

Notes on the

Continuation of the 2601th COREPER on 17.10.2016, here: Preparation of the RfAB / Trade on 18.10.2016 (CETA)

I. Summary

Even in today's special COREPER-II referral, progress has not yet been reached on the CETA decisions for the signature, provisional application and conclusion of the agreement as well as the "joint declaration" of CAN and the EU. DEU informed, according to instructions, about its ability to approve the Council decisions for provisional application and for signing in accordance with the three conditions imposed by the Constitutional Court. HUN also announced that it would be able to agree to the texts. BGR, ROU, AUT, POL and SVN maintained their known reservations, but expressed the hope that they could be lifted in tomorrow's meeting. Only BEL was unable to send positive signals (not even with a view to tomorrow's Council) due to federal issues and the need for all regions to agree on the areas covered by the joint responsibility.

III. In detail

1. Presidency wanted to take stock of the current state of affairs before tomorrow's FAC / trade, and to examine the outstanding questions with today's COREPER-II. After several debates about various reservations of some MS, some of these would still be maintained, but also positive developments could be reported.

Last week the work on the "joint declaration" had been stabilized and concluded from the perspective of the Presidency.

2. COM / Demarty reiterated the importance of the Agreement for EU Trade Policy and called on the MS to remove its reservations whenever possible, despite some remaining problems. As a result of the Constitutional Court judgment on October 13, 2016, intensive contacts were held with DEU. COM understood the fundamental systemic significance of the judgment for DEU, and COM would work intensively on the outstanding questions. From COM's perspective it seemed fundamental to now merely promote the implementation of legal elements of the judgement and not create new points which were not consistent with this judgment.

3. Exchange of views:

DEU informed, according to the instructions, about its ability to approve the Council decisions for provisional application and for signing in accordance with the three conditions laid down by the Constitutional Court and gave the corresponding details.

Since, however, the written grounds of the judgment were only available in writing today (Oct. 17th), an additional reservation had to be made.

SVN had started today with the parliamentary resolution, a continuation of the

debate was planned for tomorrow. If no adoption takes place until midnight, the government would give priority for the government's position, but can not yet abolish the parliamentary reservation.

ROU and BGR saw positive developments in the topic of visa liberalization, a solution had not yet been formally and publicly confirmed, so the reservation not be lifted.

AUT also had a reservation pending the conclusion of the intergovernmental consultations, but hopes that this could be lifted at the Council meeting.

BEL was unable to send positive signals (not even with a view to tomorrow's Council meeting) due to federal issues and the need for all regions to agree on the areas covered by the joint responsibility. At the present time, an attempt would be made to find a solution with the help of the COM, with the option to formulate further explanations.

POL reiterated its intention to include a unilateral declaration on CETA in the minutes at the time of signature.

HUN had completed the internal procedures and signing authority for tomorrow. A declaration related to internal laws would be included.

4. Response COM & Legal Service/ Council:

To DEU:

- provisional application: Legal Service saw no problem with the inclusion of a statement about the areas falling within competencies of the EU; this aspect would be part of EU law. Regarding the aspects of mixed EU / MS competence, COM considered this change in the Council decision to be difficult by means of a legally binding statement, since CAN also needed legal certainty and this was too far-reaching.
- Mixed CETA Committee and Democratic backward linkage: COM considered an interinstitutional agreement too cumbersome, possibly creating unnecessary complications. Legal Service recommended a joint Council decision; this would be in line with the agreement on the functioning of the Council.
- Notification pursuant to Article 30.7 para. 3 lit. c.: Regarding a legal declaration by the Germany, which, in the event of a subsequent Constitutional Court decision, would considerably explain the interpretation of the contract and the possible powers to terminate the provisional application Legal Service saw no contradiction to the agreement. COM urgently asked to submit a text draft.

Presidency concluded that it was hoped to clarify all concerns during the Council session and to abolish the remaining reservations. Most of the issues did not concern the substance of the texts, but political aspects.

COM also stated that no drafting exercise would be possible at the Council meeting. If no agreement was possible, the European Council (20/21/10) would be called upon to make a decision.