

EUROPEAN ECONOMIC AREA

STANDING COMMITTEE OF THE EFTA STATES

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SUBCOMMITTEE V ON LEGAL AND INSTITUTIONAL QUESTIONS

The Basic Features of the EEA Agreement

Note by Subcommittee V

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THE EUROPEAN ECONOMIC AREA

1. What is the European Economic Area?¹

The European Economic Area (EEA) brings together the EU Member States and three of the EFTA States (Iceland, Liechtenstein and Norway). It was established by the EEA Agreement, an international agreement which enables these three EFTA States to participate fully in the Single Market. It covers the four freedoms, i.e. the free movement of goods, capital, services and persons, plus competition and state aid rules and horizontal areas related to the four freedoms (see point 4 for an overview of what is included in the EEA Agreement).

The objective of the EEA Agreement is to create a homogenous European Economic Area. All relevant EU legislation in the field of the Single Market is integrated into the EEA Agreement so that it applies throughout the whole of the EEA, ensuring uniform application of laws relating to the Single Market.

2. Who are the Contracting Parties to the EEA Agreement?

The 28 EU Member States, together with the three EFTA States Iceland, Liechtenstein and Norway, make up the EEA Contracting Parties (the 31 EEA States). In everyday language the latter three go by the term “EEA EFTA States” in order to clarify that the other EFTA State, Switzerland, is not party to the EEA Agreement. However, in the EEA Agreement and legal texts linked to it (e.g. in Joint Committee Decisions (JCDs)) the term “EFTA States” refers to the three States and is also understood to exclude Switzerland.

The EEA Agreement states that when a State becomes a member of the European Union, it shall also apply to become party to the EEA Agreement (Article 128 EEA), thus leading to an enlargement of the EEA.

3. When did the EEA Agreement enter into force?

The EEA Agreement was signed in Porto on 2 May 1992 and entered into force on 1 January 1994.²

4. What is included in the EEA Agreement?

The EEA Agreement provides for the inclusion of EU legislation covering the four freedoms, i.e. the free movement of goods, services, persons and capital, as well as competition and state aid rules. In addition, the EEA Agreement covers the following horizontal policies: consumer protection, company law, environment, social policy, statistics, and provides for cooperation in several flanking policies such as research and technological development, education, training and youth, employment, tourism, culture, civil protection, enterprise, entrepreneurship and small and medium-sized enterprises.³ The EEA Agreement guarantees equal rights and obligations within the Single Market for citizens and economic operators in the EEA. Through Article 6 of

¹ For further reading, visit <http://www.efta.int>.

² Liechtenstein joined on 1 May 1995.

³ For a complete list and explanations of cooperation in individual areas, visit <http://www.efta.int/eea/policy-areas>.

the EEA Agreement, the case law of the Court of Justice of the European Union is also of relevance to the EEA Agreement, as the provisions of the EEA Agreement shall be interpreted in conformity with the relevant rulings of the Court given prior to the date of signature (i.e. 2 May 1992).

5. What is not covered by the EEA Agreement?

The EEA Agreement does *not* cover the following EU policies: common agriculture and fisheries policies (although the EEA Agreement contains provisions on trade in agricultural and fish products); customs union; common trade policy; common foreign and security policy; justice and home affairs (the EEA EFTA States are however part of the Schengen area); direct and indirect taxation; or economic and monetary union.

