

COUNCIL REGULATION (EC) No 2894/94

of 28 November 1994

concerning arrangements for implementing the Agreement on the European Economic Area

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 238 in conjunction with Article 228 (2), second phrase, and (3), second subparagraph thereof,

Having regard to the proposal from the Commission,

Having regard to the assent of the European Parliament⁽¹⁾,

Whereas an Agreement on the European Economic Area was negotiated between the European Economic Community, the European Coal and Steel Community and their Member States, on the one hand, and the EFTA States, on the other, and was signed in Oporto on 2 May 1992;

Whereas, following Switzerland's non-ratification of that Agreement, the European Economic Community, the European Coal and Steel Community and their Member States, on the one hand, and the Republic of Austria, the Republic of Finland, the Republic of Iceland, the Principality of Lichtenstein, the Kingdom of Norway and the Kingdom of Sweden, on the other, signed a Protocol on 17 March 1993 amending the Agreement on the European Economic Area and the Agreement and the Protocol are hereinafter referred to as 'the EEA Agreement';

Whereas it is necessary to establish the arrangements for implementing various provisions of the EEA Agreement;

Whereas the EEA Agreement provides for an EEA Joint Committee with decision-making powers; whereas, since the Community will have to state its views within that Committee, it is necessary to lay down rules of procedure for deciding on the position the Community will adopt;

Whereas provisional Rules of Procedure must be laid down to incorporate the *acquis communautaire* as close as possible to the date of entry into force of the EEA Agreement, in good time to secure the objective of the EEA Agreement, namely to establish a dynamic and homogenous European Economic Area;

Whereas implementing rules must also be provided for in the field of competition, to enable in particular the principles governing the application of competition law, on the basis of Articles 85 and 86 of the EC Treaty, to be applied *mutatis mutandis* to the EEA;

Whereas, given the special nature of the Banking Advisory Committee set up by Article 11 of Directive 77/780/EEC⁽²⁾ and of the Insurance Committee set up by Directive 91/675/EEC⁽³⁾, specific rules must be laid down for consulting them;

Whereas, in accordance with the EEA Agreement, a financial mechanism has been established by the EFTA States and whereas it is necessary to lay down the method for determining the allocation of grants and interest rebates on loans to each recipient Member State in accordance with Protocol 38 of the EEA Agreement; whereas this allocation is specific to the EEA framework and the criteria chosen in no way prejudice the criteria applicable to Community Funds;

Whereas the Agreements concluded by the Community bind its institutions and its Member States; whereas the latter must therefore take any measures necessary to enable the Community to fulfil its obligations under the EEA Agreement,

HAS ADOPTED THIS REGULATION:

Article 1

1. Where the Commission submits a proposal to the Council which it considers to fall within an area covered by the EEA Agreement, it shall indicate that after its adoption the future act should be extended to the EEA. If a Member State challenges the Commission's opinion that the proposal in question falls within an area covered by the EEA Agreement and that it must therefore be extended to the EEA, the Council shall take a decision by the majority provided for in the provision adopted as the legal basis for the act of Community legislation it is proposed to extend after its adoption, no later than the time of its adoption, on whether the act in question actually falls within an area covered by the EEA Agreement.

2. The Community's position regarding EEA Joint Committee decisions which simply extend acts of Community legislation to the EEA, subject to any technical adjustments needed, shall be adopted by the Commission.

⁽¹⁾ Assent delivered on 17 November 1994 (not yet published in the Official Journal).

⁽²⁾ OJ No L 322, 17. 12. 1977, p. 30. Directive as last amended by Directive 89/646/EEC (OJ No L 386, 30. 12. 1989, p. 1).

⁽³⁾ OJ No L 374, 31. 12. 1991, p. 32.

3. For other EEA Joint Committee decisions, the Community's position shall be adopted by the Council, on a proposal from the Commission, as follows :

- (a) for the purpose of adopting the Community's position regarding EEA Joint Committee decisions which extend an act of Community legislation to the EEA and in so doing introduce changes which are more than mere technical adjustments, the Council shall act by the majority laid down in the provision adopted as the legal basis of that act ;
- (b) for the purpose of adopting the Community's position regarding EEA Joint Committee decisions other than those which extend Community legislation to the EEA, the Council shall act :
- by a simple majority when the decision which the EEA Joint Committee proposes to take relates to the said Committee's Rules of Procedure or a question of procedure,
 - by a qualified majority if the decision which the EEA Joint Committee proposes to take relates to an area for which such a majority is required for the adoption of internal rules,
 - unanimously in other cases.

