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STANDING COMMITTEE OF THE EFTA STATES

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SUBCOMMITTEE V ON LEGAL AND INSTITUTIONAL QUESTIONS

How EU acts become EEA acts and the need for adaptations

Note by Subcommittee V

1. Introduction

1. The European Economic Area (EEA) brings together the EU Member States and the three EEA EFTA States (Iceland, Liechtenstein and Norway). The aim of the EEA Agreement is to establish a dynamic and homogenous EEA between these 30 States.¹ In order to ensure homogeneity, EEA-relevant EU acts are continuously incorporated into the EEA Agreement. Due to the particular features of the EEA Agreement, there is sometimes a need to adapt the EU acts upon incorporation into the EEA Agreement. This note will explain how EU acts become EEA acts and how adaptations to the acts are adopted.

2. General overview of the EEA Agreement²

2. The EEA Agreement enables the three EEA EFTA States to participate fully in the Internal Market. It covers the four freedoms, competition and state aid rules, and certain horizontal and flanking areas. The EEA Agreement, its annexes and protocols form part of the EU acquis.³
3. The following EU policies are not covered by the EEA Agreement: common agricultural and fisheries policies, customs union, common trade policy, common foreign and security policy, justice and home affairs,⁴ direct and indirect taxation and

¹ The EEA Agreement, 4th recital.

² For more information on the EEA, its institutions and the procedures for the incorporation of EU acts, see 'The basic features of the EEA Agreement' <http://www.efta.int/eea/eea-agreement/eea-basic-features.aspx> and the EFTA website <http://www.efta.int>.

³ See e.g. Article 216(2) TFEU and http://ec.europa.eu/enlargement/policy/glossary/terms/acquis_en.htm.

⁴ Based on their respective association agreements, the EEA EFTA States are, however, part of the Schengen area and the Dublin System.

economic and monetary union. Therefore, the scope of the EEA Agreement differs from that of the EU treaties.

3. Institutional set-up of the EEA Agreement

4. The institutional set-up designed to manage the EEA Agreement is based on a two-pillar structure, which consists of the EU pillar, the EFTA pillar and the joint EEA bodies situated in-between. In the EFTA pillar certain EU bodies are mirrored.⁵ The EEA Joint Committee has decision-making power and is responsible for the ongoing management of the EEA Agreement.

4. Why is there a need for an EU act to become an EEA act?

5. In order to extend the applicability of an EU act to the EEA EFTA States, an EEA-relevant act is incorporated into the EEA Agreement. This is done by means of a Decision by the EEA Joint Committee⁶ (EEA Joint Committee Decisions) which states the annex or protocol to the EEA Agreement into which the EU act should be incorporated.

5. What is the procedure for transforming an EU act into an EEA act?

6. When a draft Joint Committee Decision has been cleared on the EFTA side,⁷ it is handed over to the European External Action Service, which proceeds according to Council Regulation (EC) No 2894/94 concerning arrangements for implementing the Agreement on the European Economic Area.⁸
7. Council Regulation (EC) No 2894/94 aims at securing the objectives of the EEA Agreement, namely to establish a dynamic and homogenous EEA, and describes the processing of a Joint Committee Decision on the EU side. It further acknowledges that the EEA Agreement provides for an EEA Joint Committee with decision-making power and regulates how the EU side decides on its position as regards Joint Committee Decisions.
8. After the adoption of the corresponding EU position, and when all Contracting Parties are in agreement, the EEA Joint Committee adopts the Joint Committee Decision.

⁵ For more information about the institutional set-up and two-pillar structure of the EEA Agreement, see points 6 to 11 of the “The basic features of the EEA Agreement” <http://www.efta.int/eea/eea-agreement/eea-basic-features.aspx> and the EFTA website <http://www.efta.int>.

⁶ Article 92 et seq. EEA Agreement, OJ L 1, 3.1.1994, p. 3 et seq.

⁷ For the procedure in the EEA EFTA countries, see point 13 of the “The basic features of the EEA Agreement” <http://www.efta.int/eea/eea-agreement/eea-basic-features.aspx> and the EFTA website <http://www.efta.int>.

⁸ OJ L 305, 30.11.1994, p. 6.

6. Why and when is an adaptation needed in a Joint Committee Decision?

9. In most cases EU acts can be incorporated into the EEA Agreement without any adaptation. However, in some cases adaptations of a technical or substantial nature may be needed due to the particular features of the EEA Agreement.
10. Article 1 (2) of Council Regulation (EC) No 2894/94 foresees that the EU position on Joint Committee Decisions which simply extend an EU act to the EEA, subject to any technical adjustments needed, can be adopted by the Commission.
11. According to Article 1 (3) of Council Regulation (EC) No 2894/94, draft Joint Committee Decisions which contain more than technical adjustments are submitted by the Commission to the Council of the European Union for adoption of the corresponding EU position.⁹

6.1. Horizontal adaptations

12. In order to avoid recurring general adaptations in every Joint Committee Decision, Protocol 1 to the EEA Agreement on horizontal adaptations¹⁰ stipulates how EU acts incorporated into the annexes to the EEA Agreement shall be applied under the EEA Agreement. Protocol 1 to the EEA Agreement ensures that horizontal solutions are applied to certain provisions of EU acts.
13. For instance, whenever EU acts refer to nationals of an EU Member State, the references shall, for the purposes of the EEA Agreement, also be understood as references to nationals of EFTA States.¹¹
14. Protocol 1 to the EEA Agreement also solves various issues arising from the institutional set-up of the EEA Agreement (two-pillar structure). For instance, it follows from Protocol 1 to the EEA Agreement that whenever an EU Member State is to submit information to the European Commission, the EEA EFTA States shall submit corresponding information to the EFTA Surveillance Authority.¹²
15. In addition, the introductory paragraph to Protocol 1 to the EEA Agreement expressly provides the possibility to include specific adaptations necessary for individual EU acts in the annex where the act concerned is listed.

6.2. Specific adaptations due to the institutional set-up

16. Protocol 1 to the EEA Agreement does not resolve all issues arising from the institutional set-up of the EEA Agreement. When EU acts, for instance, confer to EU institutions the competence to adopt binding decisions, to grant authorisations or to issue fines or other pecuniary measures, an adaptation text in the Joint Committee

⁹ Concerning technical and substantial adaptations, see Council Regulation (EC) No 2894/94 of 28 November 1994 (OJ L 305, 30.11.1994, p. 6).

¹⁰ OJ L 1, 3.1.1994, p. 37.

¹¹ Article 9 of Protocol 1 to the EEA Agreement, OJ L 1, 3.1.1994, p. 38.

¹² Article 4 (a) of Protocol 1 to the EEA Agreement, OJ L 1, 3.1.1994, p. 37.

Decision is generally needed to describe how this should be dealt with on the EEA EFTA side.

6.3. Adaptations due to the scope of the EEA Agreement

17. As mentioned before, the scope of the EEA Agreement differs from that of the EU treaties. Therefore, specific adaptations may be needed when EU acts cover policy areas that fall outside the scope of the EEA Agreement. For example, adaptations may be needed to provisions concerning relations with third countries as the EEA Agreement does not cover external trade or migration policy.

6.4. Adaptations due to other factors

18. Finally, specific situations in the EEA EFTA States which are not taken into account in an EU act may require specific adaptations, mostly of substantive nature. This could be the case *inter alia* where geography, topography, climate, infrastructure, the economic or demographic situation and other similar circumstances are concerned.