Agreements EC/third countries: respect for democratic principles and human rights

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OBJECTIVE: this communication seeks to firm up and harmonize the "human rights" clauses contained in agreements between the EU and third countries so as to avoid discrimination between Community partners. CONTENT: in its communication, the Commission illustrates how references to human rights in agreements with third countries have developed over recent years. Initially, they were mentioned either not at all or only in passing in the preamble of some agreements. In subsequent years they were included in the body of cooperation agreements as a basis for relations between the parties to the agreement to become an "essential element" of agreements from 1992. In addition, all agreements concluded with CSCE countries include an innovative provision in addition to the "essential element" clause. This additional clause provides for an immediate response (that is to say either immediate suspension or non-execution of the agreement, accompanied by appropriate measures). In 1993, the Commission proposed a number of guidelines to the Council with a view to rationalizing the variety of references to human rights in the provisions of the agreements. However, the objective of a systematic approach has not yet been achieved (particularly acceptance of the human rights clause as an "essential element" of the agreement). In addition, the "Baltic" immediate suspension clause has been progressively eliminated in favour of the "Bulgarian" general non-execution clause, in some cases supplemented by interpretative declarations concerning measures to be taken (particularly in cases of "special urgency"). Accordingly, in its communication, the Commission calls for the Community approach to be made more coherent and transparent so as to avoid discrimination against third countries and proposes the incorporation of standard phases to this effect within the agreements: - in the recitals: general references to human rights and democratic values and references to universal and regional instruments common to both parties; - in the body of the agreement: . insertion of an article X defining the essential elements to be adapted according to the circumstances (e.g. OSCE membership, compliance with market economic principles etc.) such as "respect for democratic principles and fundamental human rights which constitute an essential element of the agreement". This would be one of the first articles concerning the "general principles" of the agreement and its wording should be neither modified nor incorporated into a more general provision; . insertion of an article Y concerning non-execution: "if a party considers that the other party has failed to fulfil an obligation under this agreement, it may take appropriate measures" with a possibility of examining the situation within the association/cooperation council with a view to seeking a solution, except in "cases of special urgency"; . insertion of interpretive declarations on article Y concerning "cases of special urgency", that is to say a material breach of the agreement by one of the parties (e.g. repudiation of the agreement not sanctioned by the general rules of international law or violation of essential elements of the agreement, namely its article X). In this case, the parties may agree on "appropriate measures" in accordance with international law in response to which a procedure may be initiated relating to the settlement of disputes. The Commission indicates that the concept of "special urgency" enables the parties to decide for themselves what measures to take.