



**EUROPEAN FREE TRADE ASSOCIATION
CONSULTATIVE COMMITTEE**

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**Opinion on
The Treaty of Lisbon and the EEA**

Co-rapporteurs: Ms Signe Pape (Norwegian Association of Local and Regional Authorities)
Ms Wenche Paulsrud (Norwegian Confederation of Vocational Unions)

I INTRODUCTION

- 1.1 On 13 December 2007, the Heads of State and Governments of the EU's 27 Member States signed what had been become known as the EU Reform Treaty. This indicated the end of a long period in which the EU had gone through a Convention on the Future of Europe (February 2002-July 2003), an intergovernmental conference (October 2003-July 2004), the signing of the Treaty on a Constitution for Europe (October 2004), the "no" votes in referenda in France and the Netherlands (May and June 2005), a subsequent period of reflection, and finally a new intergovernmental conference (July-October 2007) which led to a political agreement on the new Reform Treaty and its signing in Lisbon in December 2007. As opposed to the Treaty on a Constitution for Europe, which would have replaced and consolidated the existing treaties, the new text, called the Treaty of Lisbon, amends these treaties.¹ It will undergo ratification in the EU-27 in the course of 2008 with the aim being entry into force in January 2009.
- 1.2 The above-mentioned reform process revealed a solid determination by the EU to reform institutionally, moving toward closer integration and more effective decision-making, and to prepare the Union and its Member States for challenges such as globalisation, climate change, energy security, and the need for more, better and sustainable jobs. The intention was also to bring European governance closer to citizens, civil society and social partners, and this way make the EU more democratic and transparent.
- 1.3 The EEA EFTA States cannot ignore such reforms as they could have far-reaching impact on the internal market in which the EEA EFTA States fully participate. This opinion by the EFTA Consultative Committee² discusses the impact of the Treaty of Lisbon on the EEA Agreement and the extent to which the EEA EFTA States need to respond to the latest changes on the EU side. More widely, and maybe more importantly, it also explores the radically changed landscape in which the EEA Agreement now operates, after 15 years of EU reforms including four Treaty changes³ (providing that the Treaty of Lisbon is ratified) and three enlargement processes.

II THE TREATY OF LISBON AND THE EEA

- 2.1 The Treaty of Lisbon amends the existing treaties and is accompanied by 13 protocols, which have the same legal value as the treaties of which they form an integral part, and 65 declarations, which are considered expressions of political rather than legal commitment but which can be taken into consideration by the Court of Justice. The latest intergovernmental conference was to a large extent and regrettably conducted "behind closed doors" and thus failed to meet a key objective of the reform process: simplification. In the end it produced a text so

¹ The "Treaty on European Union", and the "Treaty establishing the European Community" which the Treaty of Lisbon renames the "Treaty on the Functioning of the European Union"

² The EFTA Consultative Committee is a forum for social partner organisations in the four EFTA countries of Iceland, Liechtenstein, Norway and Switzerland.

³ Treaty of Maastricht (1992), Treaty of Amsterdam (1997), Treaty of Nice (2000), Treaty of Lisbon (2007)

complex that it at one point was simply referred to as the treaty of footnotes. And a simple reading and understanding of the text, of which no official consolidated version exists, is hence difficult. While the reforms entailed in the new Treaty could prove to make the EU more democratic in terms of institutional change and thus increase its legitimacy, the reform process has not succeeded in bringing European governance closer to citizens, or made the EU more democratic or transparent. More information and involvement exercises will now be needed to make the content and impact of the final text more known to stakeholders at all levels of government.

- 2.2 The Treaty of Lisbon, like its predecessors, is unlikely to drastically change the overall functioning of the EEA, but it could, like the previous amending treaties, introduce elements of relevance to the EEA cooperation. It is therefore important that the EEA EFTA States undertake a thorough legal and political analysis of the new Treaty and analyse its impact on the EEA Agreement. They should do so well in advance of the Treaty entering into force and in close dialogue with the Consultative Committee. The latter has below indicated some aspects of specific interest to the social partners, which it would urge the EEA EFTA States to address in its assessment.
- 2.3 An analysis would not withstand possible hiccups in the ratification process or the general difficulty of judging the impact of new measures on the future functioning of the EU and the EEA. So far only five Member States (as of 27 February 2008) have ratified the Treaty, and the Irish referendum and several national parliamentary votes could pose a challenge. However, the EEA EFTA States cannot afford to wait until the Treaty has entered into force with a thorough analysis and the Consultative Committee recommends that they begin this work as soon as possible while monitoring the ratification process. In addition to an analysis on the legal and political implications of the new Treaty, the EEA EFTA States should also initiate information activities for relevant stakeholders at home and in Brussels.

