

## Relations with those member and associated States of EFTA which are not applicants for accession (Brussels, 9 September 1971)

**Caption:** On 9 September 1971, the General Secretariat of the Council drafts an internal document which sets out the relations to be maintained with those member and associated States of EFTA which are not applicants for accession to the European Communities, addressing, in particular, the issues relating to the Stockholm Convention, to multilateral trade agreements and to association agreements.

**Source:** Relations with those member and associated States of EFTA which are not applicants for accession, Secret. Brussels: General Secretariat of the Council, 09.09.1971. 9 p.

Archives historiques du Conseil de l'Union européenne, Bruxelles, Rue de la Loi 175. Fonds CEE et CEEA, CM2. CM2 1972. Dossier concernant les accords entre la CEE et les États de l'AELE non candidats de l'adhésion (Autriche, Islande, Portugal, Suède, Suisse). Signés le 22.07.1972., CM2/1972-1590.

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[http://www.cvce.eu/obj/relations\\_with\\_those\\_member\\_and\\_associated\\_states\\_of\\_efta\\_which\\_are\\_not\\_applicants\\_for\\_accession\\_brussels\\_9\\_september\\_1971-en-2e6479f9-bdd1-4207-bf9d-d1f4ad2e7da6.html](http://www.cvce.eu/obj/relations_with_those_member_and_associated_states_of_efta_which_are_not_applicants_for_accession_brussels_9_september_1971-en-2e6479f9-bdd1-4207-bf9d-d1f4ad2e7da6.html)

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## Relations with those member and associated States of EFTA which are not applicants for accession (Brussels, 9 September 1971)

Subject: Unity or multiplicity of the instruments to be concluded with EFTA countries which have not applied for membership.

In accordance with the mandate given to the Legal Department of the Council by the Permanent Representatives Committee, the purpose of this note is to examine whether the arrangements for those EFTA countries which have not applied for membership

- can be dealt with in a single instrument,
- will have to be dealt with in several separate instruments.

### I.

1. It should be remembered that point 14 of The Hague communiqué stated that "as soon as negotiations with the applicant countries have been opened, discussions will be started with such other EFTA members as may request them, on their position in relation to the EEC".

2. In its opinion dated 1 October 1969, the Commission stated:

"Parallel to the applications for accession, and in the majority of instances because of these applications, several European countries, particularly among the members of EFTA, have manifested their desire to open negotiations with the Community with a view to establishing special relations with it. The perspective of the enlargement of the Community therefore brings the Community face to face with the problems of the economic organisation of a large part of Europe".

The Commission added:

"The Applicant States will, of course, have to withdraw from this Convention (1) as soon as possible. It is therefore necessary to know what form the free trade relations at present existing between the Applicant States and their EFTA partners will take".

3. In addition to the relations between the Applicant States and their partners in EFTA, the Community is confronted with the problem of its own relations with the latter, and with the problem of these countries' relations among themselves (2).

4. The first discussions which took place within the Council on this subject (see Internal Doc. No. 497) have made it possible to envisage concluding one or more agreements, the probable content of which can be summed up as follows:

- trading arrangements for industrial products,
- trading arrangements for agricultural products,
- joint action in the field of scientific and technical research,
- joint action in the field of economic and monetary policy,
- joint action in other sectors.

Whereas trade in industrial products and possibly in agricultural products appear necessarily to require agreement with all the EFTA member countries which have not applied for membership, the joint action envisaged for various sectors might possibly be the subject of agreements with certain of these countries

only.

5. In these circumstances, the problem arises of the unity of the instrument vis-à-vis the co-contracting countries on one hand, and the three Communities on the other.

With regard to the co-contracting countries, the solution of this problem depends:

(a) on the future of the Stockholm Convention,

(b) on the nature of the relations to be established:

indeed, it is possible to envisage multilateral relations between all the Contracting Parties, including the Community, or alternatively relations between the Community and all the co-contracting countries (a series of bilateral relations as in the case of the Yaoundé Convention), or even varying bilateral relations between the Community and each of these countries.

As far as the three Communities are concerned, the problem must be solved on the basis of the texts of the Treaties establishing these Communities.

## II.

### The future of the Stockholm Convention

Article 234 of the EEC Treaty reads as follows:

"The rights and obligations arising from agreements concluded before the entry into force of this Treaty between one or more Member States on the one hand, and one or more third countries on the other, shall not be affected by the provisions of this Treaty.

To the extent that such agreements are not compatible with this Treaty, the Member State or States concerned shall take all appropriate steps to eliminate the incompatibilities established. Member States shall, where necessary, assist each other to this end and shall, where appropriate, adopt a common attitude.

In applying the agreements referred to in the first paragraph of this Article, Member States shall take into account the fact that the advantages accorded under this Treaty by each Member State form an integral part of the establishment of the Community and are thereby inseparably linked with the creation of common institutions, the conferring of powers upon them and the granting of the same advantages by all the other Member States".