INSTITUTIONAL ASPECTS / THE TWO-PILLAR STRUCTURE

6. Who is responsible for the management of the EEA?

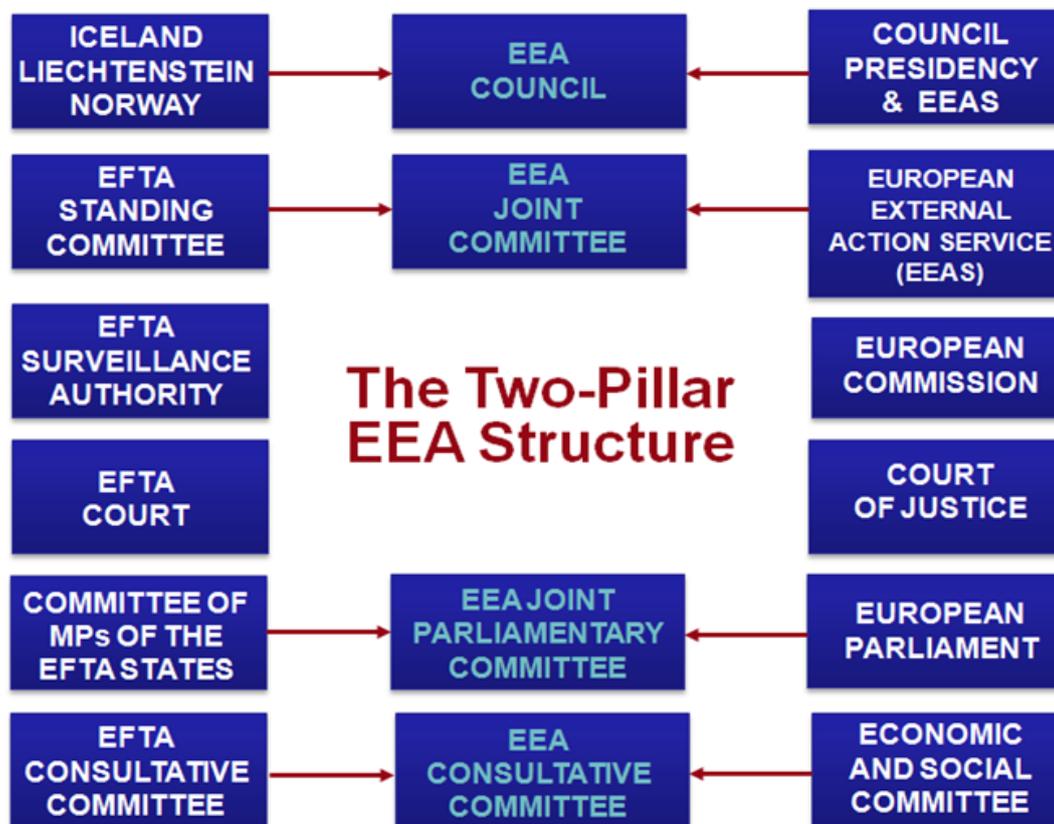
The administration and management of the EEA is shared between the EU and the EEA EFTA States in a two-pillar structure (see diagram in point 7). Substantive decisions relating to the EEA Agreement and its operation are a joint venture and are taken by joint EEA bodies (see point 8) established by the EEA Agreement and consisting of representatives both from the EU side and the EEA EFTA States.

The daily management of the EEA lies with the 31 individual states, which are responsible for implementing new legislation and adhering to the rights and obligations laid down by the EEA Agreement. To ensure uniform implementation and application of the common rules in all EEA States, there is a system of monitoring and judicial control, under which the EU institutions are responsible for the EU Member States and the EEA EFTA institutions (see point 9) are responsible for the EEA EFTA States.

In addition, the EFTA Secretariat in Brussels plays an important role in the coordination and management of the EEA.

7. What is the two-pillar structure?

The EEA EFTA States have not transferred any legislative competences to the joint EEA bodies and they are also unable, constitutionally, to accept decisions made by the EU institutions directly. To cater for this situation, the EEA Agreement established EEA EFTA bodies to match those on the EU side. The EEA EFTA institutions and EU institutions form the two pillars, whereas the joint EEA bodies are situated in-between.



This diagram illustrates the management of the EEA Agreement. The left pillar shows the EFTA States and their institutions, while the right pillar shows the EU side. The joint EEA bodies are in the middle.

The two-pillar structure covers firstly the decision-making procedure. In the EEA EFTA pillar all decisions are taken by consensus, as opposed to the EU pillar where decisions related to EEA legislation are normally taken by majority vote (see point 9 for the decision-making procedures of the EEA joint bodies). Secondly, the structure encompasses supervision and judicial control and, as parallels to the European Commission and the Court of Justice of the European Union, a surveillance authority and a court were established by the EEA Agreement to ensure the monitoring of implementation and application of EEA law in the EEA EFTA States.