Legal personality

- 2.4 The Lisbon Treaty provides the European Union with legal personality. Under the existing treaties it is only the European Community that has legal personality, and when the EEA Agreement was signed, it was the European Economic Community (and the European Coal and Steel Community) together with the EEA States that were named as contracting parties. Conferral of legal personality on the European Union may have implications for agreements and treaties that the Community has signed and that the Union will sign with non-EU Member States. The Consultative Committee is confident that the rights and obligations of the European Community will be transferred to the European Union once it has been conferred with legal personality. However, the Committee asks the EEA EFTA States to keep an eye on this process with a view to ensuring the smooth and uninterrupted continuation of the EEA Agreement.
- 2.5 With the conferral of legal personality on the European Union, the “Court of Justice of the European Communities” would consequently be renamed “the

Court of Justice of the European Union”, and the existing distinction between Community and European Union case law would cease to exist. The Treaty of Lisbon would also put the two treaties on an equal footing for the first time, in contrast to existing case law which recognises the primacy of the EC Treaty, on which the EEA Agreement is based, over the Treaty on European Union. The question is whether these changes would have any consequences for the EEA Agreement. Article 105(2) of the EEA Agreement states that the “EEA Joint Committee shall keep under constant review the development of the case law of the Court of Justice of the European Communities and the EFTA Court”. With the Court of Justice of the European Communities ceasing to exist as such, it would be important to assess whether, within the overall case law of the new “Court of Justice of the European Union”, it would be increasingly difficult to identify what case law to review. It is important that it in the future will be possible to easily identify EEA relevant case law.

Institutional reform and new EFTA counterparts

- 2.6 The Treaty of Lisbon introduces important reforms to the EU institutions which, together with simplified working methods and voting rules are meant to make the EU more efficient and improve its ability to act in areas of major priority. The European Commission maintains its central role as the guardian of the treaties and initiator of legislation but will have its size reduced from 2014 to represent 2/3 of the Member States, with members chosen according to a revolving system among the latter. The Treaty also introduces a stable presidency with a full-time president elected for a 2 ½-year period (renewable once) which will mean much less focus on national mandates and priorities. However, the rotating national presidencies will continue to exist in parallel to the permanent presidency and will chair all council meetings except for the European Council and the Foreign Affairs Council. With regard to external relations, the present functions of the High Representative of the Union for Foreign Affairs and Security Policy and the European Commissioner for external relations will be merged and will at the same time serve as Vice-President of the European Commission and Chair of the Foreign Affairs Council of the Council of Ministers.
- 2.7 While it is still too early to judge how the new institutional set-up would work in practice on the EU side, specifically with regard to the interaction and relationship between the three top positions (President of the Commission, President of the Council, and the new “Foreign Minister”) and between the permanent and rotating national presidencies, it is clear that these changes will be very important, and possibly pose a challenge for the EEA EFTA States. So far their key interlocutors have been the Commission (External Relations Directorate General) and the national EU presidencies (chairing the EFTA Group in the Council), however, it is not clear who would chair the EFTA Group in the Council under a new institutional regime (the national or permanent presidency?) or represent the EU side in the EEA Council (the new EU “Foreign Minister”, a minister representing the rotating national presidency, or the permanent president of the European Council?). It will be essential for the EEA EFTA States to quickly familiarise themselves with the new institutional landscape in order to be able to communicate and continue close cooperation

with the EU in the most effective manner. To this end, information activities and workshops could help the EFTA side understand the altered landscape in which its stakeholders would have to operate from 2009.

The role of the social partners

- 2.8 The social partner organisations at the European level, of which the EFTA social partner organisations are active members, have throughout the reform process called for a special recognition of the social partners and the social dialogue. The social dialogue is key to well-functioning labour market relations, and has the potential of resolving important economic and social issues and boosting economic progress. The essential role of the social partner organisations in European society, specifically as a bridge between policy makers and employees and employers, justifies their specific recognition in the Treaty of Lisbon. The Consultative Committee hence welcomes the following addition to the Treaty on the functioning of the European Union which was first included in the Constitutional Treaty:

“The Union recognises and promotes the role of the social partners at its level, taking into account the diversity of national systems. It shall facilitate dialogue between the social partners, respecting their autonomy.

