

Collaboration between the Authorities and Occupational Organisations in Luxembourg

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ORGANISED ECONOMIC GROUPS participate in framing economic and social policy in Luxembourg through two institutions: the occupational chambers, established under the Act of 4 April 1924, which have become an important part of the legislative machinery; and the Economic and Social Council, which was set up by the Act of 21 March 1966. The latter represents a new start rather than an innovation, for this institution has suffered a series of setbacks over the years, unlike the occupational chambers, which have long enjoyed public recognition.

The purpose of this article is to trace the underlying principles of occupational organisation in Luxembourg, to describe the characteristics of the existing institutions and their problems, and, lastly, to analyse the conditions necessary to the success of the new Economic and Social Council.

Underlying principles of occupational organisation

Duality of occupational organisation

A trade union or employers' organisation is a private association freely set up and run, and cannot speak for the whole of an occupation; this function is the prerogative of occupational chambers. These are public establishments of which all the members of the occupation concerned are the constituents. Membership of a trade union or employers' organisation is optional; adherence to an occupational chamber is compulsory.

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An occupational chamber is the official intermediary between the members of an occupation and the authorities. It is a consultative body representing and defending the general and interoccupational interests of the activities it covers. As the rapporteur stated in the Chamber of Deputies in 1922, the occupational chamber is the highest expression of the unity of the occupation.

The function of a trade union or employers' organisation is more specific: it has no official consultative function, and it defends the interests of a more restricted group. Moreover it may have a political character, whereas an occupational chamber is more of a technical body.

The two types of body are complementary; this duality should leave no room for rivalry, and in fact the links between them are fairly close.

Two problems have arisen in this connection since the Second World War. New regulations for the Chamber of Handicrafts issued in 1945 confined the right to be elected to the chamber to members of craftsmen's associations. This provision, which was considered contrary to the principles of the 1924 Act, was subsequently repealed, with the agreement of those concerned.

In agriculture, on the other hand, matters did not work out so well. Since the Chamber of Agriculture had not succeeded in playing the part in public life that had been assigned to it under the Act, a Ministerial Order of 1945 authorised the very vigorous Peasant Confederation, the farmers' organisation, to exercise the functions of the Chamber of Agriculture until the adoption of provisions to the contrary. The Peasant Confederation, which has retained the monopoly of occupational representation, subsequently acquired so great a political influence that it became clear that a return to the position under the Act would have been increasingly difficult.

Such a return was attempted by the Grand Ducal Order of 29 December 1960, which provided for the setting up of an official body representing agricultural interests (the National Council for Agriculture); but in fact the Peasant Confederation, which administers a great number of agricultural enterprises (dairies, a grain store, a meat processing plant, an insemination centre, etc.), occupies so strong a position that no regulation aimed at breaking its monopoly is likely to be effective in practice.

Under the system followed in Luxembourg, the word "occupation" is taken to include all persons having the same employment status and not in the sense of all persons working together to the same productive end. The trade chambers differ, then, in their composition from the Belgian and Dutch occupational councils which are joint bodies.

Autonomy of the occupational chambers

The autonomy of the occupational chambers is greater than that of any other public body. They are administered by members freely

elected by universal suffrage within the occupation. They have legal personality and enjoy a wide measure of financial autonomy (the right to levy contributions and charges) and administrative autonomy (elected executive committee, secretariat appointed by the chamber itself). They can provide services in the interest of their constituents.

Public supervision is limited to the strict minimum necessary to ensure respect for the Constitution and the supremacy of the general interest: public supervision of elections; government audit; approval of certain acts, such as the appointment of the secretary, and the standing orders; right to dissolve the chamber for grave reasons.

Concentration of occupational chambers

Occupations are extremely numerous and varied, and so they have a natural tendency to particularism. The 1924 Act was an amalgam of many Bills. At that period, the Council of State championed the principle of the concentration of the trade chambers and their equality before the law. Accordingly, Bills to set up separate chambers of veterinary surgeons, railway workers, retail traders and the middle classes, for example, were rejected, and the various groups were incorporated in the five chambers set up in 1924, since "an excessive dispersal might well have led to the establishment of bodies with feeble resources and a small number of constituents".¹

These considerations are still valid, although the co-operation within a single chamber of various groups with disparate interests raises difficult problems, particularly in the employers' chambers, and certain centrifugal forces are in evidence.

In case members of minority groups should be prevented from being elected to their chambers, the principles of concentration and universal suffrage in the occupation are tempered by the creation of special electoral colleges within each chamber and even, in certain chambers, by the creation of special standing committees (see the table given later in the text).

The representatives of the retail traders, for example, in the Chamber of Commerce form a special standing committee that can meet independently to deal with questions of special interest to the retail trade.

If the number of constituents were the only criterion in the distribution of seats, the Chamber of Commerce would probably consist only of retail traders, the Chamber of Salaried Employees and the Chamber of Labour would consist exclusively of salaried employees and workers in heavy industry, and only officials of the lowest grade would succeed in being elected to the Chamber of Public Officials. It is therefore essential to take account, too, of the functional importance of the various groups

¹ Chambre des députés, session ordinaire: *Compte rendu*, 1922-23, p. 430 (Avis du Conseil d'Etat).

