

## Commission Opinion on relations with EFTA Member States (16 June 1971)

**Caption:** On 16 June 1971, the European Commission submits to the Council its opinion on the enlarged Community's relations with the Member States and associate Members of EFTA which are not candidates for accession.

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## Opinion submitted by the Commission to the Council on relations between the enlarged Community and those EFTA Member States (including the associated Finland) which have not applied for membership of the Community (16 June 1971)

### I

1. "Parallel with the applications for membership, and in most cases because of them, several European countries, in particular some members of EFTA, have made it known that they wish to open negotiations with the Community with a view to establishing special relations. Thus, the possibility of enlargement means that the Community must tackle the problem of the economic organization of a large part of Europe."

It was in these terms in its Opinion rendered on 1 October 1969 (point 34) that the Commission drew the Council's attention to the concrete and immediate problem arising in connection with the Community's possible enlargement out of the fact that three of the four applicant countries belonged to the European Free Trade Association set up by the Stockholm Convention. The applicant countries will, of course, have to withdraw from this Convention as soon as possible. It would therefore appear necessary to know what would happen to the free trade arrangements which at present exist between the applicant countries and their EFTA partners.

The following table, covering the year 1969, shows the real economic importance of this problem.

#### Free trade between applicant countries and their partners in EFTA

2. The establishment of close relations based on the free movement of goods with European countries which did not belong to the Community was a difficult problem at the time when the Rome Treaties came into force. In an attempt to find a solution discussions and negotiations were held during the period 1956-1958 within the framework of OECD, with a view to setting up a large European free trade area. Two irreconcilable concepts clashed on this occasion.

As far as the countries which were not members of the Community were concerned, there should be no difference in customs tariff treatment between the Six and their partners, since any measure which resulted in differences of this kind was considered "discrimination" and condemned from the outset. At the same time, these countries took the view that it was not essential for free trade to be accompanied by harmonization of domestic and external economic policies as required by the Rome Treaties.

The EEC Member States considered that such harmonization was essential not only from the technical standpoint, but also in order to stress the nature of their venture, which looked forward to an ever increasing degree of integration at a later stage. Furthermore, these countries took the view that, by creating their Community, by agreeing to make certain sacrifices to assist its formation, and by accepting new constraints and specific obligations, they had built up between them a solidarity which entitled them to treat each other differently from the way they treated non-member countries. At the same time, however, they acknowledged that if their venture created problems for any of their partners, they would be prepared to seek together with them practical solutions involving cooperation.

A further difficulty arose from the fact that the problem of close association between the other European countries and the Community came at a very early stage in the latter's history, the Community being in its infancy. The transitional period had only just begun. The common external tariff, on which the Community bases its trade relations, had not yet been fully established, and it was to be put into effect over a period of more than ten years. It was therefore more difficult for the Community to take action than if it had already had years of Community life behind it. It was also difficult not to be concerned with something that might affect its development adversely, or even jeopardize its very existence.

3. Since 1959 the Community has not been called upon to take decisions involving the simultaneous establishment of close relations with several European countries whose economic structures are comparable to its own. The prospect of enlargement has raised this problem once again.

The Heads of State and Government of the EEC Member States made the following statement at the Hague Conference, concerning those European States which had not applied for membership, in point 4 of the Communiqué:

“The entry of other countries of this continent into the Communities — in accordance with the provisions of the Treaties of Rome — would undoubtedly help the Communities to grow to dimensions still more in conformity with the present state of economy and technology. The creation of special links with other European States which have expressed a desire to that effect would also contribute to this end.”

They further stated in point 14 of the Communiqué:

“As soon as negotiations with the applicant countries have been opened, discussions on their position in relation to the EEC will be started with such other EFTA countries as may request them.”

At its session on 8 December 1969, the Council recognized the need to adopt a common position in order to implement point 14 of the Hague Communiqué.

This common standpoint was adopted by the Council on 8/9 June 1970. It was first of all explained to the applicant countries on 30 June 1970, in the following terms:

“The Community is prepared to open discussions with the European States which are members of EFTA but have not applied for membership of the Community on the subject of possible solutions to the problems arising from enlargement, thus to enable these States to contribute to the construction of Europe.”

Later, at the ministerial meetings with each of the countries concerned, on 10 and 24 November 1970, the President of the Council expressed the Community’s point of view in the following words:

“We are of course aware that the enlargement of the Community will have repercussions for those EFTA member countries which have not applied to join.