The Tripartite Social Summit for Growth and Employment shall contribute to social dialogue.”⁴

- 2.9 Following up on its opinion on the then draft Constitutional Treaty from June 2003, the Consultative Committee reiterates the importance of analysing the impact of this article granting social partners a specific role within a new treaty, and of seeing, as a consequence, whether it would be relevant to negotiate wider competences for consultations between EFTA social partners and the EEA EFTA States.

A more democratic European Union

- 2.10 The Treaty of Lisbon strengthens the role of the European Parliament with regard to EU legislation, the EU budget and international agreements. The foreseen extension of the co-decision procedure, now renamed the “ordinary legislative procedure” will be specifically important and put the Parliament on an equal footing with the Council for a vast majority of EU legislation. The Treaty also grants increased powers to national parliaments including the right to indicate whether a new legislative proposal complies with the subsidiarity principle or not.⁵ If more than a third of national parliaments believe it does not, the Commission must present a reasoned opinion why it believes the proposal complies with subsidiarity before re-introducing it. A reinforced control mechanism has also been introduced: A simple majority of national parliaments

⁴ New article 136a under the renamed title “Social Policy” in the renamed Treaty on the functioning of the European Union

⁵ See “Protocol on the role of national parliaments in the European Union” and “Protocol on the application of the principles of subsidiarity and proportionality”.

(i.e. today 14) could trigger a special procedure. If 55% of the Member States in the Council or a simple majority in the European Parliament would agree that a legislative proposal was beyond the competences of the EU, the Commission would be forced to withdraw the proposal. Finally, the Treaty gives a stronger voice to the EU citizens through the Citizens' Initiative whereby one million citizens from a number of Member States (the number to be decided by the European Parliament and Council in accordance with the ordinary legislative procedure) will have the possibility to call on the Commission to bring forward new policy proposals.

- 2.11 While increased powers to the European Parliament, the national parliaments and the European citizens could enhance democracy and increase legitimacy in the European Union, paradoxically they are likely to have the opposite effect on the EEA cooperation and to further increase the democratic deficit already inherent in the EEA Agreement. While the EEA Agreement gives EEA EFTA experts and representatives the opportunity to influence the shaping of initial proposals by the Commission, the EEA EFTA States have no representation in the European Parliament which is now enhancing its powers. Furthermore, new provisions for national parliaments to block legislative proposals would not include national EEA EFTA parliaments although some proposals could be of EEA relevance, and, finally, citizens in the EEA EFTA States would naturally not be entitled to sign a petition for the Commission to bring forward policy proposals of potential EEA relevance.
- 2.12 Provided the Treaty of Lisbon is ratified, the EEA EFTA States will need to find ways of influencing policy-making beyond the stage where proposals are initially shaped by the European Commission and, to an increasing extent, convey their positions also to the Members of European Parliament. This will require more knowledge of the EU decision-making procedure and of the European Parliament, as well as more resources dedicated to this work. In addition, the national EEA EFTA parliaments should explore whether it would at all be possible for the Commission to forward EEA relevant proposals to them as well for comments. If this turns out to be difficult, which is likely, they should explore ways of working more closely with national parliaments in neighbouring EU countries to influence EU decision-making. Finally, they should increase their activities at home by enhancing early warning mechanisms and impact assessments on new EU initiatives in close cooperation with relevant stakeholders, as well as strengthening their Brussels activity by establishing representative offices there. An update on these considerations and possible future actions from the EEA EFTA parliaments would be of great interest to the social partners.
- 2.13 Since its creation in 1994, the EU Committee of the Regions has had its powers enhanced by every treaty reform, and the Treaty of Lisbon is no exception. Even though, together with the European Economic and Social Committee, the Committee of the Region is still not considered an EU institution, it is given the right to bring a case of violation of the subsidiarity principle, and to defend its own prerogative before the Court of Justice. The increased powers of the Committee are in ever starker contrast to the lack of a similar body in the EFTA and EEA system. Elected representatives of local and regional authorities in the

EFTA countries, with the support of the EFTA social partners and EFTA parliamentarians, have requested to be more involved in EFTA and the EEA, through the establishment of a Committee along the lines of the Consultative Committee and the Parliamentary Committee, and are currently awaiting a response from the EFTA Ministers. The new Treaty makes it even more important to find a satisfactory solution to these needs in the near future.

