

COMMISSION OF THE EUROPEAN COMMUNITIES

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COMMUNICATION FROM THE COMMISSION TO THE COUNCIL

Entry into force of the EEA Agreement for Liechtenstein

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1. Background

The Agreement on the European Economic Area extends the Community's single market legislation to the States of the European Free Trade Association (EFTA). The Agreement was signed in Oporto in May 1992 but was modified by an Adjusting Protocol to take account of the negative result of the referendum in Switzerland on 6 December 1992.

The result of the referendum in Principality of Liechtenstein one week later was positive. However, because of its close regional ties with Switzerland (including a customs union), Liechtenstein could not participate immediately in the EEA, which entered into force in the meantime for the Community, Austria, Finland, Iceland, Norway and Sweden on 1 January 1994.

The Adjusting Protocol provides that the EEA will enter into force for Liechtenstein on a date to be determined by the EEA Council provided that:

- the good functioning of the EEA Agreement is not impaired; and
- the EEA Council has taken other decisions necessary to allow the EEA to enter into force for the Principality.

At the meeting of the EEA Council at Ministerial level on 17 May 1994, all parties declared their intention to do everything within their power to allow Liechtenstein to become a member of the EEA before the end of the year. This will require a decision at the next meeting of the EEA Council on 20 December 1994, by common agreement among the seventeen EEA States. The Commission recommends that the Community position in the EEA Council be based on this Communication and its Annex.

2. Liechtenstein's requests

Liechtenstein's approach, as presented in the form of a Memorandum in December 1993, and more detailed requests formulated in September 1994, is that the Principality will maintain a customs union with Switzerland. The currency union, patent union and other agreements including the post and telecommunications sectors will also remain in force. However, the text of the customs union agreement between Liechtenstein and Switzerland has to be amended to take account of the EEA entering into force for the Principality.

The response of the Community in the EEA Council should be based on 3 elements:

- to treat sympathetically where possible those requests which result directly from Liechtenstein's close links with Switzerland;
- to ensure that integrity of the EEA arrangements is respected and that Switzerland and its economic operators do not gain more favourable treatment as a result of the EEA entering into force for the Principality;
- to avoid where possible renegotiation of the dates for transition periods already agreed with Liechtenstein.

The most important proposals which Liechtenstein has put forward are as follows:

(a) Free movement of Goods

The maintenance of a customs union between Liechtenstein and Switzerland has important implications in the field of customs arrangements and technical regulations. Firstly, in the field of customs matters, movement of goods between Liechtenstein and the other States of the EEA via Switzerland will be controlled only at the border between Switzerland and the other EEA States concerned. The principles of the arrangements proposed by Liechtenstein are acceptable to the Commission.

Secondly, in the field of technical regulations and standards, goods which conform to Swiss rules, but not necessarily to the EEA acquis, will continue to circulate freely in Liechtenstein - the concept of "parallel marketability". The arrangements which Liechtenstein proposes will need to ensure that products exported from the Principality under the EEA Agreement are in full conformity with the EEA technical regulations and standards.

(b) Free movement of persons

This is a politically sensitive matter. The Principality requests that the date of the expiry of the transition period in this field be extended by 2 years from 1 January 1998 to 1 January 2000. There is no justification for a modification of the date already agreed. However, the provisions of the review clause, which take account of the specific situation of Liechtenstein, are recalled.

(c) Free movement of capital

Liechtenstein requests changes to the dates originally agreed to in the EEA. The transition periods concern investment in real estate and direct investment on national territory. As with the free movement of persons, no change in the dates is justified.

(d) Other transition periods

Liechtenstein has made more than fifty other requests for additional transition periods or derogations from the EEA acquis. Where agreed transition periods expire at the end of this year, some flexibility is proposed since the Principality has not yet begun the process of implementing the acquis concerned. It is recommended that, in cases where there is no substantial justification, other requests be rejected.