(out of 10,000 constituents in the Chamber of Commerce only five belong to the iron and steel industry, and yet that industry produces more than one-quarter of Luxembourg's national income).

Equality before the law

"It is only reasonable" declared the Council of State in 1924 "to provide the same form of representation for the various branches of national activity, to apply the same rules to the formation of electoral colleges, and to grant representatives the same facilities for action."

That this is not the only possible point of view is shown by the example of other countries. In view, however, of the national character of occupational chambers in Luxembourg and the basic similarity of their aims, equality before the law is the most rational system.

It should be added that this equality does not rule out a certain degree of particularism. In addition to the powers held by all of them, individual chambers have certain special statutory functions. Moreover, though the composition of the chambers follows general principles, the distribution of seats among the various groups and the definition of the constituents of each chamber are the subject of special provisions.

Functions and statutory powers of occupational chambers

The functions of the chambers are mainly consultative. The consultation of the people on projected legislation concerning them is a form of economic democracy. It has been suggested that the introduction of an additional step lengthens the legislative process, but the opposite effect should be expected: the informed advice of the occupational chambers relieves Parliament of detailed research and cannot fail to shorten it. The consultative powers granted to organised industry should also reduce the danger that the Chamber of Deputies may degenerate into a chamber of representatives of special interests.

The occupational chambers may also undertake various activities of value to their respective occupations. When the definition of their powers was being discussed in 1924, there were those who favoured making them into public services financed by the state budget and wielding wide powers such as that of adopting the budget of their department or organising vocational training. This led the Minister of Agriculture, Industry and Social Insurance to utter the following solemn warning in the Chamber of Deputies:

I feel bound to draw the attention of the Chamber to a great danger. The occupational chambers must not be allowed to become an impediment to the administration and place the Government, which is responsible before Parliament, in a false situation between two sources of responsibility one of which would be unconsti-

tutional.... The credits relating to the various occupations will be voted by Parliament after it has considered the recommendations of the occupational chambers. If we should give these chambers the right to decide how the credits were to be used, ordinance by ordinance, I cannot see what would be left for the Government to do.... We cannot grant the power to decide these questions to the chambers, that is to say to bodies without responsibility, and take it away from the responsible authorities, that is to say the Government and Parliament.¹

In short, a balance had to be established between the economic powers and the political power, the latter remaining the guardian of the public interest.

In 1957 a plan was introduced under which the chambers would have been granted far greater powers than under the 1924 statute, in order to encourage the expansion of their activities as far as was compatible with the general interest. In certain conditions, Grand Ducal Orders might have granted a monopoly to their services or made regulations issued by them binding on all their constituents. Orders could also have been issued authorising them to take part in the formation or management of commercial or industrial enterprises.

This plan, which would have given a statutory framework to the desire of certain chambers to expand, did not get beyond the preliminary stage. The next government, fearing the political difficulties that might result from a reform of the system, preferred to separate the two problems that had originally been considered as one—that of the occupational chambers and that of the Economic and Social Council—and to concentrate on the second.

The Economic and Social Council

The Economic and Social Council is intended to complement the occupational chambers; it is called on to study problems concerning two or more occupations or the whole of the national economy.

From the doctrinal point of view, the idea of an economic and social council, like that of the occupational chambers, derives from principles of economic democracy. The chamber is the highest occupational institution in a particular occupation. The Economic and Social Council is the final stage in the development of occupational organisation on the national scale. The occupational chamber makes recommendations to the public authorities on questions mainly concerning a single occupational group; the council makes recommendations on general problems concerning two or more groups or the whole of the economy. The chamber defends more or less homogeneous interests; within the council, groups representing various interests come face to face. The Socratic method of discussion within a council representing the national economy must contribute to

¹ Chambre des députés: *Compte rendu des débats*, 1921-22, pp. 1392 ff.

better mutual understanding, promote social peace and facilitate the working out of solutions to national problems.¹

The occupational chambers

The occupational chambers are bodies set up to advise the public authorities and to represent the general interests of the various occupations. There are at present six of them. Three represent employers: the Chamber of Agriculture, the Chamber of Commerce, and the Chamber of Handicrafts; three others represent employees: the Chamber of Labour, the Chamber of Salaried Employees, and the Chamber of Public Officials. The liberal professions are not yet represented.

Despite the existence of foreign models, we believe that the Luxembourg institution shows some originality, on account of the importance of its consultative functions at the national level and the number of groups represented. In most other countries only employers' chambers are known, and even they are sometimes mere private associations. Besides, the activities of these chambers are essentially regional.

On the other hand, the privileged situation of the occupational chambers in Luxembourg seems to explain, in part, the difficulties met there by the Economic Council.

Legal status

The trade chambers are incorporated public bodies.

All persons resident in the Grand Duchy of Luxembourg as well as the Luxembourg branches of foreign companies are constituents of the occupational chambers, provided that these persons or branches follow in Luxembourg, either as their main activity or as a secondary but continuous activity, one of the occupations represented by the chambers. Constituents are required to pay a contribution, they benefit from the activities of the chambers and can avail themselves of the services provided by them.

¹ The following paragraphs are contained in the government statement of 7 July 1954: "The Government considers economic and occupational organisation to be one of its most important tasks. There is a growing need in the interests of social peace and the harmonious development of the economy, to ensure genuine collaboration between the public authorities, the economic forces and the forces of labour.

