The Associated States of the European Union

URL: http://www.cvce.eu/obj/the_associated_states_of_the_european_union-en-c814b917-dcc5-445a-b3f7-b9265f5b7338.html

Last updated: 08/07/2016

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Article 310 of the EC Treaty (formerly Article 238 of the EEC Treaty) makes it possible for the Community to 'conclude with one or more States or international organisations agreements establishing an association involving reciprocal rights and obligations, common action and special procedures.' This provision which, in the original Treaty, was placed after Article 237 which dealt with accession to the Community, offers an **alternative to accession** for States wishing to take common action together with the Community but without giving them the opportunity to participate in the decision-making processes in the Community institutions. In fact, the reference to 'special procedures' rules out any form of 'internal' association such as that laid down by a number of international organisations (e.g. the Council of Europe), thereby permitting only 'external' association. This restriction may be explained by the special nature of the European Communities which, as organisations of supranational integration with political objectives, require from their Member States a commitment which goes far beyond the commitment required in traditional intergovernmental cooperation.

An association agreement creates a special, privileged link between the Community and the Associated State. Closer than the link created by a trade agreement governed by Article 133 of the EC Treaty, this link gives rise to a stable and institutionalised cooperation relationship which may cover Community policies as a whole (the first pillar of the European Union). When an association agreement also involves exclusive powers for Member States, arising from intergovernmental cooperation within the European Union (second and third pillars), it takes the form of a mixed agreement (concluded by both the Community and the Member States).

The first association agreements, based on Article 238 of the EEC Treaty, were concluded with States which would later seek accession to the Communities: Greece in 1961, Turkey in 1963, Malta in 1970 and Cyprus in 1972. All four agreements entered into force the year following their signing and made provision for the creation of a customs union with the Community. Even though only the first two agreements held out the prospect of accession for the Associated States, 'association agreements' have proved to be a commonly used way of **preparing for accession**, one which the Communities have been using to an increasing extent.

In this respect, the political conditions for association are more stringent for European States, which are required to observe scrupulously the principle of democracy, than for non-European States. Accordingly, the agreement with Greece was suspended in part from 1967 to 1974, and the agreement with Turkey was completely frozen between 1983 and 1986. In the same way, although Franco's Spain had applied for association with the Community on two occasions (February 1962 and February 1964), it was not until 1970 that a preferential trade agreement was signed, on the basis of Article 113 of the EEC Treaty (later Article 133 of the EC Treaty). In this connection, the Commission stated, in its opinion of 1 October 1969, that the Community's relations with the countries of southern Europe could take the form only of an association in the strict sense of the word in the case of those countries which had institutions comparable with those of the founding States; other countries might be offered agreements which would enable the Community to take into account their subsequent development.

At the same time, agreements concluded on the basis of Article 238 with other States which could not be eligible for accession but which enjoyed a preferential relationship with the Communities changed their name from the second generation onwards. The real 'associated' States rejected that term because of its colonialist connotations. That happened in the case of the 'association' agreements with the African, Caribbean and Pacific States (ACP), which became 'cooperation' agreements and then 'partnership' agreements, and also in the case of the agreements with Mediterranean non-member countries (MNCs), especially the Maghreb and Mashrek countries, which, after one initial 'association' agreement with Morocco in 1969, became 'cooperation' agreements (Tunisia, Algeria and Morocco in 1976, Egypt, Jordan, Syria and Lebanon in 1977), and then 'Euro-Mediterranean' agreements, with the aim of creating a vast Euro-Mediterranean free-trade area and establishing a framework for political dialogue and sectoral cooperation (Tunisia and Israel in 1995, Morocco in 1996, the PLO — on behalf of the Palestinian Authority — and Jordan in 1997, Egypt in 2001, and Algeria and Lebanon in 2002). However, it should be noted that these agreements, which establish an association between the parties, are also commonly known as 'Euro-

Mediterranean Association Agreements'. The term 'association' therefore won the day.

In the case of the ACP States, the first generation of agreements included the association agreement between the EEC and the African States, Madagascar and Mauritius (ASMM) which were associated with it (Yaoundé I — 1963), the second Yaoundé Convention signed in 1969 (Yaoundé II), and the association agreement with Kenya, Uganda and Tanzania signed in 1969 (Convention of Arusha). Then came the first cooperation convention with 46 ACP States (Lomé I — 1975), the second cooperation convention with 57 ACP States (Lomé II — 1979), the third cooperation convention with 65 ACP States (Lomé III — 1984), the fourth cooperation convention with 68 ACP States (Lomé IV — 1989) and the Cotonou Partnership Agreement with 77 ACP States in 2000.

On the basis of both Article 133 and Article 238, framework cooperation agreements, mostly interregional, have been signed with the countries of Latin America: Andean Pact countries/Andean Community (1983 and 1993), Central America (1992), the Southern Common Market (Mercosur — 1996), Mexico (1997) and Chile (1990 and 1996). Following the first European Union-Latin America and Caribbean Summit, held in Rio de Janeiro in 1999, the strategic bi-regional partnership approach focused on the signing of 'political dialogue and cooperation agreements' (Andean Community and Central America (2003)) with a view to the negotiation of 'association agreements', including free trade agreements. Initial association agreements were signed with Mexico and Chile in 2002. Negotiations are being held with Mercosur, the Andean Community and Central America for inter-regional association agreements, including political dialogue, cooperation programmes and a trade agreement.

The main association agreements with European States

European Free Trade Association (EFTA) countries

The question of the special relationship to be established between those member states of the European Free Trade Association (EFTA) which were not applying for accession (applicant countries were obliged to withdraw from the 1960 Stockholm Convention establishing EFTA) arose as soon as the Communities underwent their first enlargement, since that enlargement was to include three EFTA members.

