17

Non-paper
22 November 1990
FINAL

Elements For A Political Breakthrough

1. Derogations In General

In the context of an overall balanced solution, EFTA chief negotiators are prepared to recommend to their governments to consider to withdraw their requests for the permanent derogations.

This is conditional on:

- a satisfactory legal and institutional set up;
- transition periods for implementation of appropriate non-discriminatory legislation;
- adequate safeguard mechanisms, taking also care of more specific situations (the parameters for such safeguards are at Annex).

This position does not cover matters related to transit. Austria and Switzerland are negotiating bilateral agreements which have to lead to a permanent solution. The two countries will stick to their well-known positions in those negotiations. Direct investment in the Icelandic fisheries sector is not included in the agreement. With regard to the high level of protection, negotiated solutions are under way.

2. High Level Of Protection

The EC and EFTA sides are of the opinion that negotiated solutions for free circulation of goods, in most cases, can be achieved while securing a high level of protection in the fields of health, safety and environment.

The solution of a number of problems is envisaged, possibly coupled with declarations of interpretation. In some cases transitional arrangements would be called for and in others mutual recognition of technical rules. On some items, revised EC legislation now under preparation could form the basis of a solution. Its acceptance would be facilitated by satisfactory participation by experts, as free circulation will have to be discussed on a case-by-case basis. With regard to a few issues, partial or full derogations would have to be envisaged and the free circulation of the goods in question would not be possible until satisfactory EEA rules are developed. The EEA treaty should have provisions that will promote convergence on high standard levels within their future co-operation. The treaty should not prevent a Contracting Party from further developing national legislation in the areas of health, safety and environment, in accordance with the spirit of Article 36 of the Rome Treaty.

3. Fish

The EEA treaty should provide for free market access for fish and other marine products.

A satisfactory solution for the EFTA countries on this issue is a precondition for a treaty. In the view of the EFTA countries, this issue is inextricably linked to the necessity of achieving an overall balance of benefits for all Contracting Parties to the agreement.

4. Competition

We take as a point of departure that the EEA competition rules be based on Articles 85 to 92 of the Rome Treaty. Should an independent EFTA structure, the composition of which shall be decided upon by the EFTA countries, be established, it should, in principle, be entrusted the same powers and functions as those at present exercised by the EC Commission. National authorities would, however, have a major role as regards in particular inspection visits. The two structures would co-operate closely with a view to ensuring equal conditions of competition throughout the EEA. Objective criteria for the attribution of cases to one of the two structures would be a prerequisite for such a system. A decision by one of the structures would be respected by the other, unless ruled against by a joint court.

5. Third Country Relations In Financial Services

The EEA treaty should provide for a de facto common regime on establishment of institutions from third countries based on the reciprocity criteria in the EC acquis. An institutional framework should be instituted providing for information and close consultations between all Contracting Parties at all decision-making levels with a view to facilitating concurring decisions by all Contracting Parties on policies vis-à-vis third countries. A specific clause should be foreseen allowing one EEA Contracting Party to opt out individually at the end of any stage of the procedure, yet still facilitating a continuous well-functioning integrated financial market.

6. General Approach To Flanking And Horizontal Policies

The EEA treaty should provide the basis for a comprehensive and dynamic co-operation in all flanking and horizontal policies which should be given the same weight as the four freedoms. The framework programmes, specific programmes, actions and projects of the EC in these fields should be open to, and permit full and equal participation by, the EFTA States, their institutions and nationals. The Contracting Parties should also develop joint policies, programmes and actions and establish joint undertakings for such purposes, as well as promote close co-operation between EEA states. The scope of co-operation, including objectives, principles and modalities, should be given a firm legal basis in the EEA treaty. To the extent these policies are based on common rules, the general procedures for EEA comitology and EEA decision-making should apply to the fields covered by flanking and horizontal policies.

7. Reduction Of Economic And Social Disparities

The EFTA countries consider it essential that the agreement ensures an overall balance of benefits for all countries in the EEA.

In this context the EFTA countries are prepared to consider concrete proposals by the Community aimed at reducing economic and social disparities between the various regions of the EEA.

8. Methods of Securing Legal Homogeneity

The basic condition for securing legal homogeneity is that the texts of EEA rules be as closely as possible worded as corresponding primary or secondary EC rules.