"Such collaboration can fulfil its purpose only if the powers of the trade organisations, federations and unions are clearly defined and delimited. This will be done when the Government places plans for reforming the occupational chambers and the Economic and Social Council before the Chamber.

"It is in this council that the consciousness of their interdependence will grow, that collaboration on an equal footing will develop, at the level of the occupation, between the employers' and workers' associations, and that the various occupations of the country will come together for the purpose of working out a co-ordinated economic policy."

Occupational Organisations in Luxembourg

In order to vote, a constituent must be of Luxembourg nationality and have reached the age of 21. Every elector who has reached the age of 25 is eligible. Elections are held every five years.¹

Finance

The occupational chambers have their own resources of various kinds.

First of all, they have the right to require their constituents to pay contributions in accordance with a scale established by them but subject to a statutory maximum. The revenue from contributions covers the main administrative expenses of the chambers, including those incurred in the performance of their consultative functions and the defence of the general interests of their occupations.

Since it is compulsory, the contribution payable amounts to a tax. When it is being fixed, account must therefore be taken of article 102 of the Constitution, under which: "Payment may be exacted of citizens or public establishments only in the form of taxes for the benefit of the State or the community or otherwise as expressly laid down by law."

Accordingly, not only must the levying of contributions by the chambers be authorised by law, but also the maximum must be fixed by law; otherwise article 102 would fail in its purpose, which is to protect the citizen against arbitrary action.

In 1924 the legislative authority fixed the total amount of the contributions to be levied by a single chamber at a maximum of 100,000 francs. The result is that today the chambers are in an illegal situation (see table) and that they have no legal means of enforcing the payment of contributions.

Before the Second World War, the Administration of Taxes and Excise undertook the recovery of the amounts due. Since the war, however, its workload has not permitted it to carry out this task. The employers' chambers themselves recover the contributions and fees due to them, while the wage earners' chambers collect contributions through the employers.

The occupational chambers also charge fees for the services they provide. These fees, unlike contributions, are not in the nature of taxes; they represent more or less the value of a service rendered. They must relate to a specific service rendered to a constituent or a third party (certificates of origin, expert opinions, evening courses, occupational advice, etc.) and not to the defence of general interests. It is hardly necessary to say that there is no obligation to charge a fee for these services.

¹ Even though a single person may exceptionally have the right of vote for two chambers, the right to be elected to two is excluded: a person with two occupations may stand for election for only one chamber, which he may choose, and for a single electoral college.

SOME DATA ON THE OCCUPATIONAL CHAMBERS

	Agriculture	Commerce	Handicrafts	Labour	Salaried employees	Public officials
Constituents	c. 7,500 (1,500 vine growers)	10,000	5,000	60,000	22,500	8,000
Elected members	(35)	21	24	18	20	27
Electoral colleges	(2)	8	24	2	5	7
Special standing committees	Vine growing	Retail trade	—	—	—	—
Delimitation of constituents	Farmers, vine growers, livestock raisers, fruit growers, horticulturists, nurserymen, gardeners, market gardeners, fish breeders	Businessmen under the rules of commercial law, except master craftsmen	Master craftsmen practising in Luxembourg and holding a master craftsman's certificate	Wage earners in Luxembourg enterprises	Salaried employees in Luxembourg enterprises	Public officials and employees in service and on pension
Amount of contribution	10 fr. per hectare per constituent	1.5 per cent. of taxable business profits (minimum 75 fr.; companies 250 fr.)	4 per cent. of taxable profits (minimum 140 fr., maximum 2,500 fr.)	60 fr.	50 fr.	30 fr.
Statutory basis	1924 Act	1924 Act	1924 Act	1924 Act	1924 Act	Act of 12 Feb. 1964
Previous system	Agriculture Committee and Vine Growing Committee	1867	—	Act of 28 June 1920	—	From 1956 until the passing of the Act, the Public Officials' Association acted as the chamber
Subsequent legislation	Grand Ducal Order of 31 December 1960	—	Grand Ducal Order of 8 Oct. 1945, as amended on 31 Dec. 1960	—	—	—

Powers

The opinion of a chamber must be obtained by the Government on all Bills and draft orders "mainly" concerning its constituents. The word "mainly" is probably open to interpretation. But the chambers are consulted not only on problems that concern them exclusively; they are also consulted in connection with important political decisions, such as the state budget or European treaties. It can in fact be said that consulting the chambers has become a part of political tradition. The Council of State considers Bills only after the recommendations of the chambers have been communicated to it. Failure to consult them does not, indeed, involve invalidation of an Act or regulation; but it would be likely to have political consequences.

The minutes of the proceedings of the chambers are published in the press.

After the right to be consulted officially, that to establish services of value to the occupation is the most important conferred on the chambers by the 1924 Act. It is not specified whether this right involves the power to issue regulations: the matter raises delicate problems. It must, however, be observed that, although important powers were conferred on the occupational chambers in 1924, some of them have not made use of these powers.

The Chamber of Commerce has set up a service of information and documentation on the Luxembourg market, its sources of supply and its outlets as well as an apprenticeship service (evening courses). The Chamber of Handicrafts organises further training courses, and has set up a mutual insurance society for craftsmen and a rationalisation service. The Chamber of Agriculture has many activities, including a health service, a market service, artificial insemination and participation in the verification of the herd-book.

