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from : General Secretariat of the Council
to : Permanent Representatives Committee (part II) / Council
Subject : Draft Council conclusions on EU relations with EFTA countries

1. In accordance with Council conclusions of 8 December 2010¹, the Working Party on European Free Trade Association (EFTA) held during the second half of 2010 an orientation debate on each of the EFTA Member States (Liechtenstein, Norway, Switzerland and Iceland) in order to reassess the state of relations between the EU and the four countries in question. In the light of these debates, the Presidency drew up a set of draft Council conclusions on EU relations with EFTA countries.
2. These draft Council conclusions were discussed by the Working Party on European Free Trade Association (EFTA) in a number of meetings. On 7 December 2010, the Working Party on European Free Trade Association (EFTA) endorsed the draft conclusions as set out in Annex.

¹ Doc. 16651/1/08 REV 1.

3. Against this background, the Permanent Representatives Committee is asked to invite the Council to adopt the conclusions, as set out in the ANNEX, as an "A" item in one of its forthcoming meetings.

Draft Council conclusions on EU relations with EFTA countries

1. The Council has assessed the development of relations between the EU and the four Member States of the European Free Trade Association (EFTA) since the adoption of its last conclusions on the subject in December 2008. Generally, EU relations with the EFTA countries, which were already considered to be very good and close in 2008, have further intensified in the past two years (details on developments are set out below in country-specific paragraphs). The Council is looking forward to continue the positive relationship with the EFTA countries and to deepen it in the future. It will reassess the state of relations between the EU and the EFTA countries in two years.
2. The Council appreciates the financial contributions of the EFTA countries to the economic and social cohesion in the European Economic Area (EEA). Norway, Liechtenstein and Iceland (the "EEA EFTA States") recently committed themselves to a substantial increase of their continued contributions. The EU is looking forward to a constructive dialogue with Switzerland on the review of the current mechanism, expiring in June 2012. The Council hopes that a mutually acceptable solution will be found with the aim of reducing economic and social disparities in the EU.
3. Iceland, Liechtenstein and Norway are integrated in the internal market through the EEA Agreement of 1994. This Agreement functions properly so long as all Contracting Parties incorporate the full body of the relevant EU *acquis* relating to the internal market into their national law. The Council welcomes that the EEA countries have demonstrated an excellent record of proper and regular incorporation of the *acquis* into their own legislation and encourages them to maintain this good record to ensure the continued homogeneity of the internal market.

4. The Council notes with interest that Norway and Liechtenstein have launched work for a in-depth review of their experiences with the EEA Agreement. The Council encourages a parallel exercise on the EU-side and looks forward to exchange on findings with the EEA EFTA countries in due time.
5. The Council welcomes the opening, in July 2010, of accession negotiations with Iceland, which conserves its status as EEA EFTA State while negotiations are ongoing.
6. Since Switzerland is not a member of the European Economic Area, it has chosen to take a sector-based approach to its agreements in view of a possible long-term rapprochement with the EU. In full respect of the Swiss sovereignty and choices, the Council has come to the conclusion that while the present system of bilateral agreements has worked well in the past, the challenge of the coming years will be to go beyond this complex system, which is creating legal uncertainty and has become unwieldy to manage and has clearly reached its limits. In order to create a sound basis for future relations, mutually acceptable solutions to a number of horizontal issues, set out below, will need to be found.
7. Though EU relations with the EFTA countries were extended over the years to many areas not covered by the internal market, these relations are mainly based on the progressive integration of the EFTA countries' economies into the EU internal market. In view of the need for a level playing field for all economic operators of the parties concerned and the continued development of internal market relevant *acquis*, the EU and the EFTA States should ensure homogeneity in the implementation of the *acquis* and the good functioning of the institutions.

8. A similar assessment should also be undertaken concerning the relations of the EU with the European countries of small territorial dimension, and more in particular the Principality of Andorra, the Principality of Monaco and the Republic of San Marino. Their current relations with the EU are extended but fragmented, with large parts of the *acquis* related to the internal market not introduced in their legislation and therefore not applicable.
9. An analysis of the possibilities and modalities of their possible progressive integration into the internal market should be undertaken by the EU during the first half of 2011 under the Hungarian Presidency, in accordance with the Declaration on Article 8 of the Treaty on the European Union, taking into account the particularities related to their size.

