the level of aids granted outside the central areas.

## sectoral aids

Aid granted to facilitate the development of certain economic activities may also be considered to be compatible with the

common market. However, such aid must not adversely affect trading conditions "to an extent contrary to the common interest" (article 92(3)(c)). Thus aids to certain sectors of the economy, or even certain undertakings, may be permitted on grounds other than those of regional development. The commission will, however, require to know precisely what sector of the economy is to benefit, if a whole economic sector is concerned. If individual undertakings are to benefit, then the commission will require to approve the individual companies concerned. The commission will, of course, require to approve the type and quantity of aid given in each case.

The formal decisions to date have been limited in number. They include cases in which objection has been taken to French and Italian plans for aiding particular industries by giving them the proceeds of a levy on the sales of all the products of that industry. The objection was that the levy was raised on goods imported from other member states as well as home produced goods, and yet only the home manufacturers benefited from the levy. Where aids have been given to companies in difficulties, objection has been taken where the aid did little more than keep the company alive. An aid to a company or an industry in difficulties, enabling that company or industry to adapt itself, and thereby improve its long term prospects would have a better chance of success.

## other aids

Aids may be considered compatible with the common market, where they are to promote the execution of an important project of common European interest, and similarly, where they are to remedy a serious disturbance in the economy of a member state. An aid to remedy a serious disturbance in the economy must not, however, outlive the period of its justification. The French government was taken to the European court, for maintaining special rates for export credits, long after it was considered they were necessary to help the economy on to its feet following the events of May 1968. Finally, the

council acting by a qualified majority on a proposal from the commission, is empowered to lay down other categories of aid which may be compatible with the common market. So far it has made provision for aids to shipbuilding and repair, to offset the distortions of competition on the international market.

## transport

The provisions of the treaty concerning state aids apply equally to transport, but that sector enjoys an additional exemption. Article 77 of the treaty states that aids are compatible with the treaty, "if they meet the needs of co-ordination of transport or if they represent reimbursement for the discharge of certain obligations inherent in the concept of a public service." Various regulations have been adopted clarifying, to a certain extent, the meaning of these phrases; of most significance for the United Kingdom, however, is the provision in regulation number 1107/70, to the effect that there is an exemption for aid granted to railways pending the adoption of a regulation governing the relationship between governments and railway undertakings. No such regulation is currently contemplated. As a result, the British government is not limited in the subsidies which it may give to British Rail. In the details of some of the accounting methods concerning compensation for keeping open unremunerative lines for social reasons, there may be some amendments to be made.

## effects of non-compliance

Article 92 lays down that certain types of state aid are incompatible with the treaty. It gives certain limited automatic exemptions and considerable scope to the commission to allow regional and certain other types of aid. After 1 July, 1973, the date when the aid provisions of the treaty become applicable in the United Kingdom (article 154 of the accession treaty), the commission will be able to take a stand against systems of aid now existing in the United Kingdom. Provisions of the industry act 1972, in particular those giving

the secretary of state wide and loosely defined powers to offer selective financial aid to industry inside and outside the assisted areas, seem most likely to attract attention. Those provisions will not obtain commission approval, although once the details of specific aid measures are available to the commission, the particular recipient and measure may be approved. In practice, each proposal will be discussed with the commission and with representatives of other member states and there is some give and take. If, however, there is no agreement and the commission feels well supported by the other member states, it may rule that the measure is contrary to the treaty.

Any aid measure which the commission finds incompatible with the treaty is prohibited. Assuming that there is no successful appeal to the European court, and that the council does not unanimously approve the aid concerned, the United Kingdom government will be in breach of the treaty in continuing to apply the aid. Although the government may be brought before the European court, there are, of course, no means of enforcement of the court's decision against the government. However, the effect of the prohibition issued by the commission is felt directly in English law, since the prohibition is a directly applicable provision. It is not entirely clear what effects this may have, for there is little which a private citizen could do in the way of petitioning the English courts. It may be, however, that a government could successfully recover moneys paid under a prohibited scheme without further legislation to that effect.