These services are not as a rule exclusive or compulsory; a private party or a trade union may set up a similar service. But the chamber is in a particularly good position to offer them. It has a legal basis on which to do so, it represents all the members of the occupation and it gives them the benefit of its activities, for, since it levies compulsory contributions, it has financial resources available. The chambers can set up services freely. There is, however, a danger that, taking advantage of the facilities they have as public bodies, they may be tempted to adopt measures harmful to the legitimate interests of other occupations. The acquisition of a *de facto* monopoly must not, then, be allowed to tempt a chamber to abuse its economic strength.

In the specific case of the compensation funds established in 1949 by the Peasant Confederation, performing the functions of the Chamber of Agriculture, the Council of State raised constitutional objections. Since 1956 the activities of the Peasant Confederation in respect of

compensation funds have been carried out on the following basis: (1) an Act has been passed authorising the creation of such funds and fixing the maximum rate of contribution to be paid; (2) various compensation funds have been set up by Grand Ducal Orders and their administration entrusted to the Peasant Confederation, whose activity has thus received legal sanction. It remains true, however, that this unconstitutional activity lasted seven years. The report of the special committee of the Chamber of Deputies concluded as follows in this connection:

The problem of delimiting powers is too vast, too full of consequences and too unripe to be settled out of hand by so bold an innovation in respect of agricultural compensation funds, or else a precedent will be established and the future committed. But the problem remains and will have to be dealt with in connection with the projected general reform of the occupational chambers. It will then be necessary to consider whether, and, if the answer is affirmative, to what extent, their present consultative powers may be supplemented by an independent right to issue regulations, a right that, despite certain passages favourable to the idea in the debates on the 1924 Act, it does not seem possible to derive directly from the present legislation without straining its scope and meaning.

Under the 1924 Act, the occupational chambers may undertake any action within their sphere of activity, "with the exception of commercial and industrial enterprise". This provision seems to mean that a chamber cannot carry on a commercial activity and that it cannot take part in the establishment or management of a commercial company, either directly or through intermediaries. In 1950, however, the Chamber of Handicrafts took part in the formation as a co-operative society, of the Craftsmen's Mutual Aid Society. In 1954 the Chamber of Handicrafts and the Chamber of Commerce took part in the formation of the Luxembourg International Fair Society as a limited liability company. Admittedly, despite their commercial form, these two societies do not distribute profits. Doubts may nevertheless be expressed on the legality of this activity, even though it is in the obvious interests of the occupation.

It seems that the legislation should be amended in this respect.

Certain legislative texts required the occupational chambers to perform various functions, including the representation of the occupation in various bodies, the issue of certificates of origin, and so forth. The most important of them is the Grand Ducal Order of 8 October 1945 to revise the Act of 5 January 1929 on apprenticeship, which concerns all the occupational chambers except the Chamber of Agriculture and the Chamber of Public Officials, and entrusts to them the supervision of apprenticeship, the organisation of examinations, the granting of certificates of competency, the determination of the trades subject to apprenticeship, etc.

The chambers also take part in supervising official vocational education (Act of 1 December 1953), but here their role does not cover questions of organisation.

Attitude of the parties concerned

Recent discussions on the Economic and Social Council have shown once again that there is unanimous agreement in favour of maintaining the occupational chambers. The setting up of the Council should not be allowed to detract from their powers.

All the chambers are expanding, even those of the wage earners, which only a few years ago had very small secretariats. In trade union circles there was an enduring hesitation to develop the occupational chamber, owing to the fear of creating rivalry between the chambers and the trade unions and also to the desire to avoid placing additional financial charges on the members. But ideas have changed. It has been realised that the occupational chamber, as an official consultative body, can render conspicuous service to the world of labour and that, if it is to do this, it must be equipped to carry out the necessary juridical and economic research. Some of the wage earners do not belong to the trade unions; it is therefore in the interest of the unions that they should not be alone in bearing the expenses involved in defending the interests of the workers and that these expenses should be shared by all the wage earners, through the occupational chamber, which thus achieves the greatest possible unity, whereas there is more than one trade union federation.

The Economic and Social Council

Historical background

The history of the Economic and Social Council has been a long series of hopes unfulfilled. The idea of an economic council was mooted immediately after the First World War. Under section 44 of the Act of 4 April 1924, the occupational chambers were to form the infrastructure for such a council; but the proposal to bring them together in a national economic council, which was made during the discussions preceding the vote on the 1924 Act, was not adopted.¹ The Act did, nevertheless, provide for the possibility of a joint meeting of two or more chambers with a view to discussions and decisions on questions concerning more than one occupation; but these joint meetings remained extremely rare and dealt only with questions of limited interest.

In 1931, after a League of Nations resolution had invited governments to give their national economic councils a part in the work of international economic rapprochement, the Grand Ducal Order of 3 December set up an Economic Council, which was described in the preamble as a higher consultative body for study and co-ordination and had an extremely simple organisation. Its composition was fixed by the

¹ Chambre des députés. *Compte rendu*, 1921-22, p. 1386.

