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In accordance with Council Regulation (EEC, Euratom) No 354/83 of 1 February 1983 concerning the opening to the public of the historical archives of the European Economic Community and the European Atomic Energy Community (OJ L 43, 15.2.1983, p. 1), as amended by Regulation (EC, Euratom) No 1700/2003 of 22 September 2003 (OJ L 243, 27.9.2003, p. 1), this file is open to the public. Where necessary, classified documents in this file have been declassified in conformity with Article 5 of the aforementioned regulation.

In Übereinstimmung mit der Verordnung (EWG, Euratom) Nr. 354/83 des Rates vom 1. Februar 1983 über die Freigabe der historischen Archive der Europäischen Wirtschaftsgemeinschaft und der Europäischen Atomgemeinschaft (ABl. L 43 vom 15.2.1983, S. 1), geändert durch die Verordnung (EG, Euratom) Nr. 1700/2003 vom 22. September 2003 (ABl. L 243 vom 27.9.2003, S. 1), ist diese Datei der Öffentlichkeit zugänglich. Soweit erforderlich, wurden die Verschlussachen in dieser Datei in Übereinstimmung mit Artikel 5 der genannten Verordnung freigegeben.

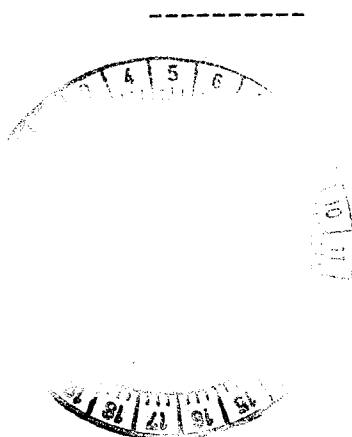
COMMISSION OF THE EUROPEAN COMMUNITIES

COM(85) 8 final

Brussels, 16 January 1985

COMMUNICATION FROM THE COMMISSION TO THE COUNCIL

concerning the negotiations for a global framework Convention
on the protection of the ozone layer



COM(85) 8 final

EXPLANATORY MEMORANDUM

1. On 19 January 1982 (4132/82 ENV.4) the Council decided to authorise the Commission to participate in the negotiations for a global framework convention on the protection of the ozone layer in order to enable the Community to become a contracting party. The Community and its Member States have taken part in all the preparation of a text which could form a future Ozone Layer Convention, and of the draft text of the first Protocol to the proposed convention.
2. The only important question remaining to be resolved on the text of the Convention is the clause which would permit the Community to become a contracting party.
3. In October 1984 the Council approved 59804/84, 23 Oct. 1984) a proposal of the Commission (9693/84 ENV. 167, COM(84) 549 final) proposing that the Commission should try to negotiate a clause allowing regional economic integration organisations to participate without any conditions. The Commission did not wish to accept any clause which would make participation by the Community subject to prior participation by one Member State (as the USA had proposed) or by a majority of the Member States (as the USSR had proposed). It was decided that in the case of major difficulties in the negotiations, the Commission would seek further instructions from the Council.
4. It has not proved possible to negotiate a clause on the lines envisaged in October. However, the services of the Commission believe that agreement on a clause substantially on the lines of that in the Annex to this Communication could be obtained in particular from the USA.
5. The Commission is therefore invited, as was envisaged in the Decision of 23 October 1984 (9804/84) to propose that the Council should authorise the Commission to negotiate a clause substantially on the lines set out in the Annex.
6. This would represent a small but significant change in the position of the Community. The Council must be requested to authorise this as rapidly as possible, since the next working session on the draft Ozone Layer Convention will take place from January 21st to 25th.

COMMUNICATION TO THE COUNCIL

concerning

the negotiations for a global framework Convention on the protection of
the ozone layer

1. On 19 January 1982 the Council decided to authorise the Commission to participate in the negotiations for a global framework convention on the protection of the ozone layer in order to enable the Community to become a contracting party. The Community and its Member States have taken part in all the preparation of a text which could form a future Ozone Layer Convention, and of the draft text of the first Protocol to the proposed Convention.
2. The only important question remaining to be resolved on the text of the Convention is the clause which would permit the Community to become a contracting party.
3. In October 1984 the Council approved (9804/84, 23.10.1984) a proposal of the Commission (9693/84 ENV. 167, COM(84) 549 final) proposing that the Commission should try to negotiate a clause allowing regional economic integration organisations to participate without any conditions. The Commission did not wish to accept any clause which would make participation by the Community subject to prior participation by one Member State (as the USA had proposed) or by a majority of the Member States (as the USSR had proposed). It was decided that in the case of major difficulties in the negotiations, the Commission would seek further instructions from the Council.
4. It has not proved possible to negotiate a clause, on the lines envisaged in October. However, the services of the Commission believe that agreement on a clause substantially on the lines of that in the Annex to this Communication could be obtained in particular from the USA.
5. The Council is therefore requested, as was envisaged in the decision of 23 October 1984 (9804/84), to authorise the Commission to negotiate a clause substantially on the lines set out in the Annex. The Council is requested to authorise this as rapidly as possible, since the next working session on the draft ozone layer convention will take place from January 21st to 25th.

6. The clause envisaged in the Annex has the important advantage over draft clauses previously suggested that it makes the decision whether and on what basis the convention and any future protocol to it should be treated as a "mixed" agreement entirely in the hands of the Community (and of any other organisation to which the clause would apply). All aspects of the decision whether the Community should become a party, and on what basis, and all questions of Community law which might arise in connection with it, would be wholly for the Community to resolve.

7. The draft clause annexed also has the advantage that it makes clear that the question whether an international organisation may become a contracting party without one (or more) of its Member States depends on its own willingness to accept all the obligations under the convention or protocol, and not on any opinion of the parties to the convention about the capacity of such organisations to enter into international agreements. This is useful because the US position is due to the fact that the US does not wish to have, as treaty partners, organisations which do not accept all the obligations under the treaty in question unless at least one of their Member States is also a party and can fulfil the obligations not undertaken by the organisation. In the view of the USA, to accept only one Member State is already a compromise.

8. It will be seen that the clause does not mention the Community by name and would not apply only to the Community. It should be stressed that the convention as drafted does not permit reservations.

9. Under the draft convention the Community would have a number of votes corresponding to the number of its Member States which are parties to the convention. It will be necessary to add a clause giving the Community one vote if it becomes a party without any Member State. At the last negotiations in Geneva the USSR delegation proposed for the first time that the Community should have only one vote when it was exercising its exclusive competence, irrespective of the number of Member States which

might be contracting parties. The Commission's representative immediately rejected this suggestion. Since it would create a wholly new and serious difficulty, it is believed that the USSR would not be able to pursue it successfully.

ANNEX

Possible new Article 12(2) of the proposed ozone layer convention.

Any regional economic integration organisation which becomes a party to this convention or to any protocol to it shall be bound by all the obligations resulting from the convention or the protocol, as the case may be, unless at the time of acceptance or ratification it accepts only certain obligations, in which case it may accept or ratify the convention or protocol only if at least one of the Member States of the organisation becomes a party to the convention or protocol at the same time.