

COMMISSION OF THE EUROPEAN COMMUNITIES

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COMMUNICATION FROM THE COMMISSION TO THE COUNCIL

relative to

negotiations with a view to concluding a European Convention
on the protection of fresh water against pollution

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Subject : Negotiations with a view to concluding a European Convention on the protection of fresh water against pollution.

1. STATEMENT OF THE PROBLEM

On 12 May 1969, the consultative Assembly of the Council of Europe adopted Recommendation 555 under of which it advised the Committee of Ministers to assign to a group of government experts the task of drawing up as quickly as possible a European Convention on the protection of Fresh Water against pollution (based on a draft prepared by this Assembly).

In reply to this recommendation, the Council of Europe's Committee of Ministers successively :

- invited the ad hoc group on the protection of water within the European Committee for the safeguarding of the natural environment and natural resources to express its opinion on the draft presented by the Assembly;
- assigned (in March 1970) to the Secretariat-General of the Council of Europe the task of preparing, with the cooperation of consulting experts, legal principles which could serve as a basis for the drawing up of an appropriate instrument in the field covered by Recommendation 555;
- Decided (in December 1970) to set up an ad hoc Committee of Experts entrusted with the task of establishing a European Convention on the protection of fresh water against pollution.

This ad hoc Committee met for the first time from 15 to 19 February 1970. They subsequently met six more times, assisted by a working party on technical matters charged with the preparation of Annexes I, II and III relating respectively to the minimum standards, lists of substances and special standards referred to in the Convention draft. In the final stages of preparation of the Convention, a drafting committee was set up which was to meet five times. Although the Commission is usually called upon to attend the proceedings of the Council of Europe as an observer, the drafting committee did not extend an invitation in this case.

Despite unofficial approaches by the Commission, it was only in December 1973, after an urgent request from the Member States concerned and the Commission

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itself, that a decision was taken during a coordination meeting of the Council's working party on the Environment on 15 November 1973, to invite the Commission by letter of 22 December 1973 to be represented for the first time, as an observer, in the last meeting of the ad hoc committee, on 5 - 8 February 1974.

In the course of this meeting, the ad hoc Committee completed the draft text of the Convention, a copy of which is attached. Although a wide measure of agreement was reached on many articles, the meeting brought to light :

1. the differences of opinion that still exist between certain Member States of the Council of Europe as regards the scope of the Convention (international waterways or international drainage basins);
2. the dissatisfaction on the part of the Belgian delegates, who expressed general reservations concerning the text and made proposals for amendments;
3. the question of the European Community's participation in the Convention. This matter was raised by the West German delegation and was referred to the Committee of Ministers of the Council of Europe for study, the ad hoc drafting committee confining itself to recommending technical cooperation with the Community (see Annex 2)

II. STUDY OF THE DRAFT CONVENTION AND OF THE RESOLUTION OF THE COMMITTEE OF MINISTERS OF THE COUNCIL OF EUROPE

A careful study of the draft currently under discussion, which will shortly be submitted to the Committee of Ministers of the Council of Europe, elicits the following observations on the part of the Commission :

A. Obligations of the parties

Under the terms of this draft text the Member States of the Council of Europe would undertake in particular to :

1. take all appropriate measures to reduce existing pollution and prevent new forms of water pollution (Article 2);

2. apply to international waterways either special standards or minimum standards. Some of the special standards are defined in an Annex to the Convention while others have yet to be worked out by a group of technical experts set up by a resolution of the Committee of Ministers. Such standards fix the quality thresholds for the water of international waterways according to the "functions" assigned to the latter. These "functions", which themselves correspond to the various uses to which the waterways are put, will continue to be laid down either by international commissions responsible for ensuring cooperation between contracting parties whose territories are separated or crossed by the same international waterway, or within the framework of intergovernmental agreements. The minimum standards are defined in an Annex to the Convention.

The contracting parties, however, may request derogations (to be defined in an Annex to the Convention) in respect of certain waterways and certain parameters. These derogations would be determined by a second group of experts set up by a resolution of the Committee of Ministers;

3. enter into negotiations, if one of them so requests, for the conclusion of "cooperation agreements" or for the amendment of existing agreements (Article 12). If a contracting party does not enter into negotiations within a reasonable time, any of the contracting parties concerned can accordingly notify the Committee of Ministers of the Council of Europe, which will place itself at the disposal of the contracting parties for the purpose of seeking a procedure for arriving at a satisfactory solution (art. 13).

