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REPORT FROM THE COMMISSION TO THE COUNCIL
AND THE EUROPEAN PARLIAMENT

Common principles for future contractual relations with certain countries in
South-Eastern Europe

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Subject: Common principles for future contractual relations with certain countries in South-Eastern Europe

1. The Context

The overriding objective of the European Union's action in South-Eastern Europe is the successful implementation of the Dayton/Paris peace agreements and the creation of an area of political stability and economic prosperity, also by fostering the process of political and economic reforms and the respect of human and minority rights and democratic principles. Cooperation and the establishment of good neighbourly relations between the countries in the region is an essential element in this context.

Following the report from the Commission of 14 February 1996 on the prospects for the development of regional cooperation for the former Yugoslavia and what the Community could do to foster such cooperation, the General Affairs Council of 26 February defined a regional approach which *"should be directed primarily at those countries of the region for which the European Community has not adopted directives for the negotiation of association agreements (i.e. Albania and four of the five successor republics of former Yugoslavia). Neighbouring countries which so wish should be able to be associated in the cooperation by appropriate means"*.

The Council noted that the future agreements with each of these countries would be particularly useful tools for favouring political stability and economic development as well as cooperation between these countries and with their neighbours. It considered that *"the agreements with each of the countries concerned must be designed as a substantial incentive to political stability and as an instrument for economic development and cooperation between them, between those countries and their neighbours, and with the European Union"*. The Council was of the view that *"the agreements must be consistent, while taking account of the special nature of each country's individual situation. It must be clear that conclusion of these agreements will depend on the willingness of the countries concerned to work towards consolidating peace and to respect human rights, the rights of minorities and democratic principles"*. It concluded in particular that the *"application of the agreements will be subject, particularly where economic cooperation is concerned, to the readiness of each of the countries concerned to cooperate with its neighbours. They will have to undertake to adopt reciprocal measures, particularly regarding the free movement of goods and persons and the provision of services, and to develop projects of common interest. Through this regional approach, financial aid from the European Union could be oriented towards jointly defined and cross-border projects"*.

The Council also reconfirmed its conclusions of 30 October 1995 concerning the conditionality with respect to the development of contractual relations, and reiterated the importance of each country's contribution to the peace process and the respect of human and minority rights and democratic principles.

After the visit of President Santer and the President of the Council to certain countries of the region the General Affairs Council of 10 June 1996 has underlined that the cooperation between the countries concerned is an indispensable condition for the establishment of closer links with the European Union. A stable development of these countries should, indeed, not predominantly depend on external support, but base itself on cooperative and good neighbourly relations among themselves. The Council has also considered it to be appropriate that common principles should be defined for the future agreements with these countries.

2. Geographical coverage

The European Union's Royaumont initiative on the process of stability and good-neighbourliness in South-Eastern Europe has undertaken to promote regional and sub-regional cooperation in this region. There are other efforts, such as the Bulgarian or the American initiatives, which are also based on multilateral discussions and cooperation between the countries involved and interested parties.

Through its technical and financial assistance and through its future bilateral relations, the European Union has a specific role to play to complement this process. As concerns in particular its future agreements, it must ensure that a strong mechanism is in place in order to encourage cooperation actively.

As regards countries for which the European Community has not adopted directives for the negotiation of an association agreement, it is necessary to draw a distinction between Albania and FYROM on the one side and the other three countries concerned on the other.¹

a) Albania and FYROM

Albania and FYROM were not involved in the war in former Yugoslavia and are not parties to the peace agreements. They have made considerable efforts and have contributed to regional stability. They have an overall positive record on human rights and are, notwithstanding significant setbacks (as for example the recent parliamentary elections in Albania), engaged in an active policy of democracy building and economic reform. Moreover, their relations to the European Union are much more advanced than in the case of Bosnia and Herzegovina, Croatia and the Federal Republic of Yugoslavia (FRY).

