

ROLE OF THE EUROPEAN PARLIAMENT IN RELATION TO
INTERNATIONAL AGREEMENTS

Luxembourg, 28 January 1980

Directorate General for Research
and Documentation
European Parliament

Role of the European Parliament in relation to
International Agreements

The attached document - Annex I - while dealing specifically with the GATT Agreement sets out the legal situation in relation to the conclusion of agreements by the Community on behalf of Member States. This document distinguishes between

(a) Association Agreements

Under Article 238 of the Treaty these agreements are concluded by the Council, acting unanimously after consulting the Assembly.

Association agreements were concluded with Greece in 1962 and with Turkey in 1964. Both these agreements aimed at preparing these countries for possible full membership of the Community at a future date.

Agreements under Article 238 were also concluded with Malta (1971) and Cyprus (1973). They have been described as association agreements designed to establish a customs union over a period of time. The agreement with Malta was extended to include provisions relating to agriculture and to economic and financial cooperation. The agreement with Cyprus, while extended to include a financial protocol, is difficult to operate in practice because of the political division of the island.

Agreements with the Maghreb countries (Algeria, Morocco and Tunisia), with the Machrek countries (Egypt, Jordan, Lebanon and Syria) in 1977 and with Israel in the same year are described as cooperation agreements. They include commercial, industrial, technical and financial provisions.

Moreover, the Lomé Convention, concluded in 1976 and renewed in 1979 under Article 238, covers, in general, trade cooperation, stabilisation of export receipts and industrial, technical and financial cooperation.

At present, the European Parliament participates in the negotiation of association agreements under the "Luns procedure" which is called after the former Netherlands Minister for Foreign Affairs who was President-in-Office of the Council when this procedure was introduced. Under the "Luns procedure" Parliament is informed, through its responsible parliamentary committees:

- (a) by the Commission concerning the evolution of negotiations, and
- (b) by the Council, when substantive negotiations have ended but before the signing of the association treaty.

The information given to Parliament's committees is unofficial and confidential.

The operation of the "Luns procedure" in practice is inadequate as the information is usually supplied to Parliamentary committees too late for an opinion from Parliament to be considered before the agreement is signed.

The "Luns procedure" precedes the official consultation of the Parliament by the Council which takes place after the signature of the association treaty and before the deposit of the instruments of ratification. Despite protests from Parliament, Council has maintained that an agreement is not "concluded" until the Community is bound internationally and this is not achieved by the mere signature of the Council. This restrictive interpretation by Council effectively excludes Parliament from any worthwhile consultation and merely ensures that Parliament is informed at a late stage. This interpretation seems to run counter to the spirit of the Treaty.

(b) Trade Agreements

Trade agreements have been concluded with over thirty countries under Article 113 of the Treaty. These agreements include preferential trade agreements with EFTA countries and

with some mediterranean countries, non-preferential agreements with Latin American countries and agreements with Asian countries principally relating to sectoral products such as textiles, jute coir and handicrafts.

Since these agreements do not necessarily involve consultation of the Parliament by the Council, members of the Parliament considered that its committees should also be informed of the progress of trade agreements.

A Resolution was adopted by the European Parliament on 13 February 1973, following consideration of the Giraud Report (Doc. 300/72). This report drew attention to the fact that from 1 January 1973 all trade agreements with third countries would have to be concluded by the Community and suggested that a number of measures be taken to improve the participation of Parliament in the conclusion of such agreements. Subsequently, the Council of Ministers meeting on 15 October, 1973 adopted a number of measures to improve relations between the Council and the Parliament.* They agreed that fuller participation with Parliament in relation to trade agreements could be envisaged along the following lines:

- prior to the opening of negotiations concerning a trade agreement with a third country, and in the light of information supplied by the Council to the appropriate parliamentary committees, a debate could, where appropriate, be held in the European Parliament;
- when negotiations are completed, but before signing of the agreement, the President of the Council or his representative would confidentially and unofficially acquaint the competent committees with the substance of the agreement;
- bearing in mind the European Parliament's interest in trade agreements concluded by the Community, the Council would acquaint the European Parliament with the content of such agreements, after their signing and before their conclusion.

* See Bulletin EC 10 - 73, pt. 2427

In this way a "Luns" type procedure was extended to cover trade agreements concluded by the Community. The procedure as applied to both association and trade agreements is known as the "Luns/Westerterp procedure".