3. Conclusion

Liechtenstein has expressed a clear wish to participate in the EEA and the EEA Council has confirmed its political commitment to that end. However, the Principality also insists on maintaining its customs arrangements and regional ties with Switzerland. The amendments to the customs union agreement will be the subject of parliamentary ratification procedures in both Liechtenstein and Switzerland, and the Principality intends to hold a referendum on these amendments and the adjusting Protocol to the EEA Agreement.

The Council is invited to base its response to Liechtenstein's requests, in view of the Community's position in the next meeting of the EEA Council, on the lines suggested in this Communication and its Annex.

Annex

SUMMARY OF LIECHTENSTEIN'S REQUESTS AND SUGGESTED RESPONSES

(a) Free movement of Goods

Annex I, Chapter I - Veterinary issues

Annex II, Chapter XII - Foodstuffs

Protocol 3 - Processed agricultural products

In view of Liechtenstein's continuing links with Switzerland, Liechtenstein has requested transitional periods of five years with a review for the above legislation.

Proposed response: Given the low level of trade with Liechtenstein, the Commission proposes that a concession be made by accepting these three requests.

iv) Standards - the principle of "parallel marketability"

Liechtenstein proposes to continue to apply Swiss legislation on product standards as well as the harmonised EC/EEA technical regulations in Annex II (as well as Annex I Chapters II and III and Protocol 47) to the EEA Agreement. Products manufactured in Switzerland or Liechtenstein, which meet Swiss national rules, but not necessarily EEA ones, would continue to circulate freely in the Principality. This constitutes a horizontal derogation from the principles of Article 23 (exclusivity of application of the *acquis* in the field of technical regulations) and Article 17 EEA.

Harmonised areas

Liechtenstein will need to ensure that products complying with Protocol 4 EEA manufactured in the Principality comply with EEA technical regulations, standards, testing and certification as well as the provisions of Annex I Chapters II and III and Protocol 47 when exported to other EEA States.

Non-harmonised areas

For products not covered by the harmonised EC/EEA technical regulations, national standards legislation applies. For Liechtenstein, this would be Swiss standards law. This means that, for EEA originating products manufactured in Liechtenstein, the Community and its EEA partners would have a recognition of Swiss national standards in the non-harmonised areas ("Cassis de Dijon").

It is most important to note that if Swiss originating products not covered by the fully harmonised EC/EEA technical regulations were by any means to obtain EEA origin through the connection between Switzerland and Liechtenstein, such products would gain full market access throughout the EEA. For this reason, it is essential to ensure the proper implementation and application of the EEA origin rules.

Proposed response: The Commission proposes to accept the principles of the above arrangements - they do not benefit goods originating in Switzerland if the EEA rules are properly implemented.

(v) Customs arrangements/Rules of origin

Under the arrangements proposed by Liechtenstein, the Principality will set up its own central customs office. This office will then "sub-contract" the main operational tasks to the Swiss customs authorities. Movements of goods to or from Liechtenstein may take place directly (across the Principality's one border with the rest of the EEA - that is with Austria - at Schaanwald) or indirectly via Switzerland.

Exports from Liechtenstein:

In many cases, EEA products originating in Liechtenstein will be exported via Switzerland, in some cases by Swiss (rather than Liechtenstein) operators. Liechtenstein

therefore requests that its EEA partners agree to provide a legal basis for Swiss authorities and operators to issue EEA evidences of origin in Switzerland.

The EEA agreement includes a regime of "full cumulation of processes" under which goods originating in third countries may obtain EEA origin once a certain amount of processing has been carried out within EEA countries. It should be recalled that the Community decided after the negative result of the Swiss referendum that the Confederation would not be included in this full cumulation regime.

Clearly, processing of third country goods carried out in Liechtenstein (as an EEA State) should count in cumulation calculations, whereas processing carried out in Switzerland (a third country) should not. The difficulty of ensuring correct application of this principle should not be underestimated, especially since there are cases where the same economic operator has production facilities in both Switzerland and Liechtenstein.

