

Confidential note from the Council on future relations with Portugal (Brussels, 2 February 1977)

Caption: In its report dated 2 February 1977, the ad hoc Working Party established by the Permanent Representatives Committee on 20 January 1977 gives its views on future relations with Portugal, in particular on the definition of a joint line of approach to be adopted during the visit by Mário Soares to Europe's capital cities, the various models for negotiations and the various possible solutions for Portugal's accession to the European Communities.

Source: Archives historiques du Conseil de l'Union européenne, Bruxelles, Rue de la Loi 175. Adhésion du Portugal, 07.151 (469): 07. Dossiers 559-564, Boîte 68. Rapports du Groupe ad hoc en ce qui concerne en particulier "l'avenir des relations avec le Portugal", Dossier n° 563.

Note. Report by the ad hoc Working Party (set up by the Permanent Representatives Committee on 20 January 1977) on future relations with Portugal and other items, P1. Brussels: Council of the European Communities, 02.02.1977. 14 p.

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Report by the ad hoc Working Party (set up by the Permanent Representatives Committee on 20 January 1977) on future relations with Portugal and other items (1)

With the rider that delegations' comments thus far have been purely unofficial or subject to confirmation, the main guidelines which emerged at the first three meetings of the Working Party, which were held on 26/31 January and 1 February 1977, may be summarized as follows:

I. Reply to Mr SOARES

1. The Working Party took as its basis the fact that the prime objective of the Council was to be able to adopt at its meeting on 8 February a joint line of approach for the position to be taken up during the forthcoming round of visits to the capitals by the Portuguese Prime Minister Mr SOARES.
2. Bearing this in mind, the Working Party established that it was already unanimously agreed that in this context Portugal's future in Europe should be confirmed, having particular regard to the political importance of this choice both for Portugal and the Community.
3. However the Working Party considered that in making this political approach the Community could not entirely pass over the difficulties which Portuguese accession in the short-term would entail both for Portugal itself, in view of its economic, financial, social and agricultural situation, and for the Community, whose past achievements - and indeed potential for development - must be preserved ⁽²⁾.
4. The Working Party further noted that
 - over the coming months the whole range of problems raised by the prospect of a further enlargement of the Communities would form the subject of continuing discussion at Ministerial level and that consequently the basic conclusions which might be reached in these deliberations should not be anticipated at the present time;
 - Mr SOARES' intended visit to the nine capitals was to begin as early as 14 February 1977.
5. With regard to the more specific subject of the joint stance to be adopted vis-à-vis Mr SOARES to take account of the various considerations set out above ⁽³⁾, the Working Party concluded that at the present stage there were still two opposing trends depending upon the attitude to be adopted in view of the Portuguese Prime Minister's intention of lodging, in the near future, an application for accession in good and due form:
 - (a) the first attitude would be simply to indicate to Mr SOARES, without expressing any preference at this stage, the solutions compatible with the Treaties whereby tangible form might be given to Portugal's future in Europe. This would allow the Community and Portugal a further period which would enable both Parties to continue examining, if necessary together, the problems outlined in paragraph 3. Not until this examination had been concluded (it could also be accompanied by exploratory talks between the Commission and Portugal) would Portugal decide upon the most appropriate formula on the basis of the facts of the situation.
 - (b) the second would be to inform Mr SOARES that in view of the considerations outlined in paragraphs 2 and 3, the Community did not intend to raise any objection to the Portuguese Government applying for entry if it so wished. This application would not of course prejudice the procedures laid down in Article 237 of the EEC Treaty nor the outcome of the search, together with Portugal, for solutions to the problems involved, which could equally well be carried out after the application was lodged.
6. However, it became evident within the Working Party that in order to obviate any misunderstanding, in particular in the event of the attitude adumbrated in paragraph 5(a) being adopted, the Council could agree on the principle of a joint statement whereby, if the Portuguese delegation expressed a wish to that effect, the political will of both Parties could be clearly re-affirmed. This statement ⁽⁴⁾ could, for example, be published subsequent to Mr SOARES' round of visits ⁽⁵⁾.

II. Possible solutions in the case of Portugal

7. With reference to the second part of the task entrusted to it, the Working Party examined possible formulas which could be contemplated in the case of Portugal to solve the problems mentioned in paragraph 3, leaving aside the well-known solutions such as accession for instance along the lines, for example, of the first enlargement of the Communities or the various types of association agreements already concluded with other European countries.