ICELAND

10. The Council welcomes the launching of accession negotiations with Iceland in July 2010, takes note of the findings presented by the Commission on 9 November 2010 to the Council and the European Parliament in its Progress Report on Iceland and refers to the Council conclusions on enlargement - Iceland - to be adopted by the General Affairs Council on 14 December 2010.
11. The opening of an EU delegation in Reykjavik in 2010 will contribute to the rapprochement of Iceland and the EU in this dynamic phase of relations.
12. The Council appreciates the solidarity shown by the Icelandic people when committing to renew their contribution to the reduction of social and economic disparities in the EEA for the period 2009-2014.

13. While accession negotiations are ongoing, the EEA Agreement remains the key contractual basis for EU-Iceland relations. In the past two years, Iceland continued to be an active and constructive partner in that framework as well as in the Schengen area, with a good record of implementation of the evolving EU *acquis*. The Council encourages Iceland to maintain the same good record also in the future.
14. The Council welcomes the good cooperation with Iceland in many areas of common interest, in particular on environmental and energy issues, as well as in the field of Common Foreign and Security Policy, with Iceland frequently supporting EU declarations and voting together with the EU in the UN. The Council is looking forward to further strengthening cooperation with Iceland on issues such as Arctic policy, the Northern Dimension, fisheries, renewable energy and climate change.
15. Regarding fisheries, the Council continues to call for a constructive approach of all Coastal States (EU, Norway, Faeroe Islands and Iceland) on the joint management of mackerel fisheries, and encourages Iceland to resume negotiations on this issue, in particular as regards a reasonable long term sustainable quota sharing arrangement, taking into account the track records of all relevant actors.
16. The Council welcomes Iceland's continued commitment to move toward economic stabilization and to address all issues deriving from the 2008 banking collapse. In this context, the Council recalls the need for Iceland to address existing obligations, such as those identified by the EFTA Surveillance Authority under the EEA Agreement, as well as weaknesses in the area of financial services, identified in the Opinion of the Commission on Iceland's application for EU-membership.

PRINCIPALITY OF LIECHTENSTEIN

17. Given its limited human resources, the swiftness shown by Liechtenstein in most areas in adopting European Union legislation and regularly updating its legislation in accordance with the evolving EU *acquis* is to be commended. The Council welcomes the positive report of the government of Liechtenstein published on the occasion of the 15th anniversary of membership in the EEA.
18. In the period 2008 to 2010, relations between the EU and Liechtenstein have substantially intensified and were marked by positive developments in a number of areas.
19. The Council welcomes the solidarity with the EU shown by the people of Liechtenstein when committing to continue and increase their contribution to the reduction of social and economic disparities in the EEA for the period 2009-2014.
20. Preparations for the association of Liechtenstein to the Schengen *acquis* are well advanced on both sides. The Council is looking forward to a rapid entry of Liechtenstein into the Schengen area.
21. With regard to cooperation and information exchange in tax matters and the fight against fraud and tax evasion and any other illegal activity to the detriment of the financial interests of the parties, the Council welcomes the commitments taken by the Principality to implement OECD standards on transparency and on tax information exchange and to fight against fraud, and calls on Liechtenstein to continue its efforts in this area. The Council expects a quick and consistent implementation of these commitments in the relationship between Liechtenstein and the EU and all its Member States.
22. Concerning the taxation of savings, the Council welcomes the openness of Liechtenstein to launch negotiations on a revision of the savings taxation agreement to reflect the evolution of the corresponding EU *acquis*, once the EU has agreed the final text for its review of the savings taxation directive.

23. Considering that the EFTA Surveillance Authority has taken in recent years several decisions relating to state aid granted by Liechtenstein, the Council reiterates its recommendation of 2008 that Liechtenstein assesses all measures applied to industry, services and trade with respect to the definition of state aid provided for in the EEA Agreement, particularly in finance. The Council welcomes the intention of Liechtenstein to reform its tax legislation and looks forward to a reform compatible with state aid legislation. The Council will closely follow the implementation of this reform.
24. With regard to harmful tax practices, the Council encourages the Principality to continue discussions with the EU on the application of the principles and criteria of the EU Code of Conduct on business taxation.

KINGDOM OF NORWAY

25. The Council notes with satisfaction, that EU-Norway relations have even further improved since 2008. The Council welcomes and encourages the proper and regular incorporation by Norway of EEA relevant EU *acquis* in its national legislation and the close cooperation with the country in many other important policy areas. The Council encourages Norway to maintain the same good record in the coming period.
26. The Council welcomes the signing of the Agreements both of the EEA and of the Norwegian financial mechanisms for the period 2009-2014 and is looking forward to their rapid entry into force. The Council welcomes, in particular, the commitment of Norway to share the founding principle of solidarity and to continue its very significant contribution to the reduction of social and economic disparities in the EU.