Although both countries have important minorities and their internal stability as well as their relations to each other and to their neighbours are crucial for the overall stability in the region, it is justified to differentiate between them and the former Yugoslav republics which

¹ The present state of play concerning the Community's relations with the five countries concerned is summarized in the annex.

are parties to the peace agreements. In addition to possible variations in the content of these agreements in order to take account of their specific economic situation, this differentiation concerns the institutional mechanisms of their bilateral agreements with the Community as well as the timing of the negotiations which are constrained neither by the same considerations of possible interdependence nor the political conditionality as in the case of the other three countries.

As early as 1992 the Community has concluded with Albania a non-preferential Trade and Cooperation Agreement (without Financial Protocol). This agreement contains an evolutionary clause referring to the objective of an association agreement, when conditions are met. Both sides also agreed in a Joint Declaration on a political dialogue. Since 1992 Albania benefits from PHARE assistance and it is beneficiary of the GSP.

In 1996 the Community has negotiated a preferential Cooperation Agreement with FYROM, including a Financial Protocol. This agreement also contains an evolutionary clause expressing the Contracting Parties' desire to strengthen their relationship and making reference to FYROM's aspirations towards an association. A Joint Declaration provides for a regular political dialogue which should be organised on a regional level, where appropriate. In addition to the traditional emphasis on the respect for democratic principles and human rights as well as principles of market economy, the agreement (i) encourages cooperative and good neighbourly relations with the other countries of the region, (ii) emphasises the contribution to regional cooperation of the Community's assistance and cooperation, and (iii) underlines the importance of such open and cooperative relations for the further development of the relations with the European Union. This agreement is intended to be concluded soon so as to enter into force on 1 January 1997. FYROM has also become beneficiary of PHARE and benefits from preferential access to the Community market and from the GSP for agricultural products.

The next agreement with Albania should also have a preferential character which will be justified in the light of the general character of political and economic relations between this country and the Community. Moreover, the above-mentioned regional elements in the agreement with FYROM which are adequate in order to ensure FYROM's contribution to regional stability and cohesion, could be taken as model for the next agreement with Albania.

b) Bosnia and Herzegovina, Croatia, FRY

The circumstances have not yet permitted the negotiation of such agreements with Bosnia and Herzegovina, Croatia and FRY. Negotiations of a cooperation agreement with Croatia (and the application of the PHARE programme to it) were suspended after the Croatian military operation in the UN Protected Areas (Krajinas) in August 1995. Croatia's role in the implementation of the peace agreements (Federation, Mostar), but also its record on human and minority rights did not yet permit the resumption of the negotiations or of the implementation of the PHARE programme. Nor has the Federal Republic of Yugoslavia fully met essential conditions for contractual relations with the European Union, including a constructive approach towards a satisfactory solution to the Kosovo problem and a commitment to genuine political and economic reform. Negotiations with Bosnia and Herzegovina have not been possible before the establishment of the new common institutions

following the 14 September elections.

Moreover, the fact that these countries were involved in the war, and that their behaviour and mutual relations have a direct impact on the realisation of the objectives of the peace agreements and in particular on the future of Bosnia and Herzegovina as one state, renders cooperative and good neighbourly relations between them particularly important. This should be reflected in the agreements by an adequate conditionality and institutional mechanisms.

3. Conditionality and common principles in relation to future agreements with Bosnia and Herzegovina, Croatia and FRY

a) Conditionality

Due to geographic proximity the European Union has a particularly great interest in peace and stability in the former Yugoslavia. The area is surrounded by Member States and associated countries, and the spreading of political and military conflicts and economic crises onto its own present and future territory must be avoided. The European Union can influence the development in the area in a variety of ways. Its economic assistance (PHARE, reconstruction aid) is already subject to relevant general and specific conditionality. Given the three above-mentioned republics' interest in forging closer ties with the European Union, the establishment and content of contractual relations with them does also represent an effective tool in bringing about the desired stability. Agreements with these countries should be negotiated at a time and with a content so as to make a maximum contribution to the stability in the region.