“This is why point 14 of the Hague Communiqué stipulates that as soon as negotiations with the candidate countries begin, discussions will be held, where requested, with other EFTA countries concerning their position vis-à-vis the Community.

“The Community believes that these discussions should cover possible solutions to the problems which enlargement would involve for the other European States which have not applied for membership. The Community also believes that these problems should be solved in such a way so as not to interfere with the enlarged Community’s autonomous decision-making powers, its common policies, its smooth functioning and its prospects for further development. Finally, our international obligations must be safeguarded, particularly in the GATT setting.

“I would also like to add that neither you nor we wish to see new barriers to trade arise in Europe, and we are convinced that both on our side and on yours no effort will be spared to bring our discussions, in the framework I have just sketched and under conditions to be fixed later, to a successful and speedy

conclusion.

“We do not doubt that you want the same thing and that you also have ideas concerning how you might best contribute to the building of Europe. We would, therefore, be pleased to be able to hear what you have to say on these matters. I am convinced that our views and yours will serve as a good starting point for our discussions, which seem to me to be making a very auspicious beginning.”

4. Owing to the diversity of their economic and political situations, the States concerned put forward, at the ministerial meetings and later during exploratory discussions, rather different ideas as to the relations they would like to establish with the enlarged Community.

(i) Sweden

As it rules out membership, this country would like to establish the widest possible form of economic cooperation with the Community, extending also to the latter's future development. It proposes to establish a customs union, subject to a non-harmonization clause concerning commercial policy, which would however have very limited practical effect.

It is prepared to implement the common agricultural policy, including its financial aspects.

Sweden also intends to accept the principle of general harmonization with the Community. The Swedish delegation could, however, give no information as to how harmonization would work in detail from the institutional angle in the various sectors. With regard to the way the principle of harmonization would apply to future measures taken by the Community, Sweden would expect to be informed and consulted and possibly to be represented at preparatory meetings before final decisions are reached.

(ii) Switzerland

The Swiss position is both pragmatic and very detailed.

Trade

Switzerland rules out any form of harmonization; in view of the facts, care must be taken not to overestimate the difficulties arising from deflection of trade and distortion of competition caused by tariff disparities which can be eliminated by the application of rules of origin.

Agriculture

Switzerland has no wish to take part in the common agricultural policy. It is prepared to seek ways and means whereby trade may be facilitated. Great results should not be expected in this sector, however, in view of the dominant position the Community has already achieved in the Swiss market.

Distortion of competition

Switzerland is prepared to make permanent arrangements to avoid distortion. These arrangements should not be as detailed as those made by the Community but should, in any event, settle the important economic problems.

Harmonization of legislation, transport, and labour

Switzerland is very interested in the creation of Community law; it hopes to be able to solve problems of common interest together with the Community (insurance, pharmaceutical products).

In the transport field, Switzerland wishes to avoid hindering the work carried out in other quarters (Central Commission for the navigation of the Rhine, ECSC-Switzerland transport agreements), but acknowledges that the agreement it has in mind might shed new light on these problems. Switzerland is very reserved on the subject of manpower.

#### Development of the Community

In view of the fact that its economy is closely interconnected with the Community's, Switzerland is very interested in cooperating in economic and monetary matters, as well as in industrial policy, technology, environmental problems, etc. It considers that it will be necessary to make suitable institutional arrangements for this purpose.

#### Institutional problems

Switzerland attaches great importance to these problems and realizes the difficulties. It wishes to arrive at some form of effective say in decisions taken corresponding to the commitments it is prepared to enter into.

#### (iii) Austria

The Austrian position is close to Switzerland's as far as the general scope of the agreement desired is concerned, but Austria sets less ambitious objectives and is more disposed to make arrangements similar to the Community's.

Its position differs in the following respects:

#### Agriculture

The Austrian aim would be to bring about a certain alignment of agricultural policies gradually to ensure free movement of agricultural products.

#### Partial suspension clause

Only Austria of the neutral countries referred to this problem, which it had already raised during the 1965/67 negotiations.

#### Institutional problems

Austria laid less stress on this question than Switzerland.

#### (iv) Finland

The Finnish approach centres mainly on trade in industrial products, for which it would like a free trade arrangement.

Finland attaches great importance to retaining existing economic links with its EFTA partners, safeguarding cooperation between the Nordic countries, and maintaining preferential trade arrangements with the Soviet Union, which, in Finland's opinion, should not lead to distortion of trade or competition, just as these arrangements have created no such distortion under the association agreement with EFTA.