8. What are the EEA joint bodies, and what do they do?

The [EEA Joint Committee](#) (the EU side is represented by the European Commission (itself represented by the European External Action Service (EEAS) and its services), the three EEA EFTA States (usually at ambassadorial level) and an observer from the EFTA Surveillance Authority (ESA)) meets regularly and is responsible for the ongoing management of the EEA Agreement and for decisions concerning the incorporation of EU legislation into the EEA Agreement. Its decisions are taken by consensus.

The [EEA Council](#) (members of the Council of the European Union and members of the European Commission (itself represented by the European External Action Service (EEAS) and its services), and Foreign Ministers of the EEA EFTA States) meets twice a year and provides political impetus for the development of the EEA Agreement and guidelines for the EEA Joint Committee.

The [*EEA Joint Parliamentary Committee*](#) (Members of the European Parliament and Members of the national parliaments of the EEA EFTA States) contributes through dialogue and debate to a better understanding of the fields covered by the EEA Agreement.

The [*EEA Consultative Committee*](#) (the Economic and Social Committee of the EU and members of the EFTA Consultative Committee) is a forum for cooperation and consultation between the social partners in the EEA EFTA States and those in the EU.

9. What are the institutional bodies on the EEA EFTA side, and what do they do?

The [*Standing Committee of the EFTA States*](#) (Ambassadors of Iceland, Liechtenstein and Norway, and observers from Switzerland and ESA) is a forum in which the EEA EFTA States consult each other and arrive at a common position before meeting with the EU in the EEA Joint Committee. The Committee has five subcommittees which consist of representatives of the foreign ministries or the Prime Minister's Office of the EEA EFTA States. Under the subcommittees there are several working groups which consist of experts in different fields from the national administrations of the EEA EFTA States. They are responsible for processing all EU legislation to be incorporated into the EEA Agreement.⁴

The [*EFTA Surveillance Authority \(ESA\)*](#), based in Brussels, ensures that the EEA EFTA States fulfil their obligations under the EEA Agreement. In addition to general surveillance of compliance, ESA has powers in relation to competition, state aid and public procurement, reflecting the extended competences of the European Commission in these fields within the EU. The EEA Agreement foresees close cooperation between ESA and the European Commission.

The [*EFTA Court*](#), based in Luxembourg, deals with infringement actions brought against an EEA EFTA State with regard to the implementation, application or interpretation of EEA law, gives advisory opinions to courts in the EEA EFTA States on the interpretation of EEA rules, and is competent for the settlement of disputes between two or more EEA EFTA States. It also hears appeals concerning decisions taken by ESA.

10. What is the role of the EFTA Secretariat?

The [*EFTA Secretariat*](#) assists the EEA EFTA States in the preparation of new EU legislation for incorporation into the EEA Agreement, and in their elaboration of input into EU decision making. To this end, the Secretariat in Brussels assists both the joint EEA bodies and the Standing Committee and its underlying bodies in administrative functions and the preparation of meetings and opinions. In addition, the Secretariat coordinates cooperation with the relevant actors on the EU side.

11. Which EU institutions take part in the management of the EEA Agreement?

A large number of EU institutions and bodies are formally or informally involved in the management of the EEA Agreement. The institutions listed below are examples of some of the actors participating on the EU side:

⁴ For a more detailed description of all subcommittees and an overview of all working groups, visit <http://www.efta.int/eea/eea-institutions/standing-committee>.

The European Union Member State holding the [*Presidency of the Council of the EU*](#) participates in the EEA Council meetings and chairs the meeting once a year. It also holds the chair of the Council's own Working Party on EFTA, which meets on a regular basis to discuss EEA EFTA relations.

The [*European Commission*](#) is responsible for monitoring the EU Member States' incorporation of and compliance with EEA law. When preparing legislation in areas covered by the EEA Agreement, it works with and takes into account the advice of EEA EFTA experts, and allows EEA EFTA participation in various expert groups and committees. It also plays an important role in deciding which EU acts are to be incorporated into the EEA Agreement and in drafting Joint Committee Decisions (JCDs).

The [*European External Action Service*](#) coordinates and participates (together with the Commission and the Council) in the EU process of deciding which EU acts are to be incorporated into the EEA Agreement. It participates in the EEA Council and in the EEA Joint Committee. In the latter, it also holds the presidency in alternating periods of six months, i.e. January to June every year.