Where new aid measures coming within article 92(1) are introduced after 1 July, 1973, or existing measures modified, then article 93(3) requires that the commission be informed of them and given sufficient time to submit its comments. The government is not to bring them into force, if the commission indicates that it intends to take steps to prove the aids incompatible with the common market. If the government, nonetheless, proceeds to bring the aid measures into force, then it is in breach of the treaty, and the effects under community law and United Kingdom law

are the same as if the commission had actually found the aid incompatible with the common market. If the government introduces an aid measure, without notifying the commission, then it is clear that the United Kingdom may be in breach of the treaty. It is probable that such a course of action would have the same effects in United Kingdom law as if the aid measure had been submitted to the commission, and found incompatible with the treaty.

### **further reading**

---

A long section on state aid is contained in the commission's first report on competition policy, dated April 1972. This deals with the topic from the beginning of the communities. A report on competition policy will now be made annually.

# 12. competition rules applying to firms

Most of the detailed provisions of the community treaties are designed to bring down barriers to the movement of goods, capital and workers and to remove aspects of national legislation and policy which distort the free interplay of competitive forces; but a harsh competitive climate may encourage businessmen to seek refuge in cosy restrictive agreements or in big-ness. The competition rules or articles 85 and 86 of the Treaty of Rome (and the equivalent relating to coal and steel) go some way to dealing with this problem, by prohibitions which, under implementing regulations, are backed by the power of the commission to impose fines of up to 10 per cent of a firm's turnover.

## monopolies and mergers

Major market strength is dealt with, to a certain extent in the rules of the European Coal and Steel Community, by provisions laying down that mergers involving assets of more than a trivial amount and involving at least one enterprise in either the coal or steel sector, should obtain the prior approval of the commission. No means exist to attack market strength brought about by internal growth. The Treaty of Rome does not specifically mention mergers, nor the acquisition of market power by internal growth. Once a dominant position has been acquired, in any substantial part of the common market, article 86 (far stronger than the ECSC provision) lays down that an abuse of such a position is prohibited. As presently interpreted the United Kingdom, taken as a whole (even perhaps England or Scotland taken alone) would constitute a substantial part of the common market for these purposes. Under these provisions the commission can impose fines of up to 10 per cent of turnover on a dominant company which, for example, charges excessive prices. Article 86 does not, in any obvious way, however, lend itself to merger control, except in the unusual situation where an unwilling victim has been pressurised in the market by the dominant undertaking, so as to make him succumb. In an amazing piece of judicial law making, the European court has ruled (in the *Continental Can* case) that the

Treaty of Rome does contain a general prohibition on mergers and takeovers, at least where, prior to the merger, one of the companies is in a dominant position in a substantial part of the common market; and the result is another significant reduction of actual or potential competition.

The judgment is not entirely clear and may arguably go much further than this, embracing, for example, a restriction on internal growth deliberately aimed at monopolisation. For practical purposes, however, it is the interpretation of the commission and the commission's proposals for future complementing legislation which count most, and the commission does not appear inclined to follow any of the wider interpretations. It is likely that it will confine its attention to mergers and acquisitions where they result in a very strong market position. In order to deal with this adequately, the commission considers that the *Continental Can* decision requires supplementing by a council regulation dealing in part with the machinery of control. This can be expected to take some two years, but in the meanwhile the commission does not intend to refrain from attacking undertakings in a dominant position which significantly strengthen that position by merger or acquisition.

Precisely how this policy will develop is difficult to predict. The commission is likely to aim to prevent mergers and acquisitions which allow the undertaking thus formed (in the words of the coal and steel treaty) to determine prices, to control or restrict production or distribution, or to hinder effective competition in a substantial part of the market for those products. For steel, a 13 per cent share of crude steel production in the community has been indicated as the point above which very careful examination is necessary; but no percentage criteria are likely to be laid down for the application of the Treaty of Rome provisions as every market differs. Further, it will be relevant to the development of policy that the European court can be expected, as is shown by *Continental Can*, to demand a high degree of proof and to resist an over narrow definition of the relevant market

in any case. It is also relevant that enforcement is hampered by the fact that the staff of the commission devoted to competition law matters is tiny, by comparison with the work load, and the commission may, in practice, devote more attention to developments in countries other than the UK. Our legislation, which will remain substantially unaffected, is much stronger than the rules generally found in national laws on the continent.