Without wishing at this juncture to express an opinion at its level on the respective merits of these various formulas and without attempting to be exhaustive, the Working Party looked over a number of alternative solutions which may basically be scaled down to the models described below. As will be seen from a detailed examination of these solutions:

- the basic characteristic in common between models A and B is that they are "up-stream" of the opening of accession negotiations, whereas model C is equivalent to accepting that the procedure embodied in Article 237 of the Treaty should be initiated,

- furthermore, going beyond the current arrangements ⁽⁶⁾, "model A" makes provision for unilateral action by the two Parties (whereas B envisages joint action with mutual rights and obligations) and, unlike B, a meeting to decide whether it is possible to move on to the next phase.

The Working Party also noted that it was possible to envisage variants combining certain features of different models.

Model A

In order to enable Portugal to speed up the essential structural reforms before it is able to enter into the commitments involved in accession (combined with a "normal" ⁽⁷⁾ transitional period), during the preliminary stage the Community should grant arrangements ⁽⁸⁾ affording advantages in trade in industrial and agricultural products which would go as far as possible towards the system which would apply in the event of accession combined with access to certain "ad hoc" social, regional and agricultural funds and the EIB, as well as a "joint management" procedure and increasingly closer relations with Community institutions and political co-operation procedures on foreign policy matters.

This formula would also involve fixing a specific date (for a meeting) to examine and decide together whether all the conditions were fulfilled for moving on to the actual transition period along "traditional" lines.

Model B

This solution would consist of examining what "common action" ⁽⁹⁾ might be undertaken in the social, financial, commercial and industrial field on the basis of an "association" arrangement such as that provided for in the Athens Agreement ⁽¹⁰⁾ and based on Article 238 of the Treaty of Rome.

In this connection, the Community might offer Portugal "joint management" in the fields selected for such "common action", and access to certain "ad hoc" funds.

In the light of the results of this common action, the two Parties would determine, at an appropriate time and not on a date fixed in advance, whether accession on the traditional lines was feasible.

This solution would be supplemented by immediate participation in certain aspects of political co-operation.

Model C

This solution would amount to agreeing to the opening of accession negotiations.

The accession process would be in two phases.

(a) In the first phase,

the Community and Portugal would together examine carefully the conditions, criteria and procedures which should govern the accession process. It should be possible to organize the first phase into one or more stages and in the manner most consistent with the mutually recognized interests of both Portugal and the Community, i.e. by continuing to make allowance for the specific nature of the Portuguese case.

In this first phase,

(i) the Community would grant Portugal arrangements to enable it to speed up jointly determined and essential structural reforms and which would commit Portugal before it was ready to assume the obligations of accession accompanied by a "normal" transitional period:

- either by access to certain ad hoc social, regional and agricultural funds, and to the EIB ⁽¹¹⁾,
- or, if there were legal obstacles to Portuguese participation in these funds, by ad hoc means introduced for this purpose ⁽¹²⁾.

(ii) Portugal would enter into commitments to enable the jointly determined objectives to be attained.

In the first phase, Portugal would be increasingly associated in the procedures for political co-operation on foreign policy questions.

The question of gradually associating it with the Community Institutions during this phase should be considered.

(b) Second phase

The transition to the next phase would take place by common accord (once the Parties had established that the necessary conditions had been fulfilled) and not, therefore, according to a pre-determined timetable.

The second phase would consist of Portugal becoming a full member of the Community and the commencement of a "traditional" transitional period to enable it finally to assume its obligations as a Member State, particularly in the context of the customs union.

8. With reference to the legal implications of each of these models, it was concluded that:

- pending more detailed examination, none of the models outlined above appeared likely to require amendments to the Treaties pursuant to Article 236;
- the principal difference between an arrangement based on Article 237 of the Treaty (accession) and an arrangement pursuant to Article 238 (association) would lie not so much in the designation or the economic content of the solution adopted, as in whether the State concerned would immediately be permitted to participate, as a fully fledged member, in the Community's institutional mechanism;
- there was no legal obstacle to an arrangement based on Article 237 comprising a first phase the content of which would be designated "conditions of accession"; however, this would preclude transitional solutions

for the institutional aspects;

- an arrangement based on Article 238 would in no way preclude the inclusion of a provision providing for accession at a later stage (see, for example, the Athens and Ankara Agreements), until which time "common action" would call for a joint management mechanism outside the framework of the Community Institutions;

- all the arrangements could include autonomous Community measures; such measures should be adopted on the basis of the appropriate provisions of the Treaty, including Article 235, provided the terms of that Article were fulfilled.