The end of the pillar structure and new EU policies

- 2.14 The Treaty of Lisbon abolishes the so-called three-pillar structure which was introduced by the Treaty of Maastricht. Provided the Treaty is ratified, the “European Community” will cease to exist and there will hence be no reference to “Community legislation” (currently first pillar/internal market/EEA legislation) or the “Community method” (co-decision between the European Parliament and the Council of Ministers, and qualified majority in the Council of Ministers) which currently applies to all first pillar/internal market/EEA legislation. The “Community method” will be referred to as the “ordinary legislative procedure” and will be extended to several new areas, including legislation in what is currently considered the third pillar (justice and home affairs). A complete list of the new “Union policies and internal actions” is included in Part III of the amended Treaty on the functioning of the European Union and also covers new provisions and enhanced EU powers in areas such as energy and climate policy.
- 2.15 The Consultative Committee expects the EEA EFTA States to undertake a thorough assessment of the Union policies, with the aim of maintaining the integrity of the EEA Agreement, and to communicate this assessment to the Consultative Committee. The Treaty of Lisbon continues a trend whereby the internal market (and thus the EEA) constitutes an ever smaller share of all EU activities and policies. This, together with the absence of a pillar structure and the transfer of new competences to the EU level, will make it increasingly difficult to establish EEA relevance of new, wide-reaching EU proposals. This will raise uncertainty and open up for political judgements and differences as to whether or not such proposals should or could be incorporated into the EEA Agreement. Provided that the Treaty of Lisbon is ratified, the EEA EFTA States will need to work even closer with the European Commission to establish EEA relevance at an early stage, to avoid unnecessary delays and to ensure that the homogeneity of the EEA is maintained.
- 2.16 The Consultative Committee also notes that the Treaty of Lisbon includes recognition of the rights, freedoms and principles of the Charter of Fundamental Rights and hence makes the latter legally binding, with the exception of Britain and Poland who have opted out of these provisions. Some open questions remain as to the implications of these new provisions for the EU, and possibly also for the EEA. Are the rights linked to EU citizenship and hence not applicable to citizens in the EEA EFTA States? Or are they linked to territory, i.e. rights you have in the EU and possibly in the EEA? Do the British and Polish opt-outs refer to British and Polish citizens (wherever they are in the EU) or to EU citizens (and even citizens from the EEA EFTA States) in Britain and Poland? These questions might in the end not have any implications for the EEA cooperation,

but the Consultative Committee would ask the EEA EFTA States to include them in their overall assessment of the Treaty of Lisbon.

- 2.17 Finally, the Consultative Committee would like to turn the EEA EFTA States' attention to the new protocol on services of general interest (SGIs). A key question is whether the protocol introduces greater legal clarity for these services in the EEA. The protocol underlines the essential role of national, regional and local authorities in providing SGIs, the diversity between various services, and the importance of their high level of quality, safety and affordability. In its Single Market Review package of November 2007,⁶ the European Commission welcomed the new protocol and, on the basis of the legal clarity it would provide, ruled out further horizontal measures. To further assist users, it also published Q&A documents on state aid and public procurement, and announced its intention to develop an interactive service system. In as far as new initiatives and provisions in the field of services of general interest fall within the EEA Agreement this is naturally also of relevance to stakeholders in the EEA EFTA States. It is therefore important that the EEA EFTA authorities engage in a close dialogue with the Commission on new initiatives, and with relevant stakeholders at home on their needs for information and assistance with regard to the application of EEA relevant provisions in this field, and with regard to EEA EFTA involvement in EU activities and systems.

Global ambitions

- 2.18 In October 2007, the European Commission published a so-called "vision paper" on how to succeed in the age of globalisation.⁷ This formed part of its contribution to the meeting of Heads of State and Government in Brussels that month and set out its ideas on how to further strengthen the Lisbon Strategy as the EU's key response to the challenges of globalisation. Since the start of the last EU reform process, globalisation had moved to the heart of the EU policy agenda, and it was no longer just a question of how to develop the EU internally (by completing the single market, developing more and better jobs, ensuring sustainable development, and strengthening the European social models), but also a question of how to more actively influence and shape the global agenda and response to new challenges, such as climate change, and how, to the extent possible, export European values, rules and norms to third-country partners. This sentiment was also reflected in the European Commission's staff working paper on the external dimension of the single market review of November 2007,⁸ and in the changes proposed by the Treaty of Lisbon to the existing treaties. With regard to the latter, the new Chapter I of the renamed Title V of the Treaty on