### **restrictive practices**

Article 85 (1) prohibits agreements which restrict competition and affect trade between member states. This is a very broad provision, and its interpretation is substantially in the hands of the commission. Article 85(1) has been applied, not only to industry wide cartels, but also to very many two party agreements. Article 85(3) contains provisions for exemption from the prohibition of article 85(1), usually on a case by case basis. Only the commission may make exemptions and it is required by the treaty to be satisfied that the agreement will lead to an improvement in distribution or production, or will bring about technical or economic progress. Even then the commission is not entitled to exempt an agreement, unless it is satisfied that consumers are allowed a fair share of the resulting benefit, that no unnecessary restrictions are contained, and that the parties are not given a chance to eliminate competition in respect of a substantial part of the products in question.

The policy is only now becoming effective. The early fines included a modest one on ICI in 1969 for its alleged part in a community wide price fixing cartel. Latest fines include those on certain continental sugar refineries (now under appeal), including a fine on one company of nearly £750,000 for its alleged part in a concerted practice resulting in an insulation of each national market from the risk of competition from producers in other parts of the community. The commission considers that firms are now well aware of the rules, and their application to certain situations which have been fairly com-

mon, in particular market division along national boundaries, whether at manufacturer or distributor level; the commission has therefore indicated, that fines are likely to be heavier than they were at first.

It has taken the commission some time to reach this stage (nearly 15 years have elapsed since the Treaty of Rome) and, at least in part, this delay is due to factors which continue to be valid and may limit the vigour with which infringements can be pursued. The competition rules affect, even if sometimes in only a modest way, very many commercial transactions, including very common ones, such as patent licences. The commission has been under pressure from businessmen to delimit the application of the rules. Businessmen are concerned since, if a clause is struck by the prohibition of article 85(1), it is unenforceable. This process of interpretation and definition of the application of the rules has been undertaken very carefully on a piecemeal basis. There are still important aspects remaining to be defined, although largely in areas, such as joint venture agreements, where the effects of the agreement on competition in a wide sense may often be limited. The process of definition must, to a certain extent, go hand in hand with enforcement. It is to be expected, however, that enforcement will be more vigorous once broad principles have been adopted for the application of the rules in any type of situation; this will allow staff more time to concentrate on enforcement rather than on definition.

Another factor is that the administration of the competition policy may, on some occasions, come into real or apparent conflict with other aspects of the commission policy. In particular, there is a desire to see created in Europe, firms or groupings large enough to compete effectively with the Americans. Many of the factors which led the Labour government to set up the Industrial Reorganisation Corporation (IRC) are very much present in continental countries, where industry is not concentrated in large firms to anything like the degree known here. The commission, therefore, has been looking for ways to encourage co-operation between European firms. Proposals include amendment to

company and company taxation laws and the adoption of the European company statute. The latest step has been the setting up of an information bureau to help foster such co-operation on a European level. The administrators of the competition policy have endeavoured to play their part in the process of obtaining greater efficiency, and have endeavoured to offer encouragement to co-operation between undertakings, particularly small and medium sized ones. Agreements involving small and weak parties have been held too insignificant to fall under the prohibition of article 85(1) for lack of appreciable effect on the relevant market as a whole. Where they do fall under it, they more readily benefit from exemption under article 85(3). Even if these administrative policies may give a vague feeling of encouragement to co-operation between smaller firms, this is clearly a poor substitute for vigorous action to rationalise industry on a European scale.