New Procedure

Since then the Political Affairs Committee of the Parliament has urged in relation to both association and trade agreements that

(a) the first suggestion made by the Council, as quoted above, should apply to both association agreements and trade agreements;

(b) the Commission should continue to inform parliamentary committees of the progress of negotiations and of the major problems to be overcome;

(c) the third suggestion made by the Council is inadequate and should be replaced by a "ratification" stage which would enable the Parliament to debate fully the terms negotiated, after the agreement is initialled but before it is signed.

The suggestions were embodied in the Kirk Report which subsequently became the Reay Report on Inter-institutional Relations (Doc. 148/78) - see extract from this report Annex II.

This report was not debated on the floor of the house and members have not yet had an opportunity, in the course of a debate specifically on relations between the institutions, to voice their opinion on the suggestions made to strengthen the role of Parliament insofar as international agreements are concerned.

Attitude of present Parliament

Since the constitution of the directly elected Parliament two important agreements have been concluded by the Community - the Convention of Lomé II and the Tokyo Round of GATT. Agreement on

most issues to be included in Lomé II was reached on 27 June 1979 and on 24 October 1979 the Irish Minister for Foreign Affairs representing the Council attended a joint meeting of committees of the European Parliament, to explain the state of negotiations on Lomé II and to outline the new elements which had been incorporated in the Convention. The agreement was signed on 31 October.

The GATT agreement relates to tariff reductions on multi-lateral trade and establishes a series of codes designed to ensure free and fair trade. This agreement was initialled in April 1979. Parliament was consulted in accordance with the Luns-Westerterp procedure on 21 November 1979 when an Irish Minister of State, representing the Council attended a joint meeting of Parliamentary Committees in Brussels to explain the provisions of the new agreement.

Both in Committee and on the floor of the House members have expressed dissatisfaction with the present procedure. Information is given privately and unofficially and Parliament is consulted at a stage which is too late for any opinion it might voice to have any significance.

In a debate in the Parliament on 13 December last on the outcome of the GATT negotiations Sir Fred Catterwood, Chairman of the Committee on External Economic Relations, stated that the whole procedure for consultation and ratification of trade agreements needed to be developed and that the Luns-Westerterp procedure should be improved. Vice-President Haferkamp, in replying to the debate, welcomed the possibility of the Parliament playing a more important role. He said that Commission was at the disposal of the House and its Committees and would give practical support to the desire for greater involvement in international negotiations. Parliament's resolution on the GATT negotiations adopted on 14 December 1979 included the following paragraphs .

"Procedure to be followed for the conclusion of the GATT agreements"

"20. Notes that the results of the GATT negotiations and the appropriate implementing measures must be ratified and approved respectively by the parliaments of the other major trading partners, but that the Community will no longer refer these matters to the parliaments of the Member States; points out, moreover, that the legal bases for the requisite Community measures and decisions for the conclusion of the GATT negotiations are contained in Article 113 of the EEC Treaty and Article 72 of the ECSC Treaty and consequently fall entirely within the power of the Community;

"21. Instructs its competent committees to draw up and submit to it proposals for the participation of the European Parliament in future trade negotiations and for a procedure for the formal ratification of future trade agreements by the European Parliament; "

General Observations

Consultation with the Parliament is required under Article 228 of the Treaty (agreements with one or more states or with an international organisation) and under Article 238 (association agreements). Trade agreements under Article 113 are not subject to parliamentary consultation.

Most trade agreements concluded by the Community are based on Article 113. Practically all the others have a financial protocol which brings them into the category of mixed agreements. Such agreements, which touch upon areas within the sovereign competence of Member States, are entered into jointly by the Community and Member States. Each agreement is first subjected to whatever ratification procedures are necessary in each Member State after which the Council approves the agreement.

Insofar as agreements under Article 113 are concerned the Parliament cannot insist on a ratification procedure or on consultation.

Since 1 January 1973 trade agreements under Article 113 have been concluded by the Community on behalf of Member States. Since they are not subject to any ratification procedure or parliamentary control in Member States, they escape any parliamentary scrutiny at either national or European level.

Moreover, any agreement offering preferential trading conditions to third countries has budgetary implications. It may provide for a reduction of common customs tariff which is an essential element of the Community's own resources. In all such cases Parliament should be consulted so that it may consider the specific reasons that have led to any reduction of the Community's own resources.