27. The Council welcomes the close cooperation with Norway in the area of Common Foreign and Security Policy, in particular Norway's participation in EUPOL Afghanistan, EULEX Kosovo, Atalanta and in the "Nordic Battle Group", as well as its cooperation with the European Defence Agency. Norway's views on global matters are based on values similar to those of the EU and its international activities can give additional and valuable support to EU actions. The Council is ready to further deepen this partnership, which is facilitated by a regular political dialogue at different levels.
28. Norway remains a key partner in energy matters and an important and reliable supplier of natural gas and oil for the EU. It applies EEA relevant EU energy legislation. The EU welcomes the continuous deepening of the EU-Norway dialogue on energy issues.
29. The cooperation between Norway and the EU on environmental and climate change matters continues to be good. Environmental issues pending in 2008 have been solved in the meantime. With regard to climate change, and building on the Copenhagen Accord, the EU and Norway remain convinced of the urgent need to make progress towards an ambitious post-2012 regime and hope for a successful and balanced outcome in Cancún.
30. The High North/Arctic remains a priority subject of Norwegian policy. The EU welcomes the Treaty signed by Norway and Russia in September 2010 on the delimitation of maritime borders and cooperation in the Barents Sea and the Arctic Ocean. The EU recognises the increasing importance of international cooperation in this field and has strengthened its cooperation with Norway on Arctic policy, *inter alia* in the framework of the Northern Dimension. It welcomes the support of Norway for a permanent observer status of the European Commission in the Arctic Council.

31. The Council welcomes the initialling of an Agreement on further liberalisation of trade in agricultural products under Art. 19 of the EEA Agreement and looks forward to the continuation of common work under this Article in two years time. Concerning processed agricultural products (Protocol 3 to the EEA Agreement), the Council reiterates its regret for the long overdue progress on liberalising trade in these products and urges Norway to actively engage without delay in a proper and constructive negotiation process with regard to the joint revision of Protocol 3.
32. The Council encourages Norway to use existing structures that provide for EU-Norway dialogue, bilateral or otherwise, to raise and discuss possible differences related to trade issues in the spirit of the privileged partnership that exists between the EU and Norway
33. The Council welcomes the close EU-Norway cooperation with regard to the sustainable management of shared fisheries resources and the exchanges of fishing possibilities between the two parties. In particular, it welcomes the long-term agreement found in 2010 on the management of mackerel stock.

EEA

34. The Council notes with interest the Norwegian government's decision to establish a Committee with the mandate to undertake a thorough review of the functioning of the EEA Agreement. This Committee is due to report in 2011. The Council also notes a similar approach in Liechtenstein on its European integration policy. The Council encourages a parallel process on the EU side, with a review of the functioning of the EEA Agreement, taking into account that EU-EEA EFTA relations have developed over the past 15 years in depth and in scope both within the framework of the EEA Agreement and beyond.
35. Furthermore, it should be examined whether the EU interest is properly served by the existing framework of relations or alternatively by a more comprehensive approach, encompassing all fields of cooperation and ensuring a horizontal coherence. The EU review should also take into account possible developments in the membership of the EEA.

36. Specifically in relation to the EEA, the continued homogeneity of the applicable legislation throughout the European Economic Area must be ensured, with particular emphasis in avoiding gaps in the *acquis* across the EEA. With regard to the “technical” functioning of the Agreement, the possibility of up-dating and simplifying some of the procedures, which were established when the EEA Agreement was first conceived, should be explored, taking into account notably the massive technological development which now could be of benefit in the general functioning of the EEA Agreement.

SWISS CONFEDERATION

37. Relations between the EU and Switzerland are good, intensive and broad. Situated in the very heart of the European territory, Switzerland is one of the EU's major trading and investment partners and EU and Swiss economies are closely interlinked. In the past two years, relations have intensified even further.
38. In this context, the Council welcomes in particular the full participation of Switzerland in the Schengen area, as well as the extension of the Free Movement of Persons Agreement to Bulgaria and Romania. It congratulates Switzerland on the breakthrough of the Gotthard base tunnel, an important step in the realization of this impressive infrastructure project, which will contribute significantly to the development of efficient and environmentally sustainable transport in Europe.
39. The Council welcomes the existing cooperation with Switzerland in the area of Common Foreign and Security Policy, in particular in civilian crisis management operations, and stands ready to further strengthen cooperation in this area. It pays careful attention to the Swiss interest in holding a formal political dialogue and wishes to express its similar aim to augment our cooperation and explore together the appropriate format.