Government and its members served in an honorary capacity. With neither full-time members nor a permanent secretariat, the Council had hardly the time to devote itself to advanced studies and was unable to make its authority felt.

Various plans for reform were then discussed, including a parliamentary Bill for the establishment of a national economic council (1935) and a counter-proposal submitted by the Economic Council in the form of a Grand Ducal Order. These plans were intended to increase the importance of the council and to make consultation compulsory. The war, however, intervened before any plan for reform could get beyond the preliminary stage.

After the war the Study Committee for National Economic Recovery, a sort of "brains trust" consisting of 50 experts in all branches of production, was set up under the Grand Ducal Order of 26 November 1944. But in the report they presented in 1946 on the situation and problems of the main economic sectors these experts ignored the Economic Council.

While these discussions were going on the Economic Council was being revived in a new form. The Grand Ducal Order of 4 August 1945 established a Council of the National Economy, which differed in several respects from its pre-war predecessor. The earlier body had given advice to the whole Government, but the Council of the National Economy acted primarily as adviser to a new member of the Government, the Minister of Economic Affairs. In defining its mission account was taken of this link, for the council was called on to study problems relating to the structure, regulation and organisation of the Luxembourg economy, devoting itself in particular to new trends and readaptation. The 1945 order was also more explicit in respect of the composition of the council: according to the preamble, it comprised both "eminent" representatives of economic science and representatives of all groups concerned. The representatives were to be chosen, in proportions fixed by the order, from the occupational federations (industrialists, businessmen, craftsmen, farmers, vine growers, salaried employees and wage earners).

The Council of the National Economy was convened by the Minister of Economic Affairs, who also took the chair. Its members were appointed and removed by the Minister; five of them out of 17 were civil servants. Its function was to advise the Minister of Economic Affairs and, through him, the Government; it had no link with Parliament or public opinion. Its secretary was an official of the Ministry.

While the competence of the Council of the National Economy was limited exclusively to economic questions, the National Labour Conference, which was set up under the Grand Ducal Order of 10 November 1944, was intended to assist the Government in the social administration of the country. It had 21 members, seven representing the State, seven the employers and seven the workers. Its chairman was the Minister of Labour. The National Labour Conference was very active, but the Coun-

cil of the National Economy held very few meetings, and this led to new plans for reform.

Without altering the functions or the nature of the Council of the National Economy, the Grand Ducal Order of 1 October 1951 raised the number of members from 17 to 35 and fixed their term of office at three years. Between 1953 and 1957 the council, which was convened by the Minister of Economic Affairs, who also took the chair, held several sessions mainly devoted to the discussion of general economic policy. During these discussions the various occupational groups had the opportunity of explaining the situation and problems of their respective branches. The technical and psychological value of this institution was generally recognised during these first regular sessions, but its existence remained precarious and depended entirely on the initiative of the Minister.

The National Labour Conference seems to have wilted away after an initial period of activity, to judge from the preamble to the Ministerial Order of 31 December 1951 to fix the composition of the conference, since the purposes of the order included the "revival" of the conference "in accordance with government policy".

An Economic and Social Committee set up under the following Government by the Ministerial Order of 1 July 1960 foreshadowed in outline the future Economic and Social Council, the formation of which was to be the subject of an Act and so to involve delay. The committee had a dual mission, as its name implied, and it was more independent of the Government. It consisted of 14 members drawn in equal numbers from employers' and workers' circles and of three government representatives; the chairmanship was held for alternate periods of one year by a representative of the employers and a representative of the workers. As a provisional organisation, the committee carried on a modest existence.

It is the Economic and Social Council, set up under the Act of 21 March 1966, that fulfils for the first time the legal conditions necessary for success: compulsory consultation on certain problems, the right to initiate action, independence, a more or less satisfactory composition and its own secretariat.

It should be pointed out that before that date nothing more than an order had been devoted to the organisation of the Council. This procedure, under which there can be no provision for linking the Council with Parliament or giving it a financial basis, is justifiable only in the experimental stage. In this connection it is interesting to observe that France's Economic and Social Council was governed first by a decree in 1925 and then by an Act in 1936. Since 1946 it has been rooted in the Constitution.

Before the structure of the council is analysed, an account should be given of the trends in thinking that have led to the fusion of powers in the economic and social fields and the general conditions for the success of

an economic and social council should be examined in the light of the experience of Luxembourg and three neighbouring countries (Belgium, France and the Netherlands).

Evolution in thinking, and conditions for success

After the Second World War it appeared that councils of this sort had an important part to play in reconstruction, and separate consultative bodies came into existence for economic and social questions in a number of countries. The nature of the problems to be discussed seemed to justify this separation: in the national labour conferences trade unions and employers clashed over questions connected with social claims, whereas in the national economic councils economic questions were discussed in a calmer atmosphere. Perhaps some people were afraid of having less influence in an institution where questions belonging to both fields were discussed and whose members included not only industrial employers and trade unions but also representatives of other interests. In fact, at that time the relation between economic and social problems was not clearly appreciated except in the case of unemployment. Later, discussions on programming made the link between economic and social questions clearer. Everywhere today there is almost unanimous agreement on the need to combine the economic and social consultative bodies or, where such bodies do not exist, to create an economic and social council from the start. Thus, in France the 1958 Constitution replaced the Economic Council, established by the 1946 Constitution, with an Economic and Social Council; Italy has recently set up a National Council for the Economy and Labour; in Belgium a Bill to set up an Economic and Social Council was tabled at the end of 1963. Ideas have followed the same trend in Luxembourg.