B. Recapitulation of the provisions of the Community's Programme on the Environment

Without prejudice to the provisions of the EEC Treaty relating in particular to distortions of competition, the European Community's Programme of Action on the Environment, which was adopted by the Council on 19 July 1973, contains a certain number of provisions concerning the control of water pollution, and in particular:

1. The determination of harmfulness criteria for the major water pollutants (see 1st part, Title III, Chapter 1.A and 2nd part, Title I, Chapter 1);
2. the standardization or harmonization of methods and techniques for the taking of samples and for the analysis and determination of pollutants (more specifically water pollutants) (see 1st part, Title III, Chapter 1 B and 2nd part Title I, Chapter 1);

3. the joint definition - through the development of common methods - of the parameters and of the nature of the decision-taking process which play a part in the determination of quality objectives (see 2nd part, Title I, Chapter 3, section 2 B).
4. the joint determination of quality objectives fixing the various requirements that an environment must satisfy, having regard in particular to its function. The definition and scope of the quality objectives will have to be such as not to jeopardize subsequent improvement of the quality of an environment, notably through a change of assigned function. For a given environment, the quality objectives to be attained, are to be chosen and pursued at the appropriate geographical level.
This task will consist mainly in defining series of parameters corresponding to the various uses and purposes of the water, namely drinking, bathing, agricultural uses, piscicultural and industrial uses, beverage production, leisure activities, aquatic life in general (see ref. 3);
5. the joint study and determination of satisfactory long-term minimum quality requirements which the various areas making up the Community environment should meet. To this end the Commission will put forward proposals and a timetable before 31 December 1975 (see ref. 3.);
6. the organization and development of exchanges of technical information between the various regional and national networks for the monitoring and control of pollution (see 2nd part, Title I, Chapter 3, section 1 B).
7. the fixing of provisional common standards without waiting for the drawing-up of quality criteria and objectives at Community level, if the information already available at international and national level can be considered adequate for this purpose. As far as water is concerned, standards in respect of the following pollutants :
lead; mercury, cadmium; organic chlorine compounds; toxic chemical substances present in water intended for human consumption (due account being taken of the form in which these substances occur in products or in the environment); germs perilous to health present in water intended for human consumption
will have to be fixed as soon as possible, and at the latest by 31 December 1974, by a Commission proposal. The other standards will have to be fixed as

sson as possible in the course of a subsequent phase of the work (see 2nd part, Title I, Chapter 2 (A+B)).

Similar action is envisaged as regards pollution of the seas from land-based sources.

Generally speaking, among the principles laid down for an environmental policy in the Community, the programme provides that important aspects of environmental policy must no longer be planned and implemented by the various countries acting individually. National programmes in this field should be coordinated and policies harmonized throughout the Community on the basis of a common long-term design. Furthermore, it can be seen from the "Summary of Decisions taken by the Council at its 251st meeting (Environment) on 19 July 1973 that : "The Council took note of the determination of the Member States that the joint fixing of satisfactory long-term minimum quality requirements to be met by the various areas making up the Community environment, shall have as its objective a joint effort to attain a satisfactory minimum quality for all the different areas of the Community, particularly as regards aquatic life in the surface waters of the Community".

The Council has also taken note of the Member States' determination to ensure that the present quality of the various areas, considered from the point of view of all the Community regions, shall not deteriorate, having regard also to the often irreversible or quasi-irreversible nature of certain forms of pollution.

Finally as regards Community or joint action by the Member States within the framework of international organizations, Title III of the programme of action concludes :

"At all events, it is in the Community's interest to continue the very active cooperation it has entered into with most of the international organizations, and particularly with the OECD, UNESCO, the Council of Europe and UNEP. This cooperation will facilitate the implementation of joint action within these organizations, without prejudice to such action as the Community itself may take within the limits of its powers".

III. CONCLUSIONS FROM THE FOREGOING ANALYSIS

It emerges from the foregoing analysis that there is some measure of agreement between the Council of Europe's present draft Convention and the Community's programme as regards the objectives set and the nature of the measures contemplated. Nevertheless, its general economy and institutional aspects, plus the very fact that the object of the Convention is covered by the Community's programme of action on the environment, involve a risk that, if the Convention were to remain as it stands, the action taken at Community level might be affected.

