

Joint Declaration following the EFTA-EC ministerial meeting (Brussels, 14 May 1991)

Caption: On 14 May 1991, the day after their meeting in Brussels, the Foreign Ministers of the Twelve, of the European Free Trade Association (EFTA) and of Liechtenstein issue a joint declaration in which they outline the progress of negotiations on the establishment of a European Economic Area (EEA).

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Joint Declaration following the EFTA-EC ministerial meeting (Brussels, 14 May 1991)

1. The Ministers of the Member States and the Commission of the European Communities and the Ministers of the Member States of the European Free Trade Association and Liechtenstein met in Brussels on 13 May 1991.
 2. The meeting was chaired, for the Community, by Mr. Jacques Poos Minister of Foreign Affairs of Luxembourg, President-in-Office of the Council of the European Communities, and for the EFTA countries by Mr. Wolfgang Schüssel, Minister for Economic Affairs of Austria, Chairman of the EFTA Council. The Commission of the European Communities was represented by Mr. Frans Andriessen, Vice-Président. The list of participating Ministers is attached. Mr. Georg Reisch, Secretary-General of EFTA, also participated in the meeting.
 - 2 bis. The Ministers confirmed their commitment to conclude, before the summer, negotiations on a comprehensive EEA agreement, based on equality which should ensure the greatest possible mutual interest for the parties concerned as well as the global and balanced character of their cooperation.
 3. On the basis of the respective oral reports on the current state of the negotiations, they took note with satisfaction of the considerable progress achieved in the negotiations since their last joint meeting in December 1990.
 4. They noted that agreement had been achieved on several important elements of the EFTA agreement and concluded that solutions now seemed possible on the remaining open issues. Recalling that final agreement was dependent on a mutually acceptable solution to all questions covered by the negotiations, both substantive and institutional, as well as overall balance of benefits, rights and obligations, they encouraged negotiators to pursue their work actively in order to find solutions to the outstanding problems.
 5. With reference to the issues mentioned in their Joint Declaration of 19 December 1990 they noted the following developments.
 6. They welcomed progress achieved in the definition of solutions required for the operation of a system ensuring equal conditions of competition including state aids throughout the EEA. They noted convergence on the main elements defining the respective role of, and the cooperation between the EC Commission and the independent EFTA structure (with equivalent powers and similar functions as those exercised by the EC Commission). They encouraged negotiators to finalize the negotiations as rapidly as possible, including on more detailed criteria for the attribution of cases between the two sides and on the role of the judicial mechanism.
 7. The participants welcomed the pragmatic solutions agreed upon reconciling a high level of protection in the field of health, safety and the environment with the free circulation of goods. This will ensure that most of the relevant Community acquis will be applied in full by the EFTA countries as from 1. 1. 93. In some other areas, free circulation within the EEA will be guaranteed from 1. 1. 93 on the basis of Community acquis although EFTA countries' national legislations may be maintained during a transitional period. In relation to motor vehicles agreement was reached on free circulation as of 1. 1. 95 on the basis of the Community acquis. EFTA countries may however maintain national legislation until new Community rules are introduced which will be dealt with according to procedures laid down in the Agreement. For certain products (i. e. fertilizers containing cadmium, CFCs, Halons) an open-ended transitional period has been agreed subject to a review in 1995.
- Sectors where solutions have to be found before the end of the negotiations are now reduced to those of dangerous substances, chemical substances/ preparations and pesticides. Negotiators have been encouraged to pursue their work on these issues.
8. As regards other questions related to goods, the participants noted good progress on public procurement, product liability testing and certification and EC mark, intellectual property. The agreement will contain a

number of elements increasing cooperation in customs matters and improving and simplifying rules of origin. Further improvements will be sought in the framework of the Agreement.

9. Moreover, progress was noted on steel which both sides agree to bring under the coverage of the EEA Agreement in as far as the provisions of the bilateral Free Trade Agreements for ECSC products, which will be maintained, do not apply. Further progress has been achieved in the area of energy where agreement has been reached on the inclusion of part of the EC acquis. More work is necessary on the acquis with provisions relating to difficulties of supply.

10. They also welcomed the agreement in the areas related to the free movement of capital and services. The relevant Community acquis will be introduced by the EFTA countries from 1. 1.93 with the exception of some elements for which transitional periods will apply. Moreover, in the area of capital movement the EFTA countries concerned will apply their present legislation in a liberal manner during the transitional period. Further work is necessary concerning the EC Broadcasting Directive. Furthermore, they welcomed the agreement reached on the outline of economic and monetary policy cooperation.

11. They noted further progress in the transport area, a key factor in the EEA context in relation with the free movement both of goods and services. They concluded that a comprehensive solution in transport has to be found. They urged negotiators shortly to conclude the ongoing bilateral transit negotiations taking into account the specific interests of some EEA peripheral countries.

12. Further work remains to be done in the area of free movement of persons.

13. They noted that agreement had been reached that in a number of horizontal areas where the EC acquis will be taken over by the EFTA countries (company law, social policy and environmental policy) transitional periods of up to two years in general will apply.

They welcomed the agreement reached to strengthen and broaden cooperation outside the four freedoms (flanking policies) in the framework of the Community's activities in areas such as of research and development including information services, environment, education, training and youth, social policy, consumer protection, small and medium-sized enterprises, tourism and audiovisual sector, insofar as these matters are not regulated by other titles of the Agreement. They noted that there was now a substantial convergence of views as regards the elements which should figure in the EEA Agreement to provide a firm legal basis for a comprehensive and dynamic cooperation.