In view of the increasing complexity of economic life and the outstanding importance now assumed in it by representatives of employers' and workers' organisations, the economic and social councils may be expected to play an increasing part in the political life of the various States. There is also the example of the Common Market to show that an economic and social council works effectively and carries out an essential function when it has a constitutional basis, when it must be consulted compulsorily on certain questions, and when it brings together eminent personalities from various economic and social groups.

The accumulated experience of today makes it possible to state that certain conditions must be fulfilled if an economic and social council is to succeed. The council is not, perhaps, a panacea for the solution of all problems, but it can contribute to channelling various trends of opinion, to bringing closer together different points of view and to rationalising economic and social policy.

The success of a council depends on a whole set of legislative, administrative and psychological conditions. Consultation of the council must be compulsory for the government, at least in connection with important economic and social problems. It must have adequate financial resources to fulfil its functions. Its chairman must be a person of strong and independent character with a thorough knowledge of the problems to be discussed and the ability to control discussions effectively. It must have a competent secretariat, able to carry out the necessary research and to draft, at least in part, its recommendations. Lastly—and this condition is fundamental—the various groups represented on the council must be willing to play fair, working loyally together and firmly assuming their responsibilities. They must therefore be ready to send first-class personalities to represent them on the council. The existence of strong and wellorganised employers' and workers' organisations can facilitate the establishment and operation of the council.

The experience of certain foreign countries, as well as experience in Luxembourg going back 30 years, shows that the way of a high-level consultative council is beset with pitfalls. It should not be forgotten that it is only a consultative body and that the danger of its being ignored is particularly great if consultation is only optional; in this case, the government, under the pressure of events, will always be tempted to neglect it. Even where consultation is compulsory, however, the council runs the risk of being deserted by economic and social groups that prefer a direct approach to those holding power, that is to say to the government and parliament. Certain groups will find it simpler and more effective to approach a minister or deputies than to take part in discussions they regard as academic.

POWERS

The Netherlands legislation alone grants power to make regulations to the Economic and Social council, and the council avails itself very little of this power. Such regulations as have been made relate mainly to internal organisation: the fixing of contributions, or the creation of subordinate bodies in industry. In Luxembourg the plan drawn up in 1957 for the reform of the occupational chambers made provision for empowering them to make regulations in strictly defined fields and subject to safeguards, including that of the agreement of the Economic and Social Council. The plan is still pending. Other countries have not gone so far.

The experience of Luxembourg and certain other countries shows that it is harmful to the council to make consultation merely optional. It is generally agreed today that consultation on important plans in the economic and social fields must be made compulsory if the council is not to be neglected by the government and parliament.

But how can this obligation be enforced? In the statement of objects of the Belgian Bill¹ the opinion is expressed that consultation is not a formal obligation. The Bill's sponsors did not wish to burden the legislative procedure or create the danger of legal insecurity. In order to establish a formal obligation it would be necessary for the council to be a constitutional body and for the Constitution to make consultation a step in the legislative process.

As things are at present, the penalty can only be political; the council must acquire such influence that the Government will no longer dare to neglect it for fear of being called to account in parliament or criticised in the press. This brings us to the question whether the council can acquire the necessary influence, and so to the conditions for the success of an economic and social council, the most important of which have been referred to above.

Under the French and Netherlands Acts, the council holds an extremely high rank in the official hierarchy. This should increase its prestige, but its real influence depends on the value of its recommendations.

The right to initiate action enables the council to make itself heard when the government fails to consult it. This is an important weapon but one that is liable to impair relations between the council and the government. Ideally, the council should never have to avail itself of this right. In the Netherlands, where the Economic and Social Council may exercise the initiative, it has done so only very rarely.

MEMBERSHIP AND STAFF PROBLEMS

France uses the system of *rapporteurs*, who are often university professors. In the Netherlands, too, professors play an important part in the council. Nevertheless, the working papers, when they are not prepared by the government, must be prepared by the secretariat of the council which also often drafts recommendations after they have been discussed in committee. The councils, accordingly, generally have a considerable staff. Except in a very large country like France, recruitment of this staff raises problems, on account of the necessarily limited opportunities for advancement and of the stringent requirements that the council must lay down. In view of the universal nature of its functions it requires, in fact, a staff with a very broad education. For example, it needs some officials who must be at the same time Doctors of Law and graduates in economic science. The development of programming has been such that it must also have an econometrician and an economist with experience of statistics. This makes clear the special difficulties arising in Luxembourg, to which reference will be made at the end of this article.

¹ *Chambre des représentants. Session 1963-64, Document 675, No. 1, p. 4.*

The Chairman of the Economic and Social Committee of the European Economic Community is chosen in turn for two-year periods from the three groups represented. This procedure is due to the necessity of finding a compromise acceptable to six countries, and it is preferable for the chairman of a national economic and social council to be an independent personality. In Belgium the chairman is chosen outside the council. Not being a member he lacks the right to vote and takes no stand himself: this independence only increases his prestige. In France, and the Netherlands, the chairman is chosen among the independent experts of the council, who are generally university professors or former ministers. What is essential is that the chairman should enjoy the confidence of everybody, that he should have a thorough knowledge of the problems to be discussed and that he should be able to assist the progress of the discussions and sum up. He intervenes on the matters at issue only in exceptional circumstances when he considers that the council is reaching deadlock.