Initially, this special relationship took the form of the conclusion of a series of bilateral free-trade agreements for industrial products, signed on the basis of Article 113 of the EEC Treaty. The first agreement on the basis of Article 238 was not signed until 1992. This was the **Agreement on the European Economic Area (EEA)** between, on the one hand, the EEC, the ECSC and the Member States of the Communities and, on the other hand, the EFTA members (Austria, Finland, Iceland, Liechtenstein, Norway, Sweden and Switzerland). The agreement came into force on 1 January 1994 in all the signatory States with the exception of Switzerland, which, in a referendum held in December 1992, refused to ratify it. Since the accession of Austria, Finland and Sweden to the European Union on 1 January 1995, the agreement now includes only three States on the EFTA side (Iceland, Liechtenstein and Norway). The agreement established an association with those European States which chose to belong to EFTA as an alternative to joining the Communities. Association was, therefore, not originally designed as a preparation for accession, even though it did not rule out the possibility for an EFTA member of later becoming a Member State of the European Communities (see the Preamble to the Agreement on the EEA). Moreover, in order to respect the fact that EFTA members are free to choose, the text of the agreement lays down that any new member of that organisation 'may apply' to become a party to the agreement, whereas a new Member State of the Communities 'shall apply' to become a party to the agreement.

The agreement, which does not establish a customs union with the associated States, includes basic rules for the internal market (free movement of goods originating in the EEA, free movement of workers, services and capital, rules on competition) as well as some accompanying policies (social policy, rules on consumer protection and the protection of the environment, company law) and allows cooperation in other areas (research and technological development, information services, education, training and youth, etc.).

The agreement is based on the principle that the two organisations enjoy autonomy in decision-making but

establishes a whole series of special procedures so as to avoid disparities in the application of common rules, which, in substance, reproduce the provisions of Community legislation and are interpreted in accordance with the relevant case-law of the Court of Justice of the European Communities established prior to the agreement. A Joint Committee, responsible, in particular, for holding exchanges of views and information, decides what amendments need to be made to the annexes to the agreement as soon as possible after the adoption of a new Community act on a subject governed by that agreement so as to make it possible for them both to be adopted at the same time. Similarly, the Joint Committee constantly monitors developments in ECJ case-law and the case-law of the EFTA Court in order to ensure that common rules are interpreted in the same way.

As an alternative to the Agreement on the EEA, and in connection with the preferential links between the European Union and the Swiss Confederation, **Bilateral Agreements** (Bilateral Agreements I) were signed on 21 June 1999, on the basis of Article 310 of the EC Treaty, **between the European Community and Switzerland**, covering the following sectors: free movement of persons, civil aviation, overland transport, public procurement markets, scientific and technical cooperation, mutual recognition in relation to conformity assessment, and trade in agricultural products. Although these constitute seven different sector-specific agreements, they are closely linked by a clause which lays down that they must enter into force simultaneously, which they did on 1 June 2002, and that they must cease to apply simultaneously six months after receipt of the notification of non-renewal or notice of termination of any one of them. Under these agreements, the two parties are obliged to keep their legislation in line. In order to do this, they hold, in particular, consultations within joint committees created for each agreement. Although, in principle, these agreements allow Switzerland to retain a high level of decision-making autonomy, if Switzerland's national legislation did not follow developments in Community law, then the Community could suspend all the agreements on the grounds of failure to comply with the principle of equivalence of legislation.

Following a new round of bilateral negotiations which started in June 2002, nine new agreements were signed with Switzerland on 26 October 2004 (Bilateral Agreements II) covering the following sectors: processed agricultural products, statistics, the environment, Media programmes, the pensions of retired EU officials, the implementation of the Schengen *acquis*, the consideration of asylum applications, combating fraud, and taxation of income from savings. Of these nine, only the agreement on combating fraud has not yet entered into force.

Central and Eastern European Countries (CEECs) and Countries of the Western Balkans

The **Europe Agreements** with Central and Eastern European Countries (CEECs) (Poland and Hungary, 1991, came into force in 1994; Romania, Bulgaria, Czech Republic and Slovakia, 1993, came into force in 1995; Estonia, Latvia and Lithuania, 1995, came into force in 1998; Slovenia, 1996, came into force in 1999) and the **Stabilisation and Association Agreements (SAAs)** with the Countries of the Western Balkans (Macedonia, 2001, came into force in 2004; Croatia, 2001, came into force in 2005; Albania, 2006) were concluded on the basis of Article 310 of the EC Treaty so that association could provide those countries with a framework in which to prepare gradually for accession to the European Union.

These agreements make provision for the establishment of a free-trade area between the Community and the Associated State. However, unlike the Agreement on the EEA, they do not make provision for obligatory acceptance of the Community *acquis* in the areas covered by the four freedoms and certain accompanying policies except as a condition for accession. At the same time, unlike the Agreement on the EEA, they do not make provision for the extension of the Community institutional mechanisms regarding competition law (which, for that reason, does not become 'binding') or regarding the free movement of workers. The major difference between these agreements and the Agreement on the EEA lies precisely in the fact that economic integration via the creation of a free-trade area does not constitute an end in itself.

Moreover, in accordance with their ultimate purpose, the Europe Agreements and the Stabilisation and Association Agreements make provision for the institutionalisation of a political dialogue which promotes the principles of democracy and the rule of law. This is a feature which they share with the latest generation of agreements signed with the Mediterranean non-member countries (Euro-Mediterranean Agreements) and

with the ACP States (Cotonou), which actually contain ‘democracy clauses’ despite not being concluded with a view to EU accession.

(March 2008)