The above-mentioned Council conclusions of 30 October 1995 have stipulated that the agreements *"should have an element of clear political and economic conditionality, including in particular respect for human rights, minority rights, the right to return of displaced persons and refugees, democratic institutions, political and economic reform, readiness to establish open and cooperative relations between these countries, full compliance with the terms of the peace agreement and, with regard to the FRY (Serbia and Montenegro), the granting of a large degree of autonomy within it to Kosovo"*. Particular emphasis will have to be placed in this context on the effective possibility of return for refugees. In addition, the Presidency's declaration of 9 April 1996 underlined the importance of a constructive approach by the FRY to a number of key issues as a precondition for the development of good relations with the European Union. These conditions included in addition to the above elements the mutual recognition among all the states of former Yugoslavia, cooperation with the International War Crimes Tribunal, and a constructive approach towards agreement with the other successor republics on succession issues.

N.B.: Such conditionality is not applicable to humanitarian aid which may be given to the region. Such aid would continue to be granted solely on an evaluation of need and without prior reference to the authorities in the area.

Since open and cooperative relations between these three countries constitute an important political objective and element of conditionality, the following common principles should apply to agreements with them:

b) Common principles

(i) *Type of agreement:*

Traditionally the Community has negotiated at a first stage (trade and) cooperation agreements before considering their evolution towards association (Europe) agreements. The latter - in addition to an explicit perspective of eventual membership in the Union - provide for more intense cooperation, free trade after appropriate transition and the phasing in of the free movement of services, capital and persons. These elements reflect a higher level of economic and political maturity of the countries concerned.

The economic maturity of the three countries concerned clearly differs significantly, Croatia in particular is economically more advanced. The economic and trade aspects of the future agreements could be adjusted accordingly without, however, prejudging the level of the respective political relations with the European Union. The first agreements with the three core countries should remain cooperation agreements even if in certain respects they may go beyond the economic content of traditional first generation agreements and could be, therefore, considered as *sui generis*. If an association with the European Union in the long term will in any case require an advanced economic maturity, such maturity itself does not automatically qualify any of these countries for association or indeed any additional political progress in its relations to the Union. The political dimension is of key importance, and each case will have to be assessed with particular care both in its regional context and against the conditionalities that apply, before the bilateral relations with the European Union can move to a higher level.

(ii) *Content of agreements*

Any future agreements with the three countries concerned need not have the same content but can take into account the specific situation of each of the countries. The level of economic development may, for example, influence the level of economic cooperation offered by the Community. The agreements with all three countries should, however, include certain common structural elements. They should encourage regional cooperation and good neighbourly relations and link the further development of relations between the Community and the respective countries to their readiness to enter into cooperative and good neighbourly relations with other countries of the region. In addition they should provide for mechanisms for an active implementation of the regional dimension and thereby directly contribute to a normalisation of economic and political relations in the region.

- *Economic cooperation*

The agreements should link the economic and financial cooperation to the respective contracting parties' readiness to cooperate with their neighbours and to develop trans-border projects in all areas covered by them.

By offering concrete assistance, the Community has a bigger leverage on the countries concerned and should actively support regional cooperation. The agreements should stipulate that Community financial aid instruments be directed towards regional cooperation. PHARE assistance as well as the aid under Council Regulation (EC) N° 1628/96 are important

instruments in this respect. The agreements should also favour Community support for cooperation in the area of customs and approximation of legislation which would be of particular relevance with regard to the objective to facilitate trade flows between the countries. Financial protocols for the support of infrastructure development should mandate that in addition to the interest of the Community and the contracting party concerned the interest of other countries in the region shall be taken into account as one of the determining factors for the eligibility of individual projects.

- *Cross border cooperation*

PHARE offers important instruments (cross border cooperation², multi-country programmes, CREDO) which respond to the need for regional and cross border cooperation. PHARE programming can be designed so as to contribute to the creation of a subregional cooperation framework, although sufficient room must be left to allow the use of PHARE in favour of the specific reform process in each country. Such a cooperation framework should also extend to other countries in the region. The financial means available for this aspect of PHARE should be fixed in accordance with the importance of the regional dimension.

Likewise, the projects, programmes and cooperation schemes implemented within the framework of Council Regulation (EC) N° 1628/96 shall cover in particular regional cooperation and transborder projects.