The chairmanship is not usually a full-time duty. If it were, the chairman might clash with the secretariat. It is nevertheless an exacting duty. In the Netherlands the chairmen of the various committees of the council are university professors. In Belgium the chairman of the council also presides over the debates of the committees. In his absence he is replaced by the secretary-general.

All countries are familiar with the idea of expert members. These are appointed by the government, either directly or on the proposal of the groups represented on the council. The second alternative, however, has some drawbacks: it impairs the independence of the expert members, who run the risk of being mere appendages of the groups, and should be resorted to only when it is impossible to find enough independent personalities.

The presence of independent members is important for the council; in particular, it may make compromises easier to reach. The experts can also play a part in drafting recommendations. This raises the problem of their emoluments. These are large only in France, where the members of the council receive a fixed allowance as well as an allowance varying with the work performed. In the other countries the allowance is generally very small. It is held by some that the prestige of being a member of the economic and social council is a decisive factor in the acceptance of office by the expert members.

The new Economic and Social Council in Luxembourg

Now that the Economic and Social Council has been statutorily established, it remains to give it shape, that is to say to appoint its members, to choose a chairman, to recruit a secretary-general, to draw up standing orders and to work out a programme. These activities will

take another few months. A year or more will therefore pass before a judgment based on experience can be passed on it. At present, an analysis of the institution can be based only on proceedings in parliament, press articles and a general knowledge of Luxembourg problems.

SOME VIEWS ON THE COUNCIL

To judge by the opinions of the occupational chambers, the Council of State and the Chamber of Deputies, establishment of the council was generally favoured. To be sure, this support ranged from enthusiasm to cautious reserve. It is above all the fundamental principles that were widely accepted. Most of the reservations are based on particular national features, e.g. the small area of the country and the existence of the occupational chambers; but there is some degree of scepticism concerning the genuine will of the social partners to collaborate.

The hopes raised by the new institution were well expressed by the report of the Special Committee of the Chamber of Deputies and the recommendation of the Council of State. The latter sees in it a means of purging the study of economic and social problems of political aspects by bringing the social partners face to face in an assembly that amounts in a way to being the "States General of the economy".

Three ideas contained in the report of the Chamber of Deputies are worthy of attention: "The Economic and Social Council will be the pre-eminent institution for collective discussion, and its purpose will be to seek as wide agreement as possible among the various parties on the subjects considered. This will be its most important role.... By providing a standing procedure and an organised setting for disagreement, the Economic and Social Council is in reality a powerful force for harmony."

The Chamber of Deputies also drew attention to the role that the council is called on to play in guiding the economic and social development of the country: "The contribution of the nation's driving forces may also extend to economic and social programming.... This consultation must become one of the cornerstones of programming, since it will be indispensable in obtaining the general agreement necessary for implementation."

Lastly, the Chamber of Deputies sees in the council an instrument for achieving economic democracy. In this connection, the council is presented as "a form of emancipation of the wage-earning classes" and as "a factor in social integration".

The three chief reservations in respect of the establishment of the council should now be considered.

Some people stress that the existence of occupational chambers makes Luxembourg's case fundamentally different from that of other countries; in Luxembourg, they argue, the establishment of the council will make the legislative process clumsier still. The Chamber of Labour, like the

other chambers, has said that it cannot possibly tolerate any encroachment on its prerogatives and powers as a result of the establishment of the council. The Government has assured the chambers that the council will in no way weaken their prestige or their fundamental rights. This means that the Government will continue to consult the occupational chambers; it even intends to complete the system by setting up a chamber of the liberal professions. The objection of redundancy will not lose its force unless the council really does become a factor in reaching understanding.

Reservations based on the small size of the country carry more weight. The number of persons qualified to sit on the council is limited. Its members run the risk of being overburdened with work, for in a small country the same persons are unavoidably assigned a large number of duties; in the economic and social fields there are almost as many problems in a small country as in a large one. The secretariat of the council, which will necessarily be much smaller than in the neighbouring countries, will have to show outstanding ability if it is not to become a bottleneck in the work. Lastly, the choice of the chairman is critical; the success of the institution depends very largely on his competence, drive and authority. In the absence of a university, it is not easy to find independent personalities fit to undertake such a responsibility. The appointment of a chairman from the social partners would involve the risk of dooming the council to failure in advance.

It remains to be seen whether the will to collaborate is genuine enough for the hopes expressed by the Chamber of Deputies to be realised. There are some who tend to see in the council not an institution of collaboration but rather one of revolution. It seems appropriate here to recall the dictum of Paul Valéry that the only treaties to last are those concluded with ulterior motives on all sides. If it should prove that the various groups lack the will to listen to the arguments of the others and discuss them objectively, the council would no doubt end by falling into abeyance like its predecessors.