40. EU-Switzerland relations include a contribution to reduce economic and social disparities in the EU. The EU believes that such support contributes to enriching overall relations between the parties and reinforces mutual solidarity. The Council is therefore confident that Switzerland's contribution will continue in the future, on the basis of the review of the existing mechanisms.
41. Following Switzerland's rejection of the EEA in 1992, the EU and Switzerland decided to deepen their relations through the conclusion of agreements in chosen sectors. The Council takes note of the European Policy Report of the Swiss Federal Council of September 2010, reaffirming this choice.
42. The Council notes that this sectorial approach has allowed closer cooperation in a few areas of mutual interest but has turned in the course of the years into a highly complex set of multiple agreements. Due to a lack of efficient arrangements for the take-over of new EU *acquis* including ECJ case-law, and for ensuring the supervision and enforcement of the existing agreements, this approach does not ensure the necessary homogeneity in the parts of the internal market and of the EU policies in which Switzerland participates. This has resulted in legal uncertainty for authorities, operators and individual citizens.
43. In this context, the Council is concerned by an incoherent application of certain agreements and the introduction by Switzerland of subsequent legislative measures and practices incompatible with those agreements, in particular the Agreement on the Free Movement of Persons. The Council calls upon Switzerland to abrogate such restrictions (for instance, the obligation in force in Switzerland to provide prior notification with an 8-day waiting period) and to refrain from adopting new measures incompatible with the Agreement.

44. The Council remains very concerned regarding certain cantonal company tax regimes of Switzerland creating an unacceptable distortion of competition, and reaffirms its position on this matter. It regrets that the lengthy dialogue on this issue has not yet led to an abolition of the state aid aspects of these regimes. The Council reiterates its call on Switzerland to abolish these tax incentives and to avoid taking internal measures, such as certain aspects of the New Swiss Regional Policy, which would be incompatible with the Agreement and may have the effect of distorting competition between EU border regions and Switzerland. Other difficulties in the implementation of Protocol II of the Free Trade Agreement and in the application of the Agreement on Trade in Agricultural Products remain a matter of concern.
45. With regard to harmful business tax practices, the Council encourages Switzerland to continue discussions with the EU on the application of the principles and criteria of the EU Code of Conduct on business taxation.
46. Concerning the taxation of savings, the Council welcomes the readiness of Switzerland to consider an extension of the scope of the savings taxation agreement, once the EU has finalised its work on the revision of the savings taxation directive.
47. Regarding cooperation and information exchange in tax matters and the fight against fraud and evasion in tax matters, the Council welcomes the commitment taken by Switzerland in spring 2009 to implement OECD standards on transparency and tax information exchange. It expects a quick and consistent implementation of these standards in the relationship between Switzerland and the EU and all its Member States.

48. In full respect of the Swiss sovereignty and choices, the Council has come to the conclusion that while the present system of bilateral agreements has worked well in the past, the key challenge for the coming years will be to go beyond that system, which has become complex and unwieldy to manage and has clearly reached its limits. As a consequence, horizontal issues related to the dynamic adaptation of agreements to the evolving *acquis*, the homogeneous interpretation of the agreements, an independent surveillance and judicial enforcement mechanisms and a dispute settlement mechanism need to be reflected in EU-Switzerland agreements.
49. In addition to making the existing agreements more efficient and solving the outstanding problems in their implementation, the Council recognises that cooperation should be developed in certain areas of mutual interest. However, as regards agreements providing for Switzerland's participation in individual sectors of the internal market and policies of the EU (a status normally only granted to members of the European Economic Area (EEA)), the Council recalls its conclusions of 2008, that the requirement of a homogeneous and simultaneous application and interpretation of the evolving *acquis* - an indispensable prerequisite for a functioning internal market - has to be ensured as well as supervision, enforcement and conflict resolution mechanisms. In this context, the Council welcomes the setting-up of an informal Working Group of the Commission and Swiss authorities.
50. Furthermore, the Council reiterates its conclusion of 2008 that in assessing the balance of interests in concluding additional agreements, it will have in mind the need to ensure parallel progress in all areas of cooperation, including those areas, which cause difficulties to EU companies and citizens.