

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 16.12.2004
COM(2004) 810 final

Proposal for a

COUNCIL DECISION

Setting out the effects of the accession of the Czech Republic and Poland on the participation of the European Community to the Convention on the International Commission for the Protection of the Oder Against Pollution and the Convention on the International Commission for the Protection of the Elbe

(presented by the Commission)

EXPLANATORY MEMORANDUM

(1) Upon accession of the new Member States on 1 May 2004, the situation of transboundary river basins shared by EU Member States and third countries has changed in two ways.

(2) One consequence is that, further to the eastwards shift of the EU borders, it will now be necessary to address the relations with our new neighbours as far as transboundary rivers are concerned. This will require exploring the feasibility and modalities of the possible participation of the European Community in existing or new international agreements on transboundary rivers and watercourses further to the East of Europe.

(3) Another immediate consequence is that the situation changed substantially for those international rivers that are located since enlargement fully within the territory of the EU. The Oder and Elbe river basins are in this situation.

(4) The European Community has been a contracting party to the Convention on the International Commission for the Protection of the Oder Against Pollution[1] and to the Convention on the International Commission for the Protection of the Elbe[2] (hereinafter 'the Oder and Elbe Conventions').

(5) In both cases, the participation of the Community was necessary because the Conventions were concluded with third countries and addressed matters covered by EC environmental policy. In fact, the linkages with Community law are particularly close, and the two Conventions have been widely recognised as an important tool to promote the objectives of the Water Framework Directive (WFD) in Poland and the Czech Republic, anticipating the process of accession of these countries to the EU.

(6) From the date of accession of Poland and the Czech Republic, all States Parties to the Oder and Elbe Conventions are EU Member States. In view of this fundamental change of circumstances, this decision takes stock of the end of the legal relationship between the European Community and these two Conventions.

(7) The enlargement of the European Union has had the effect of radically transforming the legal relations between the Parties. Upon accession, it has become possible to achieve the underlying policy objectives through the measures laid down in internal Community legislation. Relations with Poland and the Czech Republic concerning integrated water management in the Oder and Elbe river basins have become a matter of compliance with existing EC acquis, and notably the Water Framework Directive.

(8) In that respect, it is recalled that the Water Framework Directive already contains a provision by which, for international river basin districts, the Member States concerned shall together ensure this coordination and may, for this purpose, use existing structures stemming from international agreements (Article 3(3)).

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[1] Council Decision 1999/257 of 29 March 1999, OJ L100/20 of 15.4.1999.

[2] Council Decision 91/598/EEC of 18 November 1991, OJ L321/24 of 23.11.1991.

(9) This is already the case of various agreements between Member States encompassing transboundary rivers (e.g. agreements for the Schelde or the Meuse). The current observer status allows for appropriate cooperation and facilitates policy coherence. However, the Community is not a party to these agreements between Member States, since there are no third countries involved and the issue of external competence of the Community in the sense of Article 300 of the EC Treaty does not arise. The same should apply in the case of the Oder and the Elbe further to the accession of Poland and the Czech Republic.

(10) In conclusion, further to the fundamental change in the legal relations between the Parties to the Conventions as a consequence of accession, the Community cannot be any longer a party to the two Conventions.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded (hereinafter 'the Act of accession')[3], and in particular Article 57 thereof,

Having regard to the proposal from the Commission[4],

Whereas:

(1) The participation of the Community European to the Convention on the International Commission for the Protection of the Oder Against Pollution[5] and to the Convention on the International Commission for the Protection of the Elbe[6] (hereinafter 'the Oder and Elbe Conventions') was necessary because the two Conventions were concluded with third countries and addressed matters covered by EC environmental policy.

(2) As from 1 May 2004, further to the accession of Poland and the Czech Republic to the European Union, all States Parties to the two Conventions are Member States of the European Union. Therefore, the basis for the consent of the Community to be bound by such Conventions does not any longer exist. From this moment, the participation of the Community is no longer needed or justified.

(3) Moreover, the enlargement of the European Union has had the effect of radically transforming the legal relations between the Parties. Upon accession, it becomes possible to achieve the underlying policy objectives through the measures laid down in Community legislation.

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3 OJ L 236 of 23.9.2003.
4 OJ C of , p.
5 Council Decision 1999/257 of 29 March 1999, OJ L100/20 of 15.4.1999.
6 Council Decision 91/598/EEC of 18 November 1991, OJ L321/24 of 23.11.1991.

(4) The Act of Accession has not provided a specific provision for this situation and it is therefore necessary to adopt the required measures in accordance with Article 57 of the Act of Accession, which allows correcting such omissions.

(5) It should be therefore made clear that, with effect of the date of accession, the Community is no longer a party to the Conventions and that certain transitory measures may need to be taken.

HAS ADOPTED THIS DECISION:

Article 1

1. The European Community has ceased to be a party to the Convention on the International Commission for the Protection of the Oder Against Pollution and to the Convention on the International Commission for the Protection of the Elbe with effect of 1 May 2004.

2. If appropriate, the Commission shall agree with the three Member States involved solutions to any transitory problem which may result from the end of the participation of the Community in the Conventions.

Article 2

This Decision is addressed to the Czech Republic, the Federal Republic of Germany and Poland.

Done at Brussels,

For the Council
The President