Parliament is regularly consulted in relation to piecemeal changes in the application of the CCT or of import conditions relating to such products as wine, citrus fruit etc. It seems contradictory that Parliament is not consulted in relation to more general changes resulting from preferential trade agreements.

Excluding imports and exports within the Community, the EEC is responsible for 18% of world trade. Much of this trade is carried on under agreements of one kind or another concluded with third countries, under unilateral measures applying to developing and state trading countries or under GATT multilateral arrangements. This general framework has been built up over a period of time by the Community acting on behalf of Member States.

It is clear that the directly elected Parliament should have the opportunity of voicing a democratic opinion on international agreements which are negotiated by the Community. Otherwise, Parliament which was elected to provide a greater democratic voice in European affairs is relegated to its present insignificant role under existing procedure.

In national parliaments ratification takes place after the conclusion of negotiations and the national parliament is confined to accepting or rejecting the agreement in toto.

In the case of two major agreements concluded by the Community - Lomé II and GATT - Parliament was for all practical purposes merely informed at a stage when it was too late for it to play any influential role.

Agreements with financial protocols, even though negotiated by the Community, are ratified by national parliaments - see Document PE 58.142 of 18 April 1979 in Annex III. In this regard it might be mentioned that Lomé II will be ratified by Member States but the GATT Agreement will not necessarily be ratified by all Member States, presumably because its financial implications affect the Community Budget rather than national budgets.

In present circumstances, it is likely that any request by Parliament for the establishment by agreement of a formal ratification procedure as applied by national parliaments would be resisted by the Council. Nevertheless, Parliament should seek to have the suggestions embodied in the Reay Report accepted by the Council. Parliament should have at its disposal sufficient time between final negotiation and signature to formulate a considered opinion using its normal procedures.

As a first step, Parliament should include a clause in any opinion it gives on current negotiations requesting adequate time, after the negotiations have finished and before signature to enable it to formulate a considered opinion on the outcome. The first opportunity to do this will probably arise in relation to Yugoslavia where negotiations are at an advanced stage.

NOTE

on the possibilities open to the European Parliament for ratifying agreements concluded by the Community as part of the common commercial policy and in particular in GATT

I. AGREEMENTS IN GATT

The Community's role in international trade negotiations is constantly increasing in importance. Customs duties were reduced considerably after the first major multilateral GATT negotiations, the 'Kennedy round' (1963-1967), which were concluded before the introduction of the Community's common customs tariff.

1973 saw the beginning of a further series of multilateral trade negotiations, the 'Tokyo round', which were concluded in April 1979. They concerned customs duties on industrial products, the level of protection of agricultural products, and the introduction of international rules on export subsidies, the application of technical standards to products, the awarding of public contracts and customs valuations.

Since three of these agreements fall within the competence of the Community and of the Member States, they are dealt with by the 'mixed-type procedure', that is, they are signed jointly by the Community and the Member States. They can therefore be submitted for ratification by the Member States in accordance with their constitutional laws.

II. COMMUNITY PROCEDURE

With regard to the situation in the Community, the legal basis for the Tokyo round agreements is provided by Article 113 of the EEC Treaty, which concerns the implementation of the common commercial policy and the negotiation of agreements with third countries. Under Article 114 it is the Council which concludes such agreements on the Community's behalf.

The general procedure for the conclusion of agreements by the Community is governed by Article 228(1) of the EEC Treaty, which states that agreements are to be negotiated by the Commission. The expression 'subject to the powers vested in the Commission in this field' refers to its right to submit proposals to the Council for implementing the common commercial policy (Art. 113(2)) and to make recommendations to the Council, so that the latter may authorize the Commission to open the necessary negotiations (Art. 113(3)). Since we are dealing with agreements concluded in GATT, reference should also be made to Article 229 of the EEC Treaty, which explicitly assigns to the Commission the task of maintaining relations with the organs of the General Agreement on Tariffs and Trade.

It is the Council which concludes the agreements and thereby makes a commitment on the Community's behalf. The phrase 'after consulting the Assembly where required by this Treaty' reflects the dichotomy in the EEC Treaty with regard to the involvement of the European Parliament in the drafting of agreements. Consultation of Parliament

is envisaged only in the case of agreements covered by Article 238 of the Treaty¹ and not for the vast range of tariff, commercial and cooperation agreements which the Community concludes with third countries on the basis of Article 113 of the Treaty and in the context of multilateral negotiations such as the GATT negotiations.