Unlike Switzerland and Austria, Finland does not wish to participate in any way in the Community's

development.

(v) Iceland

The Icelandic delegation stressed the importance for its country of the export of fishery products. It pointed out that, in its opinion, a balanced agreement would be achieved if the Community granted concessions to Iceland's fisheries and if Iceland, in return, granted the Community's industrial products facilities along the lines laid down on its accession to EFTA (transitional period extending until 1980).

In the case of fishery products, Iceland would be prepared to consider any arrangements (such as control of prices and quantities) to avoid any disturbance of the Community market. However, social and ecological factors formed an insuperable obstacle to any Icelandic concessions in the matter of fishery rights.

(vi) Portugal

The Portuguese delegation confirmed that the agreement desired should go beyond a mere trade arrangement and gradually permit transition towards closer integration of the Portuguese economy with Europe's, while taking into account the economic development of the country. Article 238 was mentioned as a possible legal basis. The agreement would cover only Portugal's European territory.

The Portuguese delegation stressed the vital importance for its country of exports of tinned fish and tomatoes, almonds, worked and unworked cork (all these products being regarded as "industrial products" in EFTA), wine and textile products. It argued that, because of the weakness of its industry, the Six should grant Portugal a transitional period exceeding that granted to her in EFTA (expiring in 1980), for a number of sectors.

## II

5. What is common to all these positions is the wish to base these countries' relations with the enlarged Community on free trade. As far as principles are concerned, the Commission's analysis of some of the conditions whereby free trade between the developed countries can be achieved has remained valid since the OEEC negotiations in 1958.

In the first place, the elimination of the barriers to trade on a wide scale is conceivable only if competition is not appreciably distorted in the case of both exports and imports by the diversity of the external tariffs and trade policies of the countries concerned.

In the second place, it is difficult to imagine customs barriers and quotas being swept away completely while there is no adequate guarantee that competition will not be distorted by restrictive agreements, dominant positions, dumping, government subsidies or other practices.

In the third place, it will be impossible to remove barriers to trade in the case of some products if the liberalization measures are not sufficiently wide-ranging to ensure an adequate balance between benefits and obligations. This question primarily affects the problem of the free movement of goods, liberalization of services, and wider trade in agricultural produce.

Lastly, it is unrealistic to contemplate the complete elimination of customs barriers and quotas unless economic policy is coordinated to a degree which guarantees that the liberalization measures achieved will be maintained.

It is impossible to fulfil all these conditions in advance by means of contractual obligations. As is stated in the Community Treaties, if they are to be adhered to, there must be a permanent attempt, within the framework of common institutions, to achieve a balance between these various interests. Moreover, it is

clear from the experience gained since the Treaties came into force that the rules laid down at the outset should be accompanied by greater economic solidarity, if the balance of the entire edifice is not to be upset; the Council resolution of 8 and 9 February 1971 implementing the decision reached at The Hague to achieve economic and monetary union between the Member States by stages met this requirement.

6. In theory, it would of course be possible for countries, like Sweden for example, having the same economic structure as the Member States to give definite undertakings to fulfil the above-mentioned conditions in their relations with the Community, and in this way to achieve free trade.

However, an arrangement of this kind would encounter insuperable difficulties, particularly from the institutional and administrative angle:

(a) In several spheres of the Community's activities, harmonization must lead to an identical system. This is so in the agricultural sector, in which free trade in agricultural produce can be achieved only if the agricultural policy measures decided upon by the Community are put into effect simultaneously in all the countries concerned. In the same way, the rules governing competition laid down in the Community Treaties require uniform implementation and, consequently, uniform case law resulting from the decisions reached by the Commission and the Court of Justice, and thus cannot be shared with non-member countries.

(b) A further problem concerns harmonization in relation to future decisions reached by the Community. Thus, while the Swedish delegation stated that it was prepared to consider such harmonization, it stipulated that Sweden should be consulted on these decisions and that, in some cases, they should be worked out in contact with the Swedish authorities. Acceptance of this requirement would involve the Community in very serious complications. Besides Community decision-making machinery, which is already cumbersome and will involve a greater number of Member States after enlargement, steps would have to be taken to make arrangements for consultation with the countries concerned, thus extending still further the periods required to reach decisions. If the interests of these countries were taken into account, it would be still more difficult to achieve the many agreements which are required if the Community is to function properly.