Assurances will be required from the competent authorities in Switzerland that the application of these arrangements will be carried out in accordance with EEA rules. These rules include verification procedures in case of doubts as to authenticity.

Proposed response: The Commission proposes to accept the principles of the arrangements proposed by Liechtenstein - subject to the precautions cited below.

For exports to Liechtenstein

It is proposed that EEA products destined for Liechtenstein which arrive at Swiss borders will be treated under the EC-Switzerland Free Trade Agreement (or the Stockholm Convention). Where the preferential treatment under those agreements is less favourable than under the EEA, the operator can either pay tariffs to the Swiss authorities with reimbursement on application at the Liechtenstein customs office or use a transit procedure. In practice, this will only apply to a limited number of products.

Proposed response: Given the availability of the transit procedure, the Commission proposes to accept the proposed arrangements.

N.B. Generally, for customs matters, the implementation of these principles will require close cooperation between the customs authorities of Liechtenstein and precise guarantees of the Swiss authorities.

(b) Free movement of persons

The text of the EEA Agreement signed in Oporto, to which Liechtenstein is a Contracting Party, grants a transition period until 1 January 1998 for the Principality to maintain its present national legislation on entry, residence and employment (including provisions relating to seasonal and frontier workers).

Liechtenstein requests a 2-year extension to the transition period to take account of the late entry into force of the EEA (a concession which has not been granted to any EEA partner before).

Furthermore, Liechtenstein made a Declaration indicating that it viewed a situation justifying the activation of the EEA's safeguard clause (Article 112) to exist in the case of an extraordinary increase in the number of nationals from the EEA States, or in the total number of jobs in the economy.

Proposed response: There is no justification for changing the agreed date of 1/1/98.

The political sensitivity of this matter for Liechtenstein is recognised and the EEA Agreement already includes a provision that "at the end of the transitional period for Liechtenstein, the transitional measures shall be jointly reviewed by the Contracting Parties, duly taking into account the specific situation of Liechtenstein.

(c) Free movement of capital

- The Oporto text of the EEA Agreement provides transition periods to 1 January 1998 for investment in real estate on national territory and to 1 January 1996 regarding direct investment on national territory. Liechtenstein also declared its view that use of the safeguard mechanism would be justified if capital flows from other Contracting Parties endangered the access of the resident population to real estate.

- Again, Liechtenstein requests that these periods be extended by 2 years.

Proposed response: There is no justification for accepting any change to the agreed dates.

(d) Free movement of services

- Liechtenstein requests a transition period of 5 years with review for the application of the Community's acquis in the field of civil aviation.

Proposed response: Given that commercial air transport possibilities are limited, this request could be accepted.

(e) Other requests

- Liechtenstein has made more than fifty other requests for additional transition periods or derogations from the EEA acquis. They include the non-application of the whole EEA Statistics acquis, with the exception of the compilation of statistics on foreign workers. Liechtenstein will need to supply separate statistics in the field of free movement of goods in order to allow the EEA Joint Committee to monitor the good functioning of the EEA Agreement in this area.

- Where transition periods already agreed expire at the end of 1994, some flexibility is proposed to allow the Principality to implement the acquis concerned. Given that the EEA can only enter into force in the early part of next year the Commission proposes to extend the transition periods to 1 January 1996 for the following:

- 3 Directives in the field of Financial services
- 7 Directives in the field of Public procurement
- 1 Directive in the field of Equal treatment for men and women
- 2 Directives and 3 derived Decisions in the field of genetically modified organisms

- No further transition period should be granted in the field of company law, where the acquis is due to be implemented from 1/1/97. However, it can be accepted that 2 related Directives in the financial services sector be applied only from that date.

- Liechtenstein's request to have the Swiss qualifications of its residents recognised by the EEA partners should be resolved with the same non-binding solution which was developed for Icelandic nationals in the original EEA Agreement.