Consequently, it is the Commission's view that certain amendments should be made to the text in order to improve certain clauses and enable the Community to sign this Convention.

Moreover, the Convention should be applied in a manner consistent with the accomplishment of the Community's objectives and specific actions as regards the control of water pollution in general. The Community programme of action on the environment should accordingly be implemented in such a way as to ensure the necessary consistency between the measures applied in the Community to combat water pollution at the various levels.

A. Points of agreement

The aims of the Convention (reduction of existing pollution, prevention of any new forms of water pollution through the fixing of minimum standards and special standards) are consistent and even identical with those of the Community.

As stated under paragraph B above, both provisional minimum standards and quality objectives (similar to the special standards) in respect of water pollution must be drawn up at Community level, before the end of the year in the case of the former and before the end of the programme in that of the latter *

* On 21 January the Commission laid before the Council a proposal for a directive on the quality of surface water intended for the abstraction of drinking water, the provisions of which coincide with certain provisions of the draft convention as regards the standards applicable to the production of mains water for human consumption (Articles 11 and 13 and Annex III)

B. Repercussions at Community level

The definition, within two different institutional frameworks, of the same type of standard or quality objective, as well as the implementation of parallel policies, is bound to present problems of consistency at two levels, namely :

1. at the technical level, because there is a great danger that different lists of parameters and different threshold values relating to the same subject will appear in two frameworks. This risk is already a reality in the case of the provisional minimum standards for water which the Commission must draw up before the end of 1974: there could conflict with those defined in Annex I. Similarly, the quality objectives for raw water intended for production of drinking water, which are the subject of a Commission proposal currently under discussion in the Council of Ministers, could differ from the special standards referred to in Article 17 and laid down in Annex III to the Convention;
2. at the political level, where there is an equal risk that the minimum standards, the special standards (or quality objectives) and the administrative measures designed to implement Annex II (elimination or reduction of certain pollutant releases) will be applied without any coordination in time and space, both in the case of international waterways and that of national waterways fulfilling identical or similar functions.

As regards international waterways within the Community, consistency will be sought through the good offices and under the auspices of the Council of Europe.

In the present state of affairs however, there is no coordination in the field of water pollution between action taken by the Member States and the Communities on the one hand and that taken by the Council of Europe on the other. This situation is obviously contrary both to the letter and to the spirit of the Community programme, which specifically provided for overall coordination through the fixing of standards and quality objectives, the laying-down of common methods for defining these objectives at the appropriate level and the joint determination of satisfactory long-term minimum quality requirements. This situation is therefore likely to impede Community action and lead to distortions of competition which are incompatible with the proper functioning of the Common Market.

Various solutions to these difficulties can be envisaged :

1. The mere setting up of coordination on a technical and practical level of the work carried out by the Committee of experts responsible for supplementing and revising Annexes I, II and III. Although such coordination is desirable, it would in itself constitute only a partial solution and would therefore be inadequate. In the first place, it would in no way guarantee that the objectives and special standards fixed by the Council of Europe will comply with the Community standards and objectives. Secondly, it would not satisfy the need for consistency of action in time and space referred to in Section B.2 above.
2. The adoption of a common position requiring Member States not to sign the draft Convention and to re-open negotiations between the Community on the one hand and the Council of Europe and its Member States on the other, with the aim of drawing up a new Convention differing from the one proposed in that it would more effectively ensure coordination and the necessary consistency of action. This solution might well encounter substantial difficulties in view of the advanced stage of the negotiations on the present draft. It would furthermore be contrary to the spirit of cooperation which must prevail between the Communities and the Council of Europe.
3. For these various reasons and in order to ensure systematic cooperation with the Council of Europe on a subject of common interest, the Commission recommends that the Community take the following steps, which reflect the progress made within the Council of Europe and the need to coordinate this progress with Community action :
 - a) establish the appropriate contacts with the Council of Europe with a view to the insertion in the Convention of clauses permitting the participation of the Community as such, as well as of its Member States;
 - b) define in an internal Community document the procedures and means of action that will ensure the necessary consistency between the measures designed to reduce water pollution throughout the Community.