The [*Court of Justice of the European Union*](#) interprets and rules on the basis of EEA legislation in cases concerning the EU Member States.

LEGISLATION AND PROCEDURE

12. What is EEA legislation?

The EEA Agreement is based on the primary legislation of the EU (Treaty of Rome) at the time of the EEA Agreement's entry into force, and on secondary legislation (EEA-relevant regulations, directives, decisions and certain non-binding instruments). Hence, a large part of the EEA Agreement is identical to the relevant parts governing the four freedoms as laid down in the Treaty on the Functioning of the European Union. A central feature of the EEA Agreement is its dynamic aspect; the common rules of the EEA Agreement are updated continuously with new EU legislation.

The EEA Agreement is made up of 129 articles, 22 annexes and 49 protocols.⁵ The annexes list the EU acts applicable to the EEA.⁶ Some of the protocols include provisions on specific areas such as rules on the origin of goods, transition periods for the EEA EFTA States in certain fields and simplified customs procedures. Protocol 1 contains horizontal adaptations, which apply to all acts referred to in the annexes to the EEA Agreement. Protocol 31 provides the basis for cooperation outside the four freedoms, and on that basis the EEA EFTA States contribute financially to and participate in various EU programmes. Finally, on the basis of Protocol 35, the EEA EFTA States have undertaken to introduce in their national legal order, if necessary, a statutory provision to the effect that EEA rules prevail in the case of a conflict with other statutory provisions.

⁵ All legal texts are available on the EFTA website, <http://efta.int/legal-texts>.

⁶ As at 30 April 2012, 6 555 acts had been incorporated into the EEA Agreement.

13. **How is new EU legislation incorporated into the EEA Agreement?**

In order to be applicable in the EEA, EU acts have to be incorporated into the EEA Agreement, more concretely into one of its Annexes or Protocols. These amendments to the EEA Agreement are done by means of Joint Committee Decisions (JCDs). These decisions constitute international agreements and are adopted according to the simplified procedures foreseen in the EEA Agreement.

After an EU act has been adopted, the EFTA experts in the EEA EFTA States analyse whether the act is EEA relevant⁷ and, if so, whether any adaptations are required in the JCD for incorporation into the EEA Agreement and whether there are likely to be any constitutional requirements (see point 14 for more on constitutional requirements). Once the EFTA Secretariat has received feedback from all three EEA EFTA States concerning these issues, it drafts a JCD. When the draft JCD has been cleared both by the EFTA experts and by the relevant subcommittee, it is handed over to the EEAS, which initiates an inter-service consultation in the Commission. Once the Commission has agreed on the draft JCD, it is sent to the Council of the European Union for adoption if it contains substantial adaptations, otherwise the EU's position is adopted by the Commission.⁸ The EFTA Secretariat and the EEAS then consult on the timing of adoption in the EEA Joint Committee, and when all Contracting Parties are in agreement the EEA Joint Committee adopts the JCD.

14. **What is a “constitutional requirement” and what does it entail?**

The EEA EFTA States have not transferred any legislative powers to the EEA Joint Committee. Occasionally, due to the content of a Joint Committee Decision (JCD), the constitution of one or more of the EEA EFTA States requires the approval of the national parliament (i.e. the ratification process) in order for the JCD to be binding.

The need for parliamentary approval can affect the date of entry into force of the JCD, but the EEA EFTA States have introduced procedures to inform and consult with their parliaments at an early stage. When the constitutional requirements have been fulfilled in an EEA EFTA State, the EEA EFTA State notifies the EFTA Secretariat, which forwards this information to the EEAS and the other EEA EFTA States. Once the last EEA EFTA State to have constitutional requirements has notified the EFTA Secretariat that all constitutional requirements have been fulfilled, the JCD can enter into force according to its wording.⁹

15. **What is “decision shaping”?**¹⁰

The EEA Agreement does not grant the EEA EFTA States formal access to the decision-making process within the EU institutions. However, the EEA EFTA States can participate in shaping a decision at the early stages of preparing a legislative

⁷ An act is considered EEA relevant when its content concerns an area covered by the scope of the EEA Agreement.

⁸ Concerning technical and substantial adaptations see also Council Regulation (EC) No 2894/94 of 28 November 1994 (OJ L 305, 30.11.1994, p. 6).