III. 'MIXED-TYPE' AGREEMENTS

In some cases the Community's authority to conclude international agreements in a specific sector is paralleled by the Member States' authority to make commitments in the same sector under international law.

This arises when the substance of the agreement lies outside the common commercial policy and hence justifies the sharing of responsibility between the Community and the Member States. This type of agreement is concluded in accordance with the procedure for mixed-type agreements, that is, jointly by the Community and the Member States. This system has been applied on numerous occasions and the agreements in question were ratified in accordance with Community procedures (which do not provide for consultation of the European Parliament).

The constitutions of the majority of the Member States stipulate that international agreements must be ratified by their parliaments.

¹ See, for example, the Second Convention of Lomé

IV. NO PARLIAMENTARY RATIFICATION

Unlike Article 238 of the EEC Treaty, which concerns agreements establishing special links between the Community and one or more third states or an international organization, Article 113 of the Treaty, which forms the basis for tariff, commercial and cooperation agreements between the Community and third countries, does not provide for consultation of the European Parliament.

The Community's intense activity in this sector led the European Parliament to insist on greater involvement in the conclusion of agreements between the Community and third countries or international organizations.

The Council therefore adopted a series of 'measures'¹ which provide the European Parliament with the possibility of holding a debate prior to the opening of negotiations on the basis of information supplied by the Council to the appropriate parliamentary committees. In addition, the Council undertook to acquaint the competent committees, confidentially and unofficially, with the substance of the agreement on completion of the negotiations. Finally, the Council informs the European Parliament of the agreement after its signing and before its conclusion.

These 'measures' reveal the disparities between the internal procedure adopted by the Member States for ratifying international agreements and that adopted by the Community.

¹ Bulletin of the European Communities No. 10 (1973), p. 90

Under Article 113 of the EEC Treaty the European Parliament is not involved in any way in the conclusion of agreements covered by the common commercial policy and is merely informed of the outcome of the negotiations and of the fact that the agreement is to be signed.

If Article 238 of the EEC Treaty, which envisages merely prior consultation of the European Parliament, can be criticized for failing to provide for final parliamentary assent, there is all the more reason for regarding the procedure for agreements based on Article 113 of the EEC Treaty as totally unsatisfactory.

There is no provision whatsoever for democratic assent either during the negotiations (as provided for by Article 238 for association agreements), or after the conclusion of the commercial, tariff or cooperation agreement.

The failure of Articles 113 and 114 of the EEC Treaty to allow for the European Parliament to give its assent to tariff, commercial and cooperation agreements cannot be redressed, since these articles do not provide for any possibility of ratification by Parliament.

Moreover, the budgetary powers which the European Parliament has acquired entail a duty to keep a check on the financial implications of agreements between the Community and third countries.

The aims of the common commercial policy listed in Article 113 (changes in tariff rates, the conclusion of tariff and trade agreements, the achievement of uniformity in measures of liberalization, export policy and measures to protect trade) inevitably have financial implications not only for the Member States signatory to this type of agreement but also for the Community as such.

In Opinion 1/78 on the International Agreement on Natural Rubber¹, the Court of Justice of the European Communities stated that the Community has exclusive authority to conclude an agreement if the resulting financial obligations are to be borne entirely by the Community, whereas, if they are to be shared by the Member States, the procedure for concluding a 'mixed-type' agreement must be followed.

The conclusion of a 'mixed-type' agreement might thus involve ratification, in accordance with the constitutional laws of the Member States, at least of that part of the agreement which places financial obligations on the Member States, whereas at Community level no parliamentary assent is obtained for that share of the financial burden borne by the Community.

V. CONCLUSIONS

The procedural provisions governing the conclusion of agreements between the Community and third countries or international organizations, that is Articles 113, 114, 228(1) and 238 of the EEC Treaty, do not provide for ratification of the agreements by Parliament.

¹ OJ No. C 279, 8.11.79, p. 3 ff

16

Since ratification by the responsible body, which indicates its final approval of an agreement, is provided for in international law and is in general carried out by the parliaments of signatory states, the Community procedure should be amended accordingly, above all in view of the fact that the European Parliament has acquired budgetary powers which were not envisaged when these provisions of the EEC Treaty were drawn up.