- *Cooperation in other areas*

The agreements should also contain unilateral commitments, so far as compatible with Community competence, by each of these countries to cooperate with each other in areas such as energy, telecommunications, transport, RDT, agriculture, tourism, environment, health and provision of services. The encouragement to allow free movement of persons also remains an important objective, but has to be seen in the context of the peace agreements.

- *Trade concessions*

The Community will offer concessions in the area of movement of goods along the lines of the autonomous import regime for the Ex-Yugoslav successor republics applied since 1992. Such offer should be made conditional upon Bosnia and Herzegovina's, Croatia's and FRY's readiness to negotiate reciprocal facilities with their respective two neighbours, allowing, however, for account being taken of their individual economic situation. The only commitment asked of these countries will be MFN treatment of Community exports. One way of ensuring that these countries enter into preferential agreements between themselves would be for the Community to delay conclusion of its agreement until these countries have negotiated their reciprocal agreements. None of the countries will be held responsible for a lack of reciprocal readiness of its potential regional partners.

Subject to the European Union's wider international obligations in the areas of trade in

² Including the possibility of a combination with Interreg IIA or C

services and capital movement a similar approach will be applied, if these areas are covered in the Community's agreements with these countries.

The linkage of the Community's trade and trade-related concessions to reciprocal concessions between the three countries concerned is necessary in order to preserve the unity of Bosnia and Herzegovina. In particular, it would eliminate any rationale for the collection of customs duties along the inter-entity boundary line.

The cooperation agreements should offer to these countries the benefit of cumulation of origin the implementation of which depends on administrative cooperation between them. This offer should be made contingent on trade liberalisation between them, including the possibility of cumulation of origin among themselves.

- *Political dialogue*

Political dialogue will have to be an important element in the framework of any agreement with any of the countries concerned. It will be agreed upon in the form of a separate Joint Declaration as in the case of the Agreements with Albania and FYROM. The international community and in particular the European Union have a responsibility for promoting internationally recognised standards of human and minority rights and democratic principles as well as the values embodied in the relevant international conventions especially in a region where these principles have been violated on a large scale. Political dialogue is an appropriate instrument in this regard. In order to promote regional stability and to prevent or settle conflicts, it should, whenever appropriate, be held in a sub-regional format, thereby offering the countries concerned the possibility to meet directly, possibly with variable geometry. The contracting parties should express their support for the initiative on stability in South-Eastern-Europe and agree that the political dialogue should contribute to this process.

- *Evolutionary clause*

A key issue in all future negotiations will be the question of the "evolutionary clause" defining the perspectives for the development of bilateral relations with the European Union. Albania and FYROM have received such clauses in their agreements.

The three countries are in principle eligible for closer relations, although at present it is impossible to forecast when the necessary conditions will be met. An evolutionary clause in a bilateral agreement can give a sense of purpose to the action of the contracting parties. It has not the objective of accelerating the establishment of closer relations to the European Union and should not encourage premature claims for an association with the Union. Such an evolutionary clause would, therefore, have to spell out the essential preconditions for a further development of relations to the Union including, inter alia, not only the full implementation of the key principles of the Dayton/Paris agreements, but also the existence of solid foundations for cooperation and good-neighbourly relations between these countries and their full cooperation to allow for the effective return of the refugees residing in Member States.

(iii) *Institutional framework*

A Cooperation Committee will be the standard body overseeing the implementation of the Cooperation Agreement. In addition a Joint Programming and Monitoring Commission (JPMC) should be set up by the Community, the principle task of which will be the discussion, planning, coordination and monitoring of programmes and projects having a clear regional dimension which are (co)financed by the Community. The JPMC, which will be chaired by the Commission, will not only comprise representatives from the three countries concerned, but also from Albania and FYROM as well as from other interested countries of the region.

(iv) *Political conditionality and human rights suspension clause*

A key objective is to ensure that the three countries should make a particularly strong commitment on their side with regard to elements which are essential for peace and stability in the region, namely human rights, including minority rights, the right to return of refugees as well as democratic structure and political and economic reform. Moreover, it is necessary to stipulate the full compliance with the terms of the peace agreements, the readiness to establish open and cooperative relations with their neighbours and (in the case of FRY) the granting of a large degree of autonomy for the Kosovo.