VI. CONCLUSIONS

The Commission accordingly proposes that the Council should call upon Member States to reserve their position concerning the Convention until the Commission has approached the Council of Europe with the view to the amendment of the draft Convention in such a way as to enable the European Economic Community as such to accede to this Convention side by side with its Member States. The amendments that appear to be necessary for this purpose are set out in an annex to the communication.

Furthermore, the Commission considers, that it is necessary to define in an internal Community document the procedures and means of action that will ensure the necessary consistency between the measures designed to reduce water pollution throughout the Community.

This would involve, in particular, the specification and implementation of the tasks provided for in the programme which relate to the "joint determination of satisfactory long-term minimum quality requirements", as stated in the 2nd part, Title I, Chapter 3, Section 2, paragraph B, as well as to the actions mentioned under points 2, 3 and 4 of the same paragraph B.

Such a document could also specify the manner in which certain provisions of the Convention would be put into effect at Community level.

The Commission will present a proposal on this subject as soon as possible.

ANNEX

A. Amendments to be made to the draft European Convention on the Protection of International Waterways against Pollution (doc. EXP/Water (74) 6 .. Addendum I of Council of Europe, 13 March 1974).

Preamble

First line : after "the Member States of the Council of Europe" add "and of the European Economic Community".

After the second "whereas" add the following text :

"Whereas the European Economic Community has initiated a programme of action in the same field";

Fifth paragraph : starting with "convinced" in the second line, replace "on behalf of the States" by "on behalf of the Contracting Parties".

Article 7

Add: "As far as the Member States of the EEC and the EEC itself are concerned, this paper will be sent by the latter".

Article 13

Add : "As far as the Member States of the EEC and the EEC itself are concerned, the present article only applies to eventual negotiations between the latter and the non-member contractant parties of this Community".

Article 15

First paragraph :

after "any international commission" add "referred to in Article 14".

Article 20

Second line : replace "Contracting State" by "Contracting Parties".

Article 23

Para. 1 second line : after "the Member States of the Council of Europe" add "and of the European Economic Community".

Para. 1 first line : replace "any State" by "any Party".

Article 25

Para. 1. first line : after "any Member State of the Council of Europe" add "and of the European Economic Communities".

Article 29

Second Para., fourth line : delete "of the governments".

Article 30

This should read : "The Contracting Parties shall acquaint themselves with the texts of the agreements through the Secretariat-General of the Council of Europe....."

Article 31

The second and third lines should read : "any Party signatory to this Convention"; the last line should read : "each of the signatory and acceding Parties".

Annex 3

Since a proposal for a directive on surface waters intended for the production of drinking water is currently under discussion in the Council, the Council of Europe will be informed that amendments may be made to Annex III so as to bring the two texts into alignment.

- B. Amendments to be made to the draft Resolution on the continuation of the work relating to the future European Convention on the Protection of International Waterways against Pollution

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Sixth paragraph : starting with "whereas it is desirable" fourth line : after "the Member States of the Council of Europe" add "and of the European Economic Community".

- I. 1. This should read : "a committee of technical experts appointed by the governments of the Member States and by the European Economic Community shall be set up. The task of this committee shall be :
- (i) second line : after "of the Member States" add "and of the European Economic Community".
- (ii) second line : after "of the Member States" add "and of the European Economic Community".
- II. This should read : "a committee of technical experts appointed by the governments of the Member States and by the European Economic Community shall be set up. The task of this committee shall be :

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- (i) after "of the Member States" add "and of the European Economic Community"
- (ii) second line : after "of the Member States" add "and of the European Economic Community"

C. Declaration by the Community and by its Member States in the final act of the negotiations.

On the model of the arrangements concluded at the diplomatic conference on the Convention on the Prevention of Marine Pollution from land-based sources, the following text should be inserted in the final Act of the negotiations on the European Convention on the Protection of International Waterways against Pollution. With regard to the signature or accession of the European Economic Community, the Contracting Parties have taken note of the fact that within the European Economic Community the powers necessary for the implementation of the European Convention on the Protection of International Waterways against Pollution may lie, as the case may be, either with the Member States or with the said Community, which shall itself decide on the allocation of those powers in accordance with its internal procedures".