(c) Finally, in the absence of common institutions with decision-making powers in order to keep a check on reciprocal undertakings and to put them into effect, there can be no guarantee that the undertaking to achieve harmonization given at the outset by all the countries concerned can be maintained in all circumstances and outside the normal operation of the escape clauses. Such countries might escape from these undertakings either by invoking the reservations concerning neutrality written into the agreements, as Sweden has already requested, or because of the difficulty they might encounter in following the Community. Detection of failure to achieve harmonization and correction of any imbalance which might result, would involve the Community in extremely complex arrangements both internally and within the bodies responsible for the administration of agreements.

Thus, we are faced with the dilemma summed up by the Commission in its Opinion of 1 October 1969 (point 36, second paragraph), in the following words:

“On the one hand, these countries might, in some cases, be required to conform to decisions in which they had played no part; on the other hand, the obligation to hold consultations and the ever-increasing number of special arrangements would involve inextricable complications for the Community.”

### III

7. Ultimately, agreements with non-member countries based on the Community's concept of free trade presuppose that it is possible to pursue the following aims simultaneously:

(a) to arrive at uniform rules of conduct applicable to both public authorities and transactors;

(b) to preserve, in its entirety, the Community's independence of decision-making and operation.

Now, these aims are contradictory, so that one can be achieved only at the expense of the other.

The statements, quoted earlier, by the President of the Council leave no doubt as to the Community's clear determination not to get involved in arrangements which might jeopardize the working of its institutions.

Conversely, it would be somewhat risky not to establish, especially in agreements with the industrialized countries, rules of conduct which are similar, if not identical, to those applied in the Community. If such rules of conduct were not applied, these agreements would inevitably create a disparity as compared with the obligations assumed by the Member States of the Community. It would be impossible to achieve that balance between benefits and obligations which naturally results from a total and unreserved commitment to achieve economic union. Moreover, the credibility of the Community's cohesion and purpose might be undermined if economic integration — which is only one of its aims — were achieved by measures of a partial nature, outside the framework of institutions endowed with their own powers.

8. In the memorandum submitted by the Commission to the Council in 1959 on relations with other Western European States, the Commission, after drawing attention to the points that the Community had had to take into account during the OEEC negotiations, expressed the view that:

“These points of concern will no doubt cease to exist when the Community is in full possession of its powers; then it will be in a position to take greater risks. What is difficult to achieve today, may be easier to achieve tomorrow.”

As the Community's enlargement becomes imminent, and in view of the progress still to be made before the objectives set at the Hague Conference are achieved, the Commission cannot take the view that these risks have entirely disappeared.

Faced with this problem, the Community must make a choice between two attitudes:

(a) Either it takes the view that it cannot contemplate the removal of barriers to trade between the enlarged Community and those EFTA Member States which, although they meet the requirements for membership, do not wish to join for reasons of their own. In this event, the United Kingdom, Denmark and Norway would have to raise their tariffs vis-à-vis their former partners,

(b) or the Community agrees that the main features of the free trade system achieved by EFTA should, in principle, be retained and extended to the whole of the enlarged Community.

Up till now, the first attitude has been ruled out by the Council.

A temporary solution might be to postpone the choice until a date following enlargement, while maintaining the status quo until that date as regards the trade relations created by EFTA in the field of industrial tariffs (though the applicant countries would in any event have to withdraw from the Stockholm Convention). It would only be possible to maintain the status quo for industrial tariffs, since the EFTA agricultural arrangements are incompatible with the common agricultural policy and since EFTA rules and institutional provisions regarding competition and other matters cannot coexist with the new Community rules with which the new member countries will have to comply.

However, the longer the waiting period, the greater will be the drawbacks which result from the fact that the new member countries belong to two preferential areas at the same time — the Community's and EFTA's. The status quo period should therefore be limited to two years, for example, after their accession, for during this period tariff reductions between the Six and the new Member States will not have been large enough for there to be any fear of serious distortions.



The advantage of this solution would be that it would not commit the Community to a particular course of action, for it would leave it time to obtain a clearer picture of the way its external relations were developing, particularly with a view to a possible round of international negotiations on tariffs and trade.

The advantage of this approach, which would reserve the position to be adopted by the enlarged Community and would nevertheless involve taking various essential technical precautions, would be that it could be applied very rapidly. However, the question might arise whether it would be in conformity with the Council's wish that the agreements with the non-applicant countries should come into force concurrently with the accession of the applicant countries.