9. Finally, the Working Party ⁽¹³⁾ noted that - despite the emphasis placed on the "specific nature" (already acknowledged on several occasions by the Council) of the Portuguese case - the implications which the arrangement eventually adopted was bound to have on the attitude of other current or potential applicants for membership should be borne in mind.

[...]

Annex II

Outline of a joint position to be adopted on the occasion of the visit of the Portuguese Prime Minister to the nine capitals

Introductory remark

Alternatives A and B in point 6 of this Annex endeavour to reflect the two positions set out in paragraph 5 (pages 2 and 3) of this report.

Alternative B would also entail retaining the text at present in square brackets in point 4 of this Annex.

The Council of the European Communities and the Representatives of the Governments of the Member States meeting within the Council:

1. would draw attention to the fundamentally open nature of the Community, as asserted in the Treaty of Rome, and to Portugal's future in Europe and would welcome the political commitment to Europe of that democratic country, which can thus aspire to become a member of the Community;

2. would express their concern over the problems which short term economic integration would entail for both Portugal, in view of its economic, financial, social and agricultural circumstances, and for the Community, whose patrimony and internal and external development prospects must be preserved;

3. would recall all the joint action already undertaken since Portugal's return to democracy and would emphasize all the progress which can still be achieved in strengthening co-operation between the Community and Portugal;

4. would reaffirm their will to continue the common search with Portugal for ways and means of aligning their economies more closely with the aim of leading to the full and complete accession of Portugal to the Community under conditions and on a time scale most favourable to all parties. ⁽¹⁴⁾

5. would state their readiness to express this will in a joint declaration ⁽¹⁵⁾ at the end of the round of visits made by the Portuguese Prime Minister;

6. Alternative A

would suggest that the views exchanged on that occasion ⁽¹⁶⁾ be actively followed up on both sides, possibly

in the context of exploratory talks between the Portuguese authorities and the Commission, after which Portugal will be able to decide on the most appropriate attitude to adopt in its relations with the Community, on the understanding that the Community for its part would entirely reserve the right to draw its own conclusions.

6. Alternative B

would accordingly agree:

- to initiate, after submission of Portugal's application for membership of the Community, the procedure provided for in Article 237 of the EEC Treaty and in the corresponding Articles of the ECSC and Euratom Treaties;

- to propose to the Portuguese authorities, with this in mind, that the present consultation procedures be intensified, particularly in the case of measures with a direct effect on Portugal and that exploratory talks with the Commission be commenced as soon as possible in order to clarify the nature and scope of the problems raised by the short-term accession of Portugal to the Community.

7. (For the record) "political co-operation" section.

⁽¹⁾ In view of its subject-matter this document will not be circulated to any other addressees at this juncture.

⁽²⁾ In this connection the point was made that when approving the joint position for the opening of accession negotiations with Greece the Council agreed to enter in its minutes the statement 2 given in internal document No 5 and consigned to Annex I hereto.

⁽³⁾ Annex II contains an attempted formulation of this joint stance (with two variants corresponding to the two trends outlined in the paragraph).

⁽⁴⁾ the content of which would be settled in due course depending upon the alternative chosen from paragraph 5.

⁽⁵⁾ scheduled to end on 12 March (viz. a few days after the Council meeting on 8 March).

⁽⁶⁾ based on Article 113 of the EEC Treaty.

⁽⁷⁾ both as regards its length and the extent of the "exceptions".

⁽⁸⁾ sufficiently "attractive".

⁽⁹⁾ the term explicitly used in Article 238 of the Treaty of Rome.

⁽¹⁰⁾ Article 72 of the Agreement reads as follows: "As soon as the operation of this Agreement has advanced far enough to justify envisaging full acceptance by Greece of the obligations arising out of the Treaty establishing the European Economic Community, the Contracting Parties shall examine the possibility of the Accession of Greece to the Community."

⁽¹¹⁾⁽¹²⁾ the point was made that, in this event, the third paragraph of the Council statement in Annex I would apply mutatis mutandis in this case also.

⁽¹³⁾ whose proceedings have been set, in accordance with the deliberations of the Council (on 18 January) and of the Permanent Representatives Committee (on 20 January), against the backdrop of current developments in a number of European states regarding the future of their relations with the Community.

⁽¹⁴⁾ See alternative B overleaf.

⁽¹⁵⁾ See paragraph 6, page 3 of the report.

⁽¹⁶⁾ Which would, if appropriate, take into account the conclusions reached by the Council as regards the whole range of possible formulae analysed in paragraph 7 of the said report (pages 4 to 8).