FUNCTIONS OF THE COUNCIL

Section 2 of the Act of 16 February 1966 gives a general definition of the functions of the council:

The council shall be a consultative body responsible for studying, either on its own initiative or at the request of the Government, such economic, financial and social problems as affect more than one sector or the national economy as a whole. In consequence of its studies, it may submit to the Government any proposal supported by arguments.

More specifically, the council has two main functions. Without being a constitutional body it is called on to become a part of the legislative process.

Except in cases of emergency, the Government shall request the advice of the council on the general measures being considered for adoption through laws or

regulations in fields concerning two or more occupational groups or the national economy as a whole. (Section 2.)

The council will thus play an important part in the legislative process, provided that it can discharge its responsibilities; otherwise the Government may be tempted to resort to the emergency clause.

Secondly, the council will be required to make annual recommendations on current economic problems.

During the first quarter of each year the Government shall place before the council a report on the economic, financial and social development of the country and a statement of the policy that the Government intends to follow in the relevant fields. These reports shall form the subject of a recommendation by the council. (Section 2.)¹

Discussion of this report will doubtless bring to light the gaps in the statistical data available. It may be hoped that the attention of the authorities will in this way be drawn to the necessity of completing the statistical organisation of the country. As the report of the Chamber of Deputies emphasised, the Government ought not to report only on the economic situation of the preceding year, but also on future development and the policy it intends to follow in coming years. Programming constitutes an extension of the competence of the council in respect of the economic situation.

With regard to voting procedure, the Act leaves this to be fixed by the standing orders. It might be thought that the council's recommendations will be adopted by a majority and that the minorities will be permitted to submit their views also. Under the basic Act, however, the council, when it is consulted by the Government on matters of general interest and questions of principle on which the occupational chambers have submitted "widely differing recommendations", must issue a single, co-ordinated recommendation. This particular rule is necessary in Luxembourg because of the existence of the trade chambers. Will the council succeed in reaching a common position on the great economic and social questions when the occupational chambers have submitted conflicting recommendations? In the intention of its supporters the true test of the council will be its ability to draw up collective recommendations. Only a chairman of outstanding worth will be able to keep the council from coming to grief on this point.

RELATIONS BETWEEN THE COUNCIL AND THE AUTHORITIES

Under section 3 of the Act the relations of the council with the Government, the Chamber of Deputies, the Council of State and all

¹ The annual recommendation of the council on the economic situation must contain the statistical and documentary data available to the Central Service of Statistics and Economic Studies, the Inspectorate of Labour and Mines, the National Labour Office, the Inspectorate of Social Institutions and bodies supervised by it, the committees set up under basic Acts, and the other technical government services.

other public authorities are carried on through the Minister of State, President of the Government. "The members of the Government shall have access to the council; they may be represented on it by public officials of their respective Ministries. The Government may be invited to delegate officials to the meetings of the council and of its committees to provide technical information."

COMPOSITION

Those responsible for the project were faced with two alternatives: was the council to be derived from the occupational chambers or was it to consist of personalities nominated by the occupational groupings?

The occupational chambers, in the opinion both of the Chamber of Commerce and of the Chamber of Labour, are the most representative organisations, for they owe their origin to universal suffrage in their respective occupations. If the Government has made a different choice, this is to underline the novel character of the institution, which is quite distinct from the occupational chambers, and also because voluntary association, although less representative, is more dynamic: it exists, not by virtue of the law, but by independent volition.

The council consists of 29 members and 29 substitutes appointed for four-year terms. Twenty-two members representing the employers and the wage earners are appointed by the Government on the proposal of the most representative employers' and workers' organisations.¹ Of the seven expert members with particular competence in economic and social affairs, four are co-opted by the employer and worker representatives on the council² and three are appointed by the Government. The number of independent personalities is thus extremely small.

In order to guarantee that the council shall be independent of the executive and legislative powers, membership of it has been made incompatible with the offices of Minister or Secretary of State, parliamentary deputy and member of the Council of State.

The members or their substitutes receive an allowance to be fixed by the Government-in-Council. Their travelling expenses are refunded.

Administrative staff comprises a secretary-general and assistants, whose status is that of private salaried employees. The emoluments of the secretary-general are fixed by the Government-in-Council on the recommendation of the Economic and Social Council and covered by the state budget.

A chairman and two vice-chairmen are appointed by the Grand Duke on the proposal of the council for a period of two years, subject

¹ For the employers, two representatives each of heavy industry, small-scale and medium-scale industry, the commercial sector, the craftsmen's sector, and agriculture, and one representative of vine growing. For the employees, six representatives of wage earners, two each of salaried employees and public officials and, one of transport employees.

² At least one must be a member of the professions.

to renewal. They form the executive of the council. The procedures for the functioning, discussion and voting of the council must be laid down by the latter in a standing order, which must be submitted to the Government-in-Council for approval.

In the performance of its functions the council may set up the necessary committees and call in experts for consultation.

Conclusion

In their 40 years of existence the occupational chambers have proved that the hopes expressed at the time of their formation were well founded. They are relatively homogeneous bodies whose operation does not raise insuperable problems. At most the 1924 Act might require a few amendments.

It is quite different with the Economic and Social Council, which by definition is a body subject to very heavy strains. Will the Council justify the hopes of its promoters? It will be some years before this is known. The die has now been cast. The experiment must be made, sincerely and with the will to make a success of it.