9. If the Council insisted on this point, it would be necessary to consider an arrangement involving the abolition of customs duties and quantitative restrictions for industrial products, to the exclusion of any contractual obligation to achieve harmonization.

The abolition of customs duties already achieved within EFTA as regards industrial products would be maintained and extended, by means of a transitional period, to relations between the original members of the enlarged Community and those EFTA countries not applying for membership. Thus, a basic system would be established reflecting the new relationship with EFTA, three Member States of which will belong to the Community. If the solution is confined to this aspect of the problem, any danger of setting precedents as regards relations with non-member countries would be ruled out.

This general system would be put into effect by agreements between the enlarged Community and each of the countries concerned. These agreements would have to include special provisions in some sectors to allow for specific situations, for example special provisions for ECSC products, and arrangements for some agricultural and fishery products in order to lend economic significance to the agreements with Iceland and Portugal.

The provisions covering trade would not be accompanied by any commitment to achieve harmonization, but by escape clauses which would enable the Community to restore the balance if disparities in conduct affected the Community's industries adversely. It is essential that such escape clauses should be invoked by the Community only and not by the Member States; otherwise, a uniform import policy would rapidly become impossible.

On political and economic grounds it is desirable that this system should be accompanied by the conclusion of separate agreements in order to settle with some of these countries such questions as the fair treatment of Community workers and cooperation in transport matters.

The distinction between agreements establishing free trade in industrial products and the other problems just referred to clearly shows the Community's determination to remain entirely free to lay down and implement its own policies, which are essential to strengthen the Community.

The joint body to be set up to administer these agreements should be given powers of decision only in technical matters arising from the trade arrangements covered by the agreements.

Furthermore, it is impossible to be sure at the outset that the provisions contained in such agreements will prove entirely suitable, for this system might not completely remove all possibility of distortion. It is also difficult to foresee what the result would be if reciprocal escape clauses were invoked. Hence it would be logical not to give a definitive character to the provisions contained in the agreements with the non-applicant countries. It might be possible for instance to arrange a meeting at the end of the transitional period in order to review the situation and, on the basis of experience gained, to arrive at the most satisfactory form of subsequent relations between the countries concerned and the Community.

It should be possible to withdraw from the agreements subject to one year's notice, as in EFTA.

10. If it is not decided to retain the status quo for a two-year period the Commission feels that it should suggest to the Council that simple agreements based on a few general, easily applicable rules relating mainly to trade in industrial products are a possible solution, which would be in the interests not only of the Community, but of all the countries concerned, and would at the same time conform with GATT rules.

By agreeing to reach agreements based on the abolition of barriers to trade in industrial products with non-applicant EFTA countries, the enlarged Community would in the first instance take into account the substantial economic interests of both its new members and neighbouring countries linked with all its members by all kinds of ties. The Community would thus avoid the considerable complications which would inevitably arise if an attempt were made to seek differentiated, and therefore delicate, solutions to the problems raised by the existence at the present time of different tariff arrangements vis-à-vis these countries.

In the second place, this type of agreement would best preserve the Community's autonomy by keeping institutionalized economic integration distinct from relations of an essentially commercial nature. The situation vis-à-vis other non-member countries would remain clear: there would be no question of granting some countries advantages inherent in participation in European integration without their joining the Community, but of solving specific trade problems arising from the fact that three EFTA Member States would leave that organization to join the Community.

In the last analysis, the vital distinction from now on in relations between Western European countries would seem to consist in the range of links binding them in economic matters and the extent to which these links are irreversible. What the Community has already done, the objectives it has set itself and, above all, the part played by the common institutions in its functioning, all guarantee the irreversible nature of the Community's achievements and of its future development.

By contrast, one feature of such agreements with non-applicant countries would be their more limited scope, and another a certain precariousness inherent in their very nature, on account for example of the escape and withdrawal clauses which will have to be embodied in these agreements.

In order to avoid any misunderstanding, it should be stressed that there is nothing to prevent these countries aligning themselves independently on Community rules. Clearly, the fewer the divergences between the respective sets of rules, the less likelihood there is of the escape clauses being invoked and the greater the stability in trade relations with the Community. While alignment of this type would ensure that the proposed trade arrangements worked smoothly, it would not change the nature of established contractual bonds. It will be up to the Community's partners to decide freely whether they wish to follow this path in order to reduce the precarious aspects of the agreements or whether they prefer, as more than one has considered essential, to retain complete independence, for example, in tariff matters or trade policy.