

# COMMISSION OF THE EUROPEAN COMMUNITIES

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## COMMUNICATION FROM THE COMMISSION

on the procedure to be followed by the  
Community and its Member States in  
adopting acts of the OCDE

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1. The Community participates in the work of the OECD in accordance with Supplementary protocol N° 1 to the Convention establishing that Organization, which does not grant the Community full member status. Although the protocol is interpreted to allow the Community to participate in the drafting of OCDE acts, the Convention restricts decision-making powers to members alone. When OECD acts are adopted, therefore, the Community as such cannot bind itself under the Convention in its areas of competence. The Member States are in the same position as regards the Community's areas of competence. Since neither the Community nor its Member States can binding obligations in these areas while other OECD member countries can, there is an imbalance of rights and obligations among the 24 Members of the OECD. Some special way must be found of getting round this problem.
2. Between May and October 1986, therefore, the Commission tried, in accordance with the policy agreed with COREPER, to find a solution to the problems encountered in this respect at the OECD, proposing to the OECD Council that a recital referring to the Community should be included in OECD acts. This proposal did not meet with unanimous agreement and the Commission reported back to COREPER on the situation, indicating that other means would have to be found. Following informal contacts with the OECD Secretariat, the Commission is now able to propose to the Council a procedure which would reconcile the interests of the Community with the provisions of the OECD Convention. The suggested procedure takes account both of the need for the Community to be able to exercise its powers and of the requirements of the OECD Convention.
3. Where an act of the OECD deals with a subject which falls within the Community's competence, the Member States cannot under the Treaty bind themselves on that subject. The OECD rules of procedure are sufficiently flexible to accommodate this imperative of Community law. Article 19 provides that a Member of the Organization may express reservations when an act is being adopted. The Member States of the Community should take advantage of this right when an issue submitted for the approval of the OECD Council falls within the Community's sphere of competence. In such a case, the Member States of the Community should,

on the adoption of an act (Decision or Recommendation), inform the OCDE Council that they cannot bind themselves on this matter. It is true that such reservations by the Member States might create a legal vacuum leading to an imbalance between the rights and obligations of the Members of the OECD. However, if the Community, represented by the Commission, voluntarily undertakes to meet the obligations concerning which a reservation has been expressed, the reservations will neither imbalance nor block the OECD's decision-making process.

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In one light of the above, the practical steps necessary to improve the Community's participation in the work of the OECD imply two levels of action by the Community and its Member States, within the OECD itself and internally, within the Community.

4. As regards action by the Community and its Member States within the OECD, the reservations expressed by the Member States will be recorded according to the procedure laid down in paragraph 19 of the OECD's rules of procedure. Nothing is laid down in the Convention concerning the procedure for recording undertakings by the Community. It would, however, be in the interests of the other OECD members to preserve a balance of rights and obligations by agreeing to undertakings by the Community being included in the acts submitted for approval by the Council. There is nothing in the OECD Convention to forbid use of this formula, and contacts with the OECD Secretariat indicate that once the principle is clearly accepted there should be no particular difficulty in implementing it.
5. The internal part of the procedure will be as follows: during the preparation of OECD acts, and in the preliminary phase of the OECD's approval procedures, the Commission and the Member States will, in the normal course of coordination, decide whether the existence of Community competences requires the Member States to express a reservation and the Community to give an undertaking.

In other words, the preparatory work will enable the Member States to formulate the statement expressing their reservation on adoption of the act by the OECD Council, and will enable the Community to plan the form of its commitment should take.

In order not to slow down the work of the OECD, the Community will have to give its binding commitment at the same time as the other OECD member countries. The Community's undertaking<sup>1)</sup> will be given on its behalf by the Commission and will be decided upon according to the normal procedure.

6. In the Commission's opinion this procedure will allow the Community's position to be represented within the OECD, in accordance with its powers competences and responsibilities, while safeguarding the rights and obligations of the Member States within both the Community and the OECD; it also provides the legal certainty necessary for the OECD to function properly.

7. The Commission therefore proposes that the Council should decide that:

- In accordance with the normal procedures, and in particular in the course of Community coordination before meetings of the OECD, there will be an assessment of areas falling within the Community's competence in order to enable the Member States to express a reservation and the Community to give an undertaking.
- When OECD acts are adopted the Member States will express a reservation as decided in accordance with the procedures referred to above, with a view to having it recorded according to the procedure laid down in the internal rules of the OECD. In particular, this reservation will refer to the fact that the Member States cannot give certain undertakings because competence has been transferred to the Community.
- The Commission will give the Community's undertaking<sup>1)</sup> as decided in accordance with the procedures described above. This undertaking will be recorded in an appropriate form in the acts of the OECD.

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1) Subject to the possibility of not accepting or of making reservations to the text of the Act in question.