The standard reference in all Community agreements to respect for human rights and democratic principles as an essential element of the agreement should be included. This could be combined with regular reporting requirements and an institutionalised verification procedure. The exceptional situation in these countries justifies departing from past practice. The Community's capacity to suspend the agreements (and financial cooperation) in case of non-compliance with essential elements should allow immediate action in cases of special urgency.

4. Approach towards negotiations

In accordance with the GAC conclusions of 26 February negotiations with the three countries need not be undertaken in parallel. An informed political assessment will be required in due course with regard to each country before negotiations can start, taking into account the relevant conditionality and the need to maintain the necessary degree of balance of the European Union's bilateral relations with each of the three countries. The full and definitive compliance with the provisions of the Dayton/Paris and, where applicable, Erdut (Eastern Slavonia) agreements, the readiness to establish open and cooperative relations with their neighbours and (in the case of FRY) the granting of a large degree of autonomy to Kosovo are absolute preconditions for negotiations with any of the three states. The creation of contractual relations with the European Union must not encourage any party from taking its obligations under these agreements less serious. The entire negotiating process will then have to be accompanied by an evaluation of relevant political developments which may have an impact on the progress of negotiations or the content of the agreements. The readiness to conclude and implement readmission agreements for refugees residing in Member States will also be a precondition for the conclusion of agreements with the Community.

The above common principles will be explained to each of the three countries. Before the conclusion of the agreements, stock will have to be taken of the extent to which the general and specific conditionalities have been fulfilled and they have complied with their

..... commitment.

It is not yet certain, when negotiations with each of the three countries can begin or indeed be concluded. The prenegotiations and negotiations phase will be used with a view to the consolidation of peace in the region. The European Union should in the meantime focus its policies with regard to them also on the regional cooperation aspect. The Commission's study on economic relations between the countries covered by the regional approach is one important element which future actions should take into consideration. Projects and programmes financed by PHARE and under Council Regulation (EC) N° 1628/96 should place particular emphasis on this aspect. The Community will negotiate in the WTO with a view to obtaining a waiver for preferential agreements with the countries concerned. It will also examine effective needs of these countries in the context of their economic recovery and structural adjustment programmes negotiated with the IFI's, to which it may respond favourably if the necessary conditions will be met. All these activities will contribute to preparing the ground for future contractual relations with the European Union.

ANNEX

- Subject:** - State of play of relations with the countries concerned by the regional approach
- Albania:** - Non-preferential Trade and Cooperation Agreement of 1 December 1992, without Financial Protocol. (Evolutionary clause: "Agreement will contribute to progress towards the objective of an association agreement in due course, when conditions are met, and to the further development of relations between them". No reference to regional cooperation.) Joint Declaration on political dialogue.
- Textiles Agreement of 1 January 1993
- GSP
- PHARE (since 1992)
- FYROM:** - Preferential Cooperation Agreement, initialled on 20 June 1996, including Financial Protocol. (Evolutionary clause: "Contracting Parties desire to strengthen their contractual relations as soon as possible, taking full account of the aspirations of FYROM for an advanced relationship with the European Union". Art. 45 refers to the aspirations "for an advanced relationship towards an association with the European Union." FYROM's readiness "to enter into cooperative and good neighbourly relations with other countries of the region is" important factor in the development of the relations" with the Community.) Joint Declaration on political dialogue, including on a regional basis.
- Agreement in the Field of Transport, initialled on 20 June 1996
- Textiles Agreement and Wine and Spirits Agreement to be negotiated soon.
- Preferential import regime, GSP (agricultural products only)
- PHARE (since 1996)
- Bosnia and Herzegovina:**
- Preferential import regime, GSP (agricultural products only)
- PHARE (since 1996)
- Croatia:** - Preferential import regime, GSP (agricultural products only)
- PHARE (suspended since 4 August 1995)
- Federal Republic of Yugoslavia:** none