They encouraged negotiators to press ahead with their work on the few remaining questions on which agreement still has to be reached.

14. The participants took note of the progress in the agricultural area. They confirmed their determination to achieve within the EEA a higher degree of liberalization of agricultural trade in the framework of their respective agricultural policies. An evolutionary clause will be included in the EEA Agreement. Moreover, EFTA countries will abolish or reduce import duties from 1. 1. 93 on a range of products of a particular importance to the less developed regions of the Community. Particular attention will also be paid to the objective of abolishing trade barriers resulting from veterinary and phytosanitary regulations. In the latter areas the EFTA countries will take over, to the maximum extent possible, the EC acquis. Moreover concrete measures will be introduced as from 1. 1. 93 in the form of reciprocal bilateral agreements between the EC and the EFTA countries under the umbrella of the EEA Agreement. Finally, trading conditions will be facilitated for processed agricultural products. They agreed that negotiations on all these issues should now be actively pursued and finalized as quickly as possible, given the importance of the agricultural sector as an element of balance in the Agreement as well as in the context of the reduction of regional social and economic disparities.

15. Recalling that they attached the same importance to the inclusion of fisheries into the EEA Agreement, they underlined the need for urgent and increased negotiating efforts in order to arrive at a solution combining satisfactorily the interests of both sides before the end of the negotiations.

With regard to fisheries, the ministers specifically refer to § 4 of this Declaration, stating that the final agreement was dependent on a mutually acceptable solution to all questions covered by the negotiations; there must, at the end, be an overall balance of benefits, rights and obligations for each Contracting Party.

16. Urgent further work was also required with regard to the ways and means of attaining the important objective of reducing regional economic and social disparities. This objective is essential to ensure a satisfactory balance of the EEA Agreement. They took note of the request of the Community and of the readiness of the EFTA countries to consider the creation of a financial mechanism through which appropriate efforts will be made to the attainment of this objective. Concrete modalities should now be worked out.

17. As regards legal and institutional questions the participants reaffirmed the principles set out in the Joint Declaration of 19 December 1990. They considered that operational institutional solutions should be arrived at in order to achieve maximum legal homogeneity within the European Economic Area without compromising decision-making autonomy of the Contracting Parties, the process of integration of the European Communities and the specific nature of Community law. With this in mind, they treated in particular the following points:

18. They agreed on the need to provide in the agreement for a general safeguard clause which could be triggered into action whenever serious economic, societal, and/or environmental difficulties of a sectoral or regional nature were arising. The Contracting Parties could, in unilateral declarations noted by the Diplomatic Conference, make any specific points they wished on the possible application of the general clause. They also confirmed the points in this connection made in the Joint Declaration of 19 December 1990.

19. They also stressed the importance, in order to ensure maximum legal homogeneity, of developing as regards questions concerning the European Economic Area, an ongoing process of information and consultation in the course of the Community legislative process and likewise of involving experts from the EFTA countries as widely as possible according to the areas concerned in the preparatory stage of draft measures to be submitted subsequently to the Committees by the Commission. In this regard, they noted that when drawing up its proposals the Commission would refer to experts from the EFTA countries on the same basis as those from the Member States. Further, they noted that pragmatic solutions for certain specific problems could be discussed and that the status of the EFTA countries in the Committees relating to the flanking policies would take full account of their possible financial participation in the projects concerned ¹⁾.

20. Recalling that decisions at European Economic Area level are taken on a consensus basis by the Community on one side and the EFTA countries speaking with one voice on the other side, they recognized that should a serious and important difficulty arise in those areas which in the EFTA countries came within the competence of the legislator, this difficulty should be subjected to examination by the Joint Committee, which would try first of all to seek a mutually acceptable solution which would allow to maintain the Agreement in its entirety without prejudice to the possibility of invoking subsequently, where necessary, the general safeguard clause and proportionate rebalancing measures.

21. The participants stressed the need to have in the European Economic Area an effective system of surveillance composed on the one hand of the Commission and on the other of an EFTA mechanism working in similar way and also an independent judicial mechanism.

22. As regards the independent judicial mechanism, the following principles will be taken into account:

- Nomination of seven judges from the EFTA countries ;
- Creation of an independent EEA Court composed of five judges from the EC Court of Justice and three from the seven EFTA judges, functionally integrated with the EC Court of Justice and which would be competent to give rulings :

* concerning dispute settlement (including when necessary interpretation of the EEA rules) on request of the Joint Body or the Contracting Parties

* concerning disputes between the EFTA Surveillance Body and an EFTA country

* concerning cases brought by enterprises or States against decisions of the EFTA structure in the field of competition (including State aid).

- Reinforcement of the legal homogeneity within EEA through opening of intervention possibilities for EFTA countries before the EC Court of Justice and through a procedure inspired by that of the Lugano Convention.

23. They noted that the EFTA Member States were prepared to introduce provisions in their internal legislation to the effect that rules of the Agreement establishing an European Economic Area shall prevail in cases of possible conflicts between these rules and other provisions of their internal legal order."

1) The Commission will send to the EFTA side a letter explaining the modalities of this paragraph.