⁹ The EFTA Secretariat also publishes a list of “awaited notifications under Article 103 of the EEA Agreement”, <http://www.efta.int/legal-texts/eea/list-of-awaited-notifications>.

¹⁰ Useful information on this subject may be found in the EFTA Bulletin on “Decision Shaping in the European Economic Area”, available online at <http://www.efta.int/~media/Files/Publications/Bulletins/eeadecisionshaping-bulletin.pdf>.

proposal. The EEA Agreement provides for input from the EEA EFTA side at various stages of the preparation of EEA-relevant legislation:

- First, representatives of the EEA EFTA States have the right to participate in expert groups and committees of the European Commission. They participate extensively in the preparatory work of the Commission and should be consulted in the same manner as EU experts. The Commission may seek advice from the EEA EFTA experts by phone or by correspondence, or in meetings. The experts may also be associated with the preparatory work through regular committee meetings.
- Second, the EEA EFTA States have the right to submit EEA EFTA comments on upcoming legislation (see point 18).

While the EEA EFTA States use these opportunities to contribute to the legislative process, they can neither sit nor vote in the European Parliament or the European Council.

16. In which EU groups and committees do the EEA EFTA States participate?

The EEA EFTA States have access to the following types of Commission committees: expert groups (Article 99 EEA); comitology committees (Article 100 EEA); programme committees (Article 81 EEA); and other committees in specific areas (Article 101 EEA). In total, the EEA EFTA States have the right to participate in several hundred committees.

17. What are EEA EFTA comments?

One of the ways in which the EEA EFTA States participate in shaping EU legislation is by submitting comments on important policy issues. A typical EEA EFTA comment provides a brief commentary and suggestions regarding Commission initiatives such as green papers or legislative proposals. The comments are endorsed by the Standing Committee and officially noted by the EEA Joint Committee after they have been sent to the relevant services in the Commission, the European Parliament and/or the Council.¹¹

[EEA EFTA comments](http://www.efta.int) are available on the EFTA website (www.efta.int).

18. Do the EEA EFTA States participate in EU programmes and agencies?

The EEA Agreement ensures participation by the three EEA EFTA States in a number of EU programmes and agencies. Several others are under consideration or preparation for incorporation into the EEA Agreement. In addition, bilateral agreements with the EU ensure the participation by the individual EFTA States in several other EU agencies. The EFTA website provides a [list of all EU programmes](#) and a [list of all EU agencies](#) in which the EEA EFTA States currently participate.

19. Where can I find EEA Joint Committee Decisions and EEA legal texts and documents?

EEA Joint Committee Decisions are published in the Official Journal of the European Union in all EU languages, and in the [EEA Supplement](#) to the Official Journal in

¹¹ Further information on EEA EFTA comments can be found in the EFTA Bulletin “Decision Shaping in the European Economic Area”, p. 23-24.

Norwegian and Icelandic. Adopted Joint Committee Decisions (JCDs) are also [listed and published](#) on the EFTA website.

In addition, the website provides an overview of and contains links to [legal texts and documents](#) connected to the EEA Agreement, including but not limited to: the main Agreement, as well as its annexes and protocols; a list of JCDs; adopted decisions of the EEA Council; a list of adopted EU acquis identified as EEA relevant by the EU or the EEA EFTA States, and a list of EU acquis that has been marked as EEA relevant by the EU but later excluded as such by one or more of the EEA EFTA States; and a list of earlier decisions where there were constitutional requirements.

The EFTA website also holds a [public register](#), through which a large number of documents are made available.

THE EEA GRANTS AND NORWAY GRANTS

20. What are the EEA Grants?

The EEA Grants are related to the EEA Agreement and provide social and economic development funding from the EEA EFTA States. This financial support aims at reducing economic and social disparities in the EEA and strengthening bilateral relations with the beneficiary states: Bulgaria, Cyprus, Czech Republic, Estonia, Greece, Hungary, Latvia, Lithuania, Malta, Poland, Portugal, Romania, Slovakia, Slovenia and Spain. In addition to the EEA Grants, Norway has funded a parallel scheme since 2004 – the Norway Grants.

For further reading, visit www.eeagrants.org.