⁶ A European Commission policy package on the single market package for the 21st century, published on 20 November 2007, which includes a communication on the single market; a communication on a new social vision for Europe; and a communication on services of general interest including social services of general interest; and several accompanying staff working papers - http://ec.europa.eu/citizens_agenda/index_en.htm

⁷ European Commission Communication on "The European Interest: Succeeding in the age of globalisation", 3 October 2007, COM(2007) 581 final

⁸ See footnote 6.

European Union⁹ states that the “Union’s action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world”. This includes among others democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, and the principles of equality and solidarity.

- 2.19 The EU’s external relations are not part of the EEA Agreement and as such not formally EEA relevant. However, the Consultative Committee urges the EEA EFTA States to closely monitor new developments and activities on the EU side and to use the opportunity in the EEA Council to discuss the challenges of globalisation. Sharing similar values and principles as the EU, it should be advantageous for the EFTA Member States to follow to what extent the EU succeeds in exporting European values, rules and norms while fully respecting the independence of its partner countries. In addition, it will be particularly important to monitor to what extent the standards and provisions regulating the internal market, in which the EEA EFTA States fully participate, will become standards also outside the EEA. Finally, the EEA EFTA States need to monitor to what extent new EU partners, through the European Neighbourhood Policy (ENP), are offered a stake in the internal market and participation in EU programmes, in which case they would need to inform the relevant partner countries of the EEA Agreement and their own participation in EU activities.

III A NEW CONTEXT FOR THE EEA: HOW SHOULD EFTA ADAPT?

- 3.1 While the Treaty of Lisbon poses several challenges to the EEA EFTA States, as shown above, it is not so much the Treaty itself as the long reform process that it represents which is increasingly challenging the functioning of the EEA. Having been in operation for almost 15 years, the EEA has witnessed fundamental changes in the EU, including the creation of the European Union by the Treaty of Maastricht (signed three months before the EEA Agreement); the significant extension of the scope of EU activities into all areas of public policy through three further treaty changes (provided the Treaty of Lisbon is ratified); three enlargement rounds (1995, 2004, 2007) extending the Union from 12 to 27 members; further development of the single market; introduction of the euro; development of a foreign, security and defence policy; integration in justice and home affairs; creation of a European Neighbourhood Policy (ENP); and development of the Lisbon Strategy and new forms of governance (i.e. the Open Method of Coordination).
- 3.2 In November 2007, the EEA Joint Parliamentary Committee produced a working paper on the future perspectives of the EEA¹⁰ in which it touched upon some of these changes and posed questions as to how the EEA EFTA States should deal with new challenges and a new context for the EEA cooperation. The Consultative Committee has and will continue to follow the debate in the

⁹ Proposed new Chapter 1 on “General Provisions on the Union’s External Action” under renamed Title V “General Provisions on the Union’s External Action and Specific Provisions on the Common Foreign and Security Policy”

¹⁰ EEA Joint Parliamentary Committee Working Paper on “Future perspectives for the European Economic Area”, agreed on 15 November 2007, Ref. 1078773

EEA Joint Parliamentary Committee, and has drawn on some of the points in the parliamentary paper below.