There should be horizontal provisions in the EEA treaty which guarantee that the legal effects of EEA rules should be such that in practice they will produce the same result throughout the EEA. An essential means of achieving this result would be to adequately reflect in the EEA treaty the distinction between Directives and Regulations.

There should also be an efficient surveillance mechanism as well as an EEA judicial body to ensure that EEA rules and corresponding EC rules are interpreted and applied in a uniform manner and that infringements are eliminated.

9. EEA Comitology

With a view to establishing the simplest possible procedures without the need for new institutions or causing additional delays, the general approach to EEA comitology would be as follows:

(a) Representatives of all EFTA countries shall have the right to participate on the same terms as EC Member States in the relevant EC committees, but without the right to vote in cases where the concerned committees have a role in the legislative process;

(b) On the basis of the deliberations in the committees, an EEA body will adopt the EEA rules concerned back-to-back with the corresponding decision by the EC Commission or by the EC Council as the case may be.

10. EEA Decision-making

The EEA decision-making process should be so designed as to reach, at the end of it, an EEA decision thereby ensuring homogeneity between corresponding new EC rules and EEA rules.

An EEA Council, composed of representatives of the Contracting Parties, which could meet regularly at levels equivalent to those of the EC Council should be set up. The EEA Council should, inter alia, be competent for the following: policy discussions, consultations in the framework of shaping of EEA rules and adoption of EEA rules and decisions. The EEA Council should have the right to set up sub-organs.

Separately from the legislative process, there should be regular joint Ministerial meetings for giving political guidance. Meetings of Heads of Governments and specialized Ministers should be held as required.

The EFTA countries as a group and the EC should have the right to make proposals in matters relevant for the EEA.

When the EC Commission or the EFTA countries as a group draft a proposal, experts from EC and EFTA countries should be given equal opportunity to provide input.

The EEA Council should reach a common understanding that a matter be pursued as an EEA matter.

In parallel with the internal and autonomous decision-making procedures of the Contracting Parties and without delaying them, representatives of the EC Commission, the EC Member States and the EFTA countries

should undertake consultations at all significant stages with the aim of arriving at a common understanding.

In the event, at the end of the process, of a change in the position of a Contracting Party diverging from the previous common understanding, the Community or the EFTA countries speaking with one voice may, without causing delays, request additional consultations which could also be held at the level of Ministers.

The Contracting Parties, the EFTA countries speaking with one voice and the Community, should adopt the EEA rules in question, co-ordinated in time with the internal EC decision, by consensus in the EEA Council.

The consequences of a failure to reach an agreement would be dealt with by the EEA Council, the principle being that existing EEA rules would continue to be applied between the Contracting Parties.

Parliamentary involvement in the EEA decision-making process shall, as far as required by internal legal orders, imply the right of each EFTA country to submit an EEA decision to parliamentary approval.

A joint parliamentary body should be instituted at the EEA level. Similar arrangements should also be made for the economic and social partners.

11. EEA General Surveillance

Should the EEA surveillance system be based on two structures, i.e. in addition to the EC Commission an independent EFTA structure, an efficiently operating joint body would have to be established. The EFTA States would organize their surveillance system among themselves. There should be adequate procedures, open to all Contracting Parties, to subject infringements to a judicial review.

12. EEA Judicial Body

There should be an independent and efficient EEA court. It should be legally separate but integrated with the EC Court of Justice (ECJ) by practical means. There would be one judge from each EFTA country and judges from the ECJ. It should have comprehensive competences, in particular preliminary rulings and infringement proceedings/dispute settlement.

- - - - -

Annex
22 November 1990

SAFEGUARDS

- In order to be able to fully apply the jointly identified relevant acquis communautaire, adequate safeguard mechanisms will be needed;

- In addition to safeguard clauses of a general character, certain fundamental interests will require more specific safeguard mechanisms;

- Criteria for the application of such safeguard mechanisms, as well as, where possible, the measures which could be taken under such mechanisms, must be clearly formulated;

- The procedure for triggering and application of a safeguard measure should include the following:

  - prior notification and consultation, except for certain emergency cases;

  - the right for a Contracting Party thereafter to trigger such measures as will least disturb the functioning of the EEA (principle of proportionality);

  - monitoring at the EEA level in order to secure that the continued application of the measure is meeting the criteria, and that consequently it is not applied longer than justified;

  - judicial control after complaint , for example, by any other Contracting Party to the EEA court of the justification for and scope of the safeguard measure.

- - - - -