Article 2

The Community's position within the EEA Council shall be adopted by the Council acting unanimously.

However, where the EEA Council has to deal with a question concerning an act of Community legislation, the Council shall act by the majority laid down in the provision adopted as the legal basis of that act.

Article 3

1. Where a proposal for an act of Community legislation in an area covered by the EEA Agreement is forwarded to the European Parliament, the Parliament shall at the same time be requested to adopt a position on extension of the act to the EEA.

2. In the case provided for in Article 1 (3) (a), the Council shall adopt the Community's position after consulting the European Parliament. The European Parliament shall deliver its opinion within a time limit which the Council may set depending on the urgency of the matter. If no opinion is given within that time limit, the Council may act.

3. In the cases provided for in Article 1 (3) (b) and in Article 2, the European Parliament shall be kept informed of the decisions taken by the EEA Joint Committee and the EEA Council.

Article 4

As an interim procedure, the Community position concerning the EEA Joint Committee decision to extend

to the EEA the *acquis communautaire* adopted up to 31 December 1993 shall be adopted by the Council acting unanimously on a proposal from the Commission after consultation of the European Parliament.

Article 5

1. To enable the principles contained in Articles 1 (2) (e) and 53 to 60 of the EEA Agreement to be put into effect, the Community rules giving effect to the principles set out in Articles 85 and 86 of the EC Treaty and Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings⁽¹⁾, shall apply *mutatis mutandis*. This shall also hold good for any relevant provisions which the Community might adopt in the future in the field of competition.

2. To enable the principle contained in Article 8 (4) of Protocols 23 and 24 of the EEA Agreement to be put into effect, the Commission shall grant an authorization to the representatives of the EFTA Surveillance Authority to enable them to participate in the investigations referred to in that provision.

Article 6

1. When individual cases falling within Articles 53 and 54 of the EEA Agreement are referred to the EFTA Surveillance Authority in accordance with Article 56 of the EEA Agreement, the Commission shall carry out those tasks entrusted to it by Protocol 23 in close and permanent liaison with the competent authorities of the Member States.

2. In particular, the Commission shall forward to the Member States, without delay, notifications, information and any other documents forwarded by the EFTA Surveillance Authority in accordance with Articles 2, 3, 4, 6, 7 and 8 of Protocol 23.

3. Should the Member States wish to present formal written observations in individual cases dealt with by the EFTA Surveillance Authority, those observations shall be forwarded to the Commission, which will lend its good offices to find a commonly acceptable solution at Community level reflecting the unanimous opinion of the Member States which have forwarded observations.

The Commission shall present the Community position, once it is defined, to the EFTA Surveillance Authority.

If no such position has been adopted within 30 days of the date referred to in Article 2 of Protocol 23, the observations of the Member States and the Commission shall be forwarded together by the Commission to the EFTA Surveillance Authority.

⁽¹⁾ OJ No L 395, 30. 12. 1989, p. 1.

4. Paragraph 3 shall apply without prejudice to the possibility for Member States to participate in meetings of the EFTA Advisory Committee in accordance with Protocol 23.

Article 7

If, in order to ensure that the EEA Agreement functions properly, the EFTA States are consulted on draft measures which the Commission proposes to take when exercising its executive powers, in spheres in which the Banking Advisory Committee and the Insurance Committee are competent, the chairman and vice-chairman of the former and the chairman and the officers of the latter shall be associated with such consultation.

Article 8

1. Pursuant to Article 4 (1) of Protocol 38 of the EEA Agreement, the Commission shall determine, on behalf of the Community, the share of each beneficiary region in the overall level of financial assistance from the financial mechanism provided for in Part VIII of the EEA Agreement. These shares shall be determined for a five-year period in the light of the beneficiary regions' relative level of economic development and population size and other relevant factors.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 28 November 1994.

2. The Commission shall communicate its decision to the Council and thereafter to the EFTA States and to the European Investment Bank at the earliest opportunity after the adoption by the Council of this Regulation.

3. The annual commitments in individual regions shall take into account the rate at which projects are presented for financing, as well as the total annual commitments provided under Protocol 38 of the EEA Agreement. The Commission shall make the necessary arrangements with the European Investment Bank and the EFTA Financial Mechanism Committee to ensure that the annual commitments to individual regions do not prejudice the five-year shares as determined under paragraph 1 of this Article.

Article 9

The Member States shall take any measures necessary to ensure that obligations deriving from the EEA Agreement for the Community are fulfilled.

Article 10

This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Communities*.

For the Council

The President

K. KINKEL
