

EU/Switzerland

Member states circumspect about Berne's proposals

By Tanguy Verhoosel | Tuesday 02 October 2012

Experts from the EU27 started, on 1 October, scrutinising proposals that Switzerland has come up with to resolve the institutional headache that is poisoning its relations with the EU. Their initial reaction was lukewarm and not much less negative than the European Commission's reaction. The file's passage to the Council's European Free Trade Area (EFTA) group marks, for the EU, the second stage in a long process that began on 26 September. On that day, the Commission approved a 'fiche' analysing the Swiss proposals "on interinstitutional relations between the Union and Switzerland" that the President of the Swiss Confederation, Eveline Widmer-Schlumpf, sent to the President of the Commission, José Manuel Barroso, on 15 June (see *Europolitics*4495).

The Swiss daily newspaper *Le Temps* obtained a version (probably a provisional one) of this document, which was sent to the EU27 to feed into their own thinking process.

Their ministers of foreign affairs will, on 10 December, adopt new conclusions on relations between the EU and EFTA countries, of which Switzerland is one. In December 2010, they had called for a modernisation of the bilateral process as the current system of sectoral agreements has, in their view, "clearly reached its limits".

Between now and then, the Secretary-General of the European External Action Service, David O'Sullivan, will go (in principle before the end of October) to Berne to set out his point of view to the Swiss Secretary of State for Foreign Affairs, Yves Rossier. Meanwhile, Berne is abstaining from making any comment. "At this stage there is no EU position on the institutional proposals of the Federal Council [Swiss government]. It is therefore not appropriate that we comment on this issue," said the Swiss Integration Office.

The Commission's opinion is very negative because Switzerland is not meeting its expectations nor those of some MEPs. In fact, on 12 September, six MEPs, all members of the EPP, complained to the Commission about "considerable gaps" in the Swiss proposals (4489). By contrast, a diplomatic source said that the EU27 have been a bit more cautious. "The Swiss proposals do pose problems for us," says the source. "But at least they have the advantage of existing, which provides a basis for discussion".

In reality, the member states are caught between two stools. They know that the firmer the EU shows itself to be towards Berne on the institutional front, the less Switzerland will be inclined to make concessions on the extremely sensitive issue of taxation.

Discussions have been kicked off in the area of company taxation and negotiations are meant to open on the taxation of savings. The Swiss Secretary of State for International Financial Issues, Michael Ambühl, will go to the Commission in mid-October to discuss these issues.

The Swiss institutional offer is focused on "the cardinal objective of ensuring homogeneity in the common rules created by agreements between Switzerland and the EU" and revolve around four

axes: adapting agreements to the developments in EU regulation and case law, monitoring and interpreting agreements and the settlement of disputes.

Everyone in Brussels is delighted with this objective of homogeneity set out by Berne as well as its wish to adapt agreements to changes in EU law in a dynamic way. But they are not (at all) delighted with the means that it envisages to use, in a reduced framework, which is unacceptable for the Commission. Switzerland suggests, to start with, finding a solution in the framework agreement on electricity currently being negotiated, which could then serve as a “model” for future agreements related to access to the EU market. The EU is demanding a “horizontal solution” that can be transposed to all agreements, those in force and those to come.

The pinch can be felt at several other levels.

According to *Le Temps*, the Commission is particularly unhappy “that Switzerland is not clarifying the circumstances in which it would be unable to take up the *acquis*” of the EU. In its letter of 15 June, the Swiss government underlined that the EU could then “take appropriate compensation measures, whose proportionality might be subject to the scrutiny of an arbitration body”.

The Swiss proposals relating to monitoring the (correct) application of agreements also leaves a lot to be desired, says the Commission. Switzerland wants to entrust this mission, on its territory, to a “national independent authority,” whose competences “would be comparable to those of the Commission” in the EU.

The Commission, for its part, wants Switzerland to subject itself to an authority from a supranational supervisory body. It has already agreed to do this as part of the agreement on air transport reached in 1999 by recognising the competences of the Commission and the EU Court of Justice in this area. For the Commission it is not acceptable that Switzerland can supervise itself or entrust its Federal Court with the task of deciding on issues of law that the Swiss authority might submit to it. The dispute settlement mechanism that Switzerland proposes setting up also poses a problem for the EU.

According to Berne, the differences of opinion should be discussed and resolved at the political level within mixed committees tasked with managing the agreements. Where that proves impossible, the damaged party could also take “appropriate and proportionate compensation measures” for which an “arbitration body” would be tasked with examining the accuracy.

The Commission and several EU member states are against setting up this mediation procedure, which could encroach on the competences of the ECJ. The idea of creating a special EFTA chamber within the EJC (created in the context of the European Economic Area) has already been raised in Brussels. The stumbling block is that Berne immediately knocked holes in that idea.

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