This gap should be filled by introducing ratification by the European Parliament, which would make up for the lack of ratification by the national parliaments for agreements concluded under Article 113, and also for agreements concluded under Article 238 of the EEC Treaty, which fall exclusively within the Community's jurisdiction. There are two ways of doing this:

- (a) by amending the Treaties in accordance with Article 236 of the EEC Treaty;
- (b) by means of a gentleman's agreement between the Council and the European Parliament.

Since the Tokyo round negotiations were concluded in April 1979 and are currently being finalized, the first alternative is impracticable.

There remains the second alternative, which could be given formal status, now and for future agreements concluded by the Community as such, by means of a 'joint declaration' similar to those made in connection with fundamental rights and with the conciliation procedure¹.

¹ See Treaties establishing the European Communities - Treaties amending these Treaties - Documents concerning the Accession, 1978 edition, pp. 214 and 900-901.

17
EUROPEAN PARLIAMENTCOMMITTEE ON DEVELOPMENT AND COOPERATIONCOMMITTEE ON EXTERNAL ECONOMIC RELATIONSCOMMITTEE ON BUDGETSNotice to Members

Please find attached a note drawn up by the Directorate-General for Research and Documentation on the role and powers of the national parliaments as regards international agreements with financial implications.

DIRECTORATE-GENERAL FOR COMMITTEES
AND INTER-PARLIAMENTARY DELEGATIONS

Luxembourg, 18 April 1979

Annex

18

A New Procedure

100. Your Rapporteur considers that information is not enough. He believes that a more genuine form of "consultation" and some form of "ratification" are required. In consequence he proposes the procedure set out below to apply both to association and trade agreements. First, before the Council establishes the Commission's mandate to negotiate and in the light of information given by the Council to the responsible parliamentary Committees an orientation debate could be held by the Parliament (thus taking up the first suggestion of the President-in-Office of the Council of 17 October 1973 not only the context of trade agreements but also in that of association agreements). The Council should then determine the Commission's mandate in the light of the views expressed in the orientation debate held by Parliament.

101. Following this, the Commission should continue the present procedure of informing, confidentially and unofficially, the responsible parliamentary Committees of the evolution of negotiations and of the major problems to be overcome. Your Rapporteur fully realises that it is not desirable to hold a public debate during the course of negotiations conducted by the Commission since this would reveal the Community's negotiating position and bargaining counters.

102. Your Rapporteur next wishes to propose a radical transformation of the present procedure. Instead of adopting the third suggestion made by the President-in-Office of the Council on 17 October 1973 by which the Council would after the signature of trade agreements and before their conclusion inform Parliament of their substance, your Rapporteur suggests that both for association and trade agreements a significant distinction should be made between the "initialling" of agreements - which could best, perhaps, be done by the Commission, on the side of the Community, in its capacity as negotiator - and the "signature" of association and trade agreements by the Council.

103. Between the "initialling" and the "signature" of agreements a "ratification" stage should be introduced, which, on the side of the Community, should involve a full debate in Parliament of the terms negotiated by the Commission on behalf of the Community. Only when Parliament has approved the terms negotiated would the Council be able to proceed to the amendment or the "signature" of association and trade agreements. Such an innovation could increase substantially the role played by the Parliament in the negotiation of both association and trade agreements. Although Parliament would not be able to modify the course of negotiations through public debate it would be able both to inject its views concerning association and trade agreements into negotiations by means of...

the initial orientation debate and, later it would then be in a position to ratify the draft treaty initialled by the Commission before this was signed by the Council and to influence any amendments to the draft agreements made by the Council. Parliament would also have the power to reject terms negotiated by the Commission under the mandate given to it by the Council by refusing to proceed to the "ratification" debate. The need for a "ratification" procedure involving Parliament is especially great in view of the fact that association, commercial and co-operation agreements are essentially Acts with financial consequences. It is necessary for Parliament to know what the financial consequences of these Acts are (especially since the introduction of the new Community budgetary system in 1975) before they are approved by the Council.

104. The new procedure suggested by your Rapporteur would have the advantage of providing some form of democratic control over the establishment of association, and trade and co-operation agreements, which have both political and economic implications of great significance, in a situation in which national parliaments have no direct control over the actions of the Council and the Commission and in which the European Parliament, until now, has played an insufficient role. This procedure might also be used (suitably adapted to the specific requirements of the individual negotiation) with respect to other international negotiations in which the Community takes part such as GATT tariff negotiations, or in which the joint interests of the Nine are involved.