### **respect for national frontiers**

As far as the United Kingdom is concerned, our legislation remains substantially unaffected by article 85, which often merely provides a "second hurdle" for agreements to cross before they are valid and legal. The effects on the climate of competition here may, in the short run, not be very great. Post-war British legislation has had a significant effect upon the competitive climate and, where it has failed or merely driven restrictive practices underground, it is hard to see that the threat of fines from Brussels will make any great difference; but the British rules have had limited application to export and import agreements. Thus, where a British firm in a strong position here has been protected from continental competition, by agreements under which the parties agree to respect national territories, the Treaty of Rome is more likely to bring about an improvement in the competitive climate. The UK legislation rarely interferes with vertical agreements such as distribution and licence agreements. The application of article 85 to such agreement may, in the long run, make for greater competition.

Exemption from the prohibition of restrictive agreements is based primarily upon efficiency criteria. It sometimes happens that agreements between firms have a very direct bearing upon the preservation of employment opportunities. One might take, for example, the recent spate of agreements involving Japanese exporters, on the one hand, and hard pressed European manufacturers, on the other; these agreements have been made with a view to controlling Japanese competition in Europe in the interests of avoiding permanent injury to their European counterparts. Such agreements fall under the prohibition of article 85(1) and do not satisfy the efficiency criteria for exemption under article 85(3). Possibly alternative criteria should be added to the treaty so as to permit the exemption of agreements which significantly help to preserve jobs, particularly in the face of competition from outside the EEC.

### **nationalised industries**

The Treaty of Rome specifically provides that it "shall in no way prejudice the rules in member states governing the system of property ownership" (article 222); similar provisions exist in the coal and steel treaty. Nationalisation is therefore not prohibited by the treaties, but in other ways the nationalised industries are clearly affected. First, it is generally against the treaties for a government to protect such industries from competition from other parts of the community, or to restrict exports. Moreover, the rules as to state aids (already discussed in section 11 of this pamphlet) are applicable. The rules for the coal and steel industries may be slightly stricter than the rules under the Treaty of Rome, in that there are certain reporting obligations which facilitate enforcement of the rules and not only are aids prohibited but also a government is prohibited from imposing "special financial burdens" on its industries. The rules generally leave considerable scope for discretion in their application. In some respects, however, they are clear, and thus, for example, the freeze on steel prices has already brought the Tory government into conflict with the rules.



The nationalised industries are subject to the same competition rules as are applicable to private firms. This includes the rules which affect their growth by merger with competitors. A further difficulty in the way of nationalised industries growing in this manner is that any funds made available by a government for this purpose may be found to be a prohibited state aid. Other possible legal restrictions on the operation of the NCB or BSC include for example, powers for the laying down of rules, usually requiring the consent of the council, to deal with serious emergencies. Thus the council could approve production quotas at the request of the commission. The commission acting alone may fix maximum or minimum producer prices where "a manifest crisis exists or is imminent." These powers have not been used in the 21 years of the ECSC's existence.

The fears, held at the time of entry negotiations, concerning a possible move by the community to break up the BSC, seem now to have been substantially allayed. The government obtained an undertaking from the Six that it had "no intention of calling into question the size or the legal position of the BSC or the NCB." None of the provisions of the coal and steel treaty appears to be particularly appropriate for an attack on the size of the NCB or BSC and the treaty specifically states that it in no way prejudices the system of ownership of the undertakings to which it relates.

### **excluded from competition**

The nationalised airlines and British Rail's cross channel ferries are excluded from the full application of the competition rules, because implementing regulations have not yet been made in respect of air and sea transport. It seems unlikely that, in the near future, the community will seek to apply the competition rules to the international air transport agreements. An inquiry has been opened by the commission into competition between cross channel ferry operators, but its findings can only be the basis for recommendations to member states.



# young fabian group

# the authors

The Young Fabian Group exists to give socialists not over 30 years of age an opportunity to carry out research, discussion and propaganda. It aims to help its members publish the results of their research, and so make a more effective contribution to the work of the Labour movement. It therefore welcomes all those who have a thoughtful and radical approach to political matters.

The group is autonomous, electing its own committee. It co-operates closely with the Fabian Society which gives financial and clerical help. But the group is responsible for its own policy and activity, subject to the constitutional rule that it can have no declared political policy beyond that implied by its commitment to democratic socialism.