In its statement of 18 June 1971 on the Helsinki Treaty, the Commission affirms:

"It is evident that the same rule must be applied to the Conventions concluded by the applicant countries before the accession treaty comes into force".

Doubt may subsist with regard to the obviousness of this affirmation. Indeed it is not certain that the provisions of Article 234, which refer to the initial situation in the implementation of the Treaty of Rome, may be applied (by analogy?) to the situation of the Acceding States immediately after their accession. It therefore appears necessary that this question should in any event be expressly settled in the treaty of accession.

If, however, the Commission's affirmation were true, then the Applicant States' obligation to denounce the Stockholm Convention - an obligation which the Commission appears to regard as established (cf. the above-mentioned opinion of 1.10.1969) - would have to be imposed as one of the conditions of accession. In this connection, it will be noted that no such condition has yet been formulated.

On the assumption that the Applicant States do in fact denounce the Stockholm Convention, the question

would arise of whether this Convention would remain in force between the other EFTA Member States, or whether they too would denounce it.

It may be supposed that the question of whether the Stockholm Convention will be denounced by all the members of EFTA, or at least by those members who accede to the Communities, can only be settled in the light of the arrangements concluded between the Community and the non-applicant EFTA countries.

If it were assumed that all the countries which are at present members of EFTA were to be linked by the arrangements to be concluded between the Community and the non-applicant EFTA Member States, either as Contracting Parties or as Member States of the enlarged Community (EEC Article 228), it seems probable that the future of the Stockholm Convention will be dealt with under these arrangements themselves.

### III.

#### Multilateral trade agreement

EEC Article 113 enables the Community to conclude bilateral and multilateral trade agreements.

Such agreements may cover trade in all industrial or agricultural products with the exception of ECSC products.

With regard to the latter, competence in the field of commercial policy devolves upon the Member States. Consequently, inasmuch as trade in ECSC products is involved, the Member States would have to participate in the conclusion of the agreement.

Subject to this reservation, a trade agreement may regulate relations between the Community on the one hand and one or several third States on the other, or else the multilateral relations between all the Contracting Parties, of which the Community is one.

Such an agreement can provide for a body to be responsible for its satisfactory operation.

It may be given the facility to evolve within the limits covered by the commercial policy.

On the other hand it cannot deal with questions which, under the EEC Treaty, do not fall under the commercial policy, nor may it provide for its extension to cover such matters.

### IV.

#### Association agreements

EEC Article 238 provides :

"The Community may conclude with a third State, a union of States or an international organisation agreements establishing an association involving reciprocal rights and obligations, common action and special procedures.

These agreements shall be concluded by the Council, acting unanimously after consulting the Assembly.

Where such agreements call for amendments to this Treaty, these amendments shall first be adopted in accordance with the procedure laid down in Article 236."

An Association agreement can regulate relations between the Community and a third State. One may also assume, although Article 233 does not so provide literally, that an association agreement may regulate relations between the Community and several third States.

On the other hand, one may suppose that the conclusion of a multilateral agreement intended to regulate relations between all the Contracting Parties, including the Community, would scarcely comply with the spirit of Article 238 which relates to the establishment of organisational links between the Community and

its partner (or possibly several partners), but is not intended to make the Community participate in a complex association in which it would be one of the components.

This however does not preclude that certain provisions of an association agreement may, as a secondary matter, regulate relations between the States associated collectively with the Community.

In addition to those matters which could also be dealt with in a trade agreement, an association agreement may cover all co-operation in the areas falling within the competence of the Community.

Insofar as the conclusion of an agreement exceeding the limits of such competence were envisaged, the Member States should also take part in it.

## V.

To the extent that it might be proposed to deal at multilateral level with trade in goods, and at a bilateral level with certain other matters, there is nothing to prevent the conclusion of

- a multilateral trade agreement in which, in addition to the third countries concerned, there would participate the Community, acting in accordance with Article 113 and the Member States of this Community, insofar as ECSC products were included; there is no reason why such a trade agreement should not contain special arrangements in respect of specific products or countries;
- one or several additional agreements dealing with subjects other than trade, for which the Community is competent, and in which, in addition to the third State or States concerned, the following would participate;
- the EEC acting pursuant to Article 238,
- possibly Euratom, acting pursuant to Article 101 or Article 206,
- possibly the SCSC acting through its institutions, pursuant to Article 6.

Insofar as such an agreement contained provisions exceeding the limits of the Communities' competence, the Member States should also participate in it.

(1) Stockholm Convention setting up a free trade area, signed on 4 January 1960 by Austria, Denmark, Norway, Portugal, the United Kingdom, Sweden and Switzerland ; Finland is associated with EFTA under the terms of an agreement signed on 27 March 1961;

(2) As far as relations between the Applicant States which are members of EFTA are concerned, it can be assumed that these will be settled by the accession Treaty.