- 3.3 With the development of new EU policies and the extension of EU competence into new areas of public policy, the internal market, and thus the EEA, has become a smaller part of the overall EU policy package. In addition, the three EU/EEA enlargements have drastically shifted the EU-EFTA power balance in the EEA, from an EEA EFTA-6/EU-12 divide to a more drastic EEA EFTA-3/EU-27 divide. Not only is the EU now much larger, it is also much more heterogeneous and to a greater extent less flexible in accommodating specific EFTA concerns. There also seems to be a lack of knowledge, forgetfulness or even neglect on the part of the EU when it comes to the EEA, which was most recently reflected in the Single Market Review package in which the EEA or EFTA was not mentioned once, despite the package's covering the very core of the EEA cooperation. This poses a challenge for the EEA EFTA States and requires much stronger efforts by all EEA EFTA stakeholders to promote the EEA and EFTA in Brussels and specifically within the EU institutions.
- 3.4 A more heterogeneous EU also means that more investments are needed to strengthen economic and social cohesion in the EEA, and the EU will most likely demand continued financial contributions from the EEA EFTA States when the existing EEA and Norwegian financial mechanisms expire at the end of April 2009. Both the EEA enlargement negotiations in 2003 and in 2006-2007 focused on the financial contributions and both proved time-consuming and difficult. In 2003-04 a simultaneous EU/EEA enlargement could still be secured, but this was not possible in 2007 when the negotiations went 7 months over time. The Consultative Committee reiterates its recommendations from 2007 that the EEA EFTA States must start preparing for the negotiations with the EU on the post-2009 financial contributions as soon as possible to ensure that the delays experienced in 2007 will not be repeated in 2009. Bearing in mind the EEA EFTA social partners' active involvement in the existing financial mechanisms and the latter's importance for industrial relations and social dialogue in the enlarged EEA, the Consultative Committee urges the relevant EEA EFTA authorities to keep the Committee informed of latest developments, and to take on board the social partners' comments throughout the negotiations with the EU.
- 3.5 The Consultative Committee also notes the changes that have taken place in the EU over the last decade with regard to new policy-making methods and instruments, which both have had an impact on the functioning of the EEA. Not only has the European Parliament enhanced its powers through an extension of the co-decision procedure, the European Commission has experienced a paradigm shift as concerns regulatory policy, moving away from a strictly legal approach through traditional law-making towards increased focus on economic and social impact assessments and non-legal instruments through the Better Regulation agenda, and towards more market surveillance of the internal market. While recognising that some legislation still needs to be put in place, the recent Single Market Review package underlined this trend and the end of the era of legislation which had contributed to the internal market in the first place. Now the key focus would be on how to make the internal market work in practice on

the ground, with the Commission in a key manager and monitor position. Also, with increasing work load in new policy areas, the Commission has decentralised and handed over tasks to new agencies. Finally, the Member States have become more involved in the functioning of the EU, beyond their existing activities in the Council, through increased focus on national implementation of internal market legislation and increased Member State responsibility for national reform programmes under the Lisbon Strategy targets.

- 3.6 Reflecting these developments, the instruments used to reach new EU objectives have also changed, including more “soft-law” (non-legal) measures such as recommendations, communications, strategies, action plans, guidelines, codes of conduct, targets, benchmarks, co-regulation, and self-regulation. It should be noted that the use of these measures can be rather controversial within the EU itself, with the European Parliament fearing they could undermine the Parliament’s role as a legislator, and other stakeholders complaining that too much emphasis has been put on “less” rather than “better” regulation.
- 3.7 The EU is also increasingly using the Open Method of Coordination (OMC) as a framework for cooperation between Member States towards common objectives, to be reached by mutual learning and peer pressure on the basis of non-legislative instruments such as targets, benchmarks and indicators. The OMC covers a whole range of policy areas where the key competence lies with the Member States but where the EU has a coordinating and monitoring role. The method has become an integral part of the Lisbon Strategy, in which the EEA EFTA States are not formally included, but in which they participate actively through the internal market and a wide range of EU programmes. Thanks to the latter the EEA EFTA States are already participating in several OMC cycles. With the OMC becoming the main tool in the new generation of EU programmes in 2007-2013, this participation will further increase, and its legal basis will improve through the new programme decisions already incorporated into the EEA Agreement. However, challenges remain, with the OMC increasingly linked to the reporting and implementation process around the national reform programmes, from which EEA EFTA States are naturally excluded. The lack of EEA EFTA participation in committees and high level groups that manage and/or support the EU programmes also remains a challenge.
- 3.8 The above-mentioned changes were not envisaged when the EEA Agreement was negotiated at the beginning of the 1990s and do not necessarily fit very well with an agreement based purely on a legal approach, a clear distinction between internal market and other EU activities, and a central role for the European Commission. Questions will hence arise as to the application of non-legal instruments that cover areas of EEA relevance; the incorporation into the EEA Agreement of broad-reaching proposals that are relevant to the EEA but also include elements that are not covered by the EEA Agreement (e.g. the Emission Trading Scheme Directive and the Free Movement of Persons Directive); proposals that are formally not covered by the EEA but are clearly relevant to the EEA (e.g. migration policy); and the changed context for EEA policy-shaping.