The group publishes pamphlets written by its members, arranges fortnightly meetings in London, and holds day and weekend schools.

Enquiries about membership should be sent to the Secretary, Young Fabian Group, 11 Dartmouth Street, London, SW1H 9BN; telephone 01-930 3077.

Graham Child, who is 29, is a solicitor in private practice. After reading law at Worcester College Oxford, he spent 18 months teaching in the law faculty in Tanzania, under a United Nations Association volunteer programme. He was, for a short period, in the legal service of the commission in Brussels. He is co-author of a book on the competition law of the common market.

John Evans, who is 30, read law at Oxford. He has taught at the University of Chicago and Worcester College Oxford. He has been a lecturer in law at the London School of Economics and Political Science since 1967. His main areas of interest are administrative law, civil liberties and immigration. He is the author of several articles on these topics in the *Modern Law Review*.

Cover design by Dick Leadbetter. Printed by Civic Press Limited (ru), Civic Street, Glasgow G4 9RH.

ISBN 7163 2034 7

# recent fabian pamphlets

## research series

291	David Stephen	Immigration and race relations	25p
297	Della Adam Nevitt	Fair deal for householders	25p
298	Jim Skinner	Collective bargaining and inequality	20p
299	S. F. Kissin	Communists: all revisionists now?	40p
300	Christopher Foster	Public enterprise	30p
301	Kees Maxey	From Rhodesia to Zimbabwe	45p
302	Arthur Gillette	Cuba's educational revolution	45p
303	Felicity Bolton, Jennie Laishley	Education for a multi-racial Britain	20p
304	Tessa Blackstone	First schools of the future	25p
305	O. Kahn-Freund, Bob Hepple	Laws against strikes	85p
306	Nicholas Deakin (ed)	Immigrants in Europe	40p
307	Paul Singh	Guyana: socialism in a plural society	25p
308	Peter Coffey, John Presley	Europe: towards a monetary union	25p

## tracts

399	R. H. S. Crossman	Paying for the social services	20p
406	Giles Radice, J. O. N. Vickers	The industrial relations bill	15p
408	Eric Deakins	EEC problems for British agriculture	25p
409	Wayland Kennet and others	Sovereignty and multinational companies	30p
410	Anthony Crosland	Towards a Labour housing policy	20p
411	Dennis Marsden	Politicians, equality and comprehensives	30p
412	Jeremy Bray	The politics of the environment	25p
413	Michael Stewart	Labour and the economy: a socialist strategy	35p
414	ten Fabian task forces	Towards a radical agenda	50p
415	Evan Luard	The United Nations in a new era	25p
416	an informal group	Emergency powers: a fresh start	30p
417	Trevor Fisk, Ken Jones	Regional development	40p
420	Colin Jackson (ed)	Labour in Asia: a new chapter?	40p
421	Malcolm Wicks	Rented housing and social ownership	25p

## young fabian pamphlets

17	Colin Crouch (ed)	Students today	30p
24	Elizabeth Durkin	Hostels for the mentally disordered	15p
27	Isla Calder	Our children's teachers	30p
28	Colin Crouch, Stephen Mennell	The universities: pressures and prospects	45p
29	Russell Lansbury	Swedish social democracy	25p
30	James Bellini	British entry: Labour's nemesis	25p
31	James Goudie	Councils and the Housing Finance Act	30p
32	Tony Klug	Middle East conflict: a tale of two peoples	40p

## books

R. H. S. Crossman and others	New Fabian Essays	cased £1.75
Margaret Cole	The story of Fabian socialism	paper £0.75
Brian Abel-Smith and others	Socialism and affluence	paper £0.60
B. Lapping and G. Radice (eds)	More power to the people	paper £1.25
Peter Townsend and others	Social services for all?	paper £0.75
Peter Townsend and others	The fifth social service	paper £0.90
George Cunningham (ed)	Britain and the world in the 1970s	cased £3.00
P. Townsend and N. Bosanquet (eds)	Labour and inequality	paper £2.20