3.9 Due to disagreements partly within the EFTA group itself, and partly between EFTA and the EU with regard to the EEA relevance of new cross-cutting proposals, serious delays have already occurred with regard to the incorporation of new legal acts into the EEA Agreement (e.g. the Emission Trading Scheme Directive and the Free Movement of Persons Directive). This trend is likely to continue with the absence of the pillar-structure, the lack of distinction on the EU side between internal market legislation and other EU activities, and the extension of EU competence into new policy areas. Ultimately, this could threaten the homogeneity of the EEA. The EEA EFTA States will have to work even closer with each other and with the EU to solve the status of new sensitive legal acts and policy initiatives in order to avoid unnecessary delays and to ensure the continued homogeneity of the EEA. They will also, as pointed out above, have to find new ways of influencing new EEA relevant legislation and policy initiatives beyond the channels already provided for in the EEA Agreement, with a focus on establishing closer links with the European Parliament.

IV RECOMMENDATIONS

4.1 In conclusion, and based on the above, the EFTA Consultative Committee recommends that the relevant EEA EFTA authorities:

- undertake a detailed legal and political assessment of the Treaty of Lisbon, with focus on new aspects such as the legal personality of the EU, institutional reforms, enhanced powers for the European Parliament, the absence of a pillar-structure, the role of the social partners, the extension of EU competence into new policy areas, new powers to the national parliaments and the Committee of the Regions, and a new legal basis for services of general interest;
- present the outcome of this assessment to the Consultative Committee and other stakeholders and engage in a dialogue with the Committee on how to best adapt to the changes presented by the Treaty of Lisbon;
- look specifically at the consequences of an EU legal personality and EU institutional reform on the functioning of the EEA and establish who will be their future EU legal counterpart (party to the EEA Agreement) and political interlocutor (representative in the EEA Council);
- recognise and promote the role of the EEA EFTA social partners in all their relevant EEA work and analyse the possible consequences of the new article in the Treaty of Lisbon granting the social partners and the social dialogue a specific role;
- while the reforms on the EU side might not fundamentally change the functioning of the EEA, the EEA EFTA authorities should assess their impact with a view to ensuring the uninterrupted continuation of the EEA Agreement and the need to make the necessary adaptations at all levels of government, including the need to establish a Committee for local and regional authorities in the EFTA structure;

- organise information activities at home and in Brussels to help relevant EEA EFTA stakeholders better understand and interact within the implications of the EU reform process for the EEA cooperation;
- familiarise themselves with the new institutional landscape on the EU side in order to be able to communicate and continue close cooperation with the EU in the most effective manner;
- monitor closely new initiatives with regard to the EU's external action as reflected in the so-called "vision paper" on "The European Interest: Succeeding in the age of globalisation" (October 2007), the European Commission staff working paper on the external dimension of the single market review (November 2007), and the Treaty of Lisbon (December 2007); and focus specifically on the possible extension of internal market standards and provisions to new partner countries and ensure that the latter are aware of the EEA and the full participation of the EEA EFTA States in the internal market;
- analyse more broadly the changes that have taken place in the EU since the EEA Agreement was signed in 1992 and the impact these have had on the EEA cooperation, including the increased use of so-called "soft law" (non-legal) instruments and the Open Method of Cooperation (OMC), both of which represent a radical shift from the traditional regulations, directives and decisions that are incorporated into the EEA Agreement;
- explore ways of participating more widely in relevant OMC processes on the EU side, specifically through the new generation of EU programmes 2007-2013, and use these processes to increase cooperation with other EEA States, share EEA EFTA best practice, and enhance the EEA EFTA decision shaping potential;
- due to the increasingly blurred distinction between internal market and other EU activities, find a way to more effectively establish EEA relevance of new wide-reaching EU proposals, and work closer within EFTA and with the EU side to avoid unnecessary delays with regard to incorporation of increasingly "sensitive" proposals into the EEA Agreement;
- develop closer relations with the European Parliament on the basis of its enhanced powers and fundamentally changed role in the EU decision-making procedure, and ensure that specific EEA EFTA concerns with regard to new EEA relevant proposals are not only conveyed to the European Commission, on the basis of existing provisions in the EEA Agreement, but increasingly also to the Members of European Parliament;
- promote the EEA and EFTA within the EU institutions in Brussels, and more widely in the EEA, to make sure EEA EFTA concerns are taken into consideration when new EEA relevant proposals are developed and implemented; and

- begin the preparations for negotiations with the EU on post-2009 financial contributions early enough to conclude them by 30 April 2009, and involve the social partners to the extent possible in such negotiations.
-