

EUROPEAN ECONOMIC AREA

STANDING COMMITTEE OF THE EFTA STATES

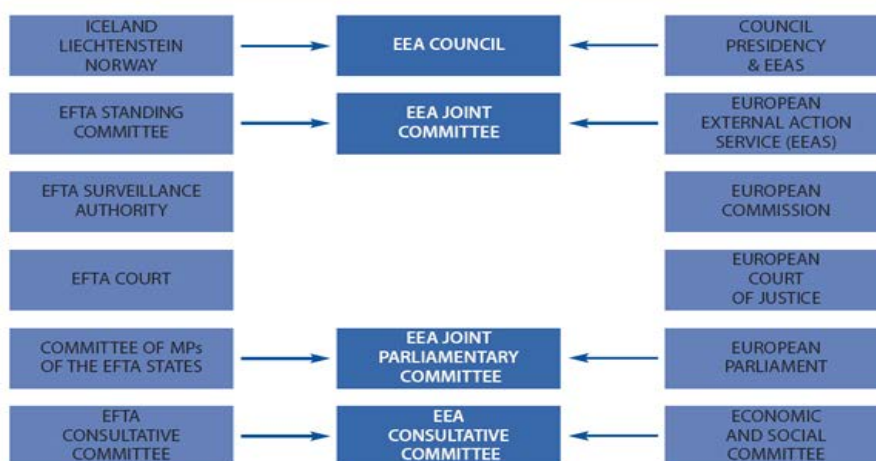
SUBCOMMITTEE V ON LEGAL AND INSTITUTIONAL QUESTIONS

The two-pillar structure of the EEA Agreement – Incorporation of new EU acts

I. General

1. Through the Agreement on the European Economic Area (EEA Agreement), the three EEA EFTA States – Iceland, Liechtenstein and Norway – participate fully in the Internal Market of the European Union (EU). The aim of the EEA Agreement is to achieve a homogeneous EEA based on common rules and equal conditions of competition, thus extending the Internal Market to the EEA EFTA States. This is ensured through the incorporation of EEA-relevant EU acts into the EEA Agreement, and the uniform interpretation and application of such rules throughout the EEA.¹
2. The institutional framework of the EEA consists of two pillars and is thus often referred to as the “two-pillar structure”. The EU and its institutions constitute one pillar (EU bodies), while the EEA EFTA States and their institutions constitute the other pillar (EEA EFTA bodies), mirroring those of the EU. Between these two pillars, a number of joint bodies have been established. Through these joint bodies, the 31 EEA States jointly implement and develop the EEA Agreement.

The Two-Pillar EEA Structure



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.

¹ For further information see: “The basic features of the EEA Agreement”, available at: <http://www.efta.int/eea/eea-agreement/eea-basic-features>; “The two-pillar structure of the EEA Agreement - Surveillance and judicial control”, available at: <http://www.efta.int/media/documents/eea/16-531-the-two-pillar-structure-surveillance-and-judicial-control.pdf>; and “How an EU act becomes an EEA act and the need for adaptations”, available at: <http://www.efta.int/media/documents/eea/1113623-How-EU-acts-become-EEA-acts.pdf>

3. The two-pillar structure is necessary because the EEA EFTA States have not transferred any legislative competences to the EU or to the joint EEA bodies. In addition, the EEA EFTA States are also, as a main rule, constitutionally unable to accept binding decisions made by the EU institutions directly.

II. Incorporation of new EU acts into the EEA Agreement

4. In order to extend the applicability of an EU act to the EEA EFTA States, the act has to be made part of the EEA Agreement by incorporation into one of the Annexes of the EEA Agreement. This is done by means of a Decision of the EEA Joint Committee (JCD).² Some JCDs may contain technical or other adaptations to the incorporated EU act in order to adapt the act to specific situations within the EEA or one of the EEA EFTA States.
5. When an EU act is foreseen to be incorporated into the EEA Agreement, the act must be scrutinised to determine whether it contains provisions conferring competences to an EU institution and, if that is the case, how to allocate those competences in the EFTA pillar.
6. If it does, there are two possibilities to confer these competences to an EFTA institution. Certain two-pillar issues are covered by the general horizontal adaptations of Protocol 1 to the EEA Agreement, and hence no adaptation text is needed in the JCD. In contrast, for those two-pillar issues not covered by Protocol 1 EEA, a specific adaptation text to the act must be included in the JCD.

Protocol 1 EEA – horizontal adaptations

7. In principle, each EU act incorporated into the EEA Agreement has to be read in the light of Protocol 1 EEA.³ Protocol 1 EEA sets out how EU acts incorporated into annexes to the EEA Agreement shall apply, in order to avoid recurring general adaptations to every act included in a JCD.
8. Protocol 1 EEA implies for example that a reference in an EU act to EU Member States or the European Commission shall be understood in the EEA context as a reference to the EEA EFTA States or the EFTA Surveillance Authority.⁴ Various two-pillar issues are thus solved by Protocol 1 EEA, such as procedures for verification or approval, the submission and exchange of information, notifications or consultations and similar matters.

Adaptations texts

9. Protocol 1 EEA does not resolve all two-pillar issues that may arise, and adaptations may therefore be needed upon incorporation of those acts into the EEA Agreement. Some EU acts, for instance, confer to EU institutions the competence to adopt binding decisions,

² For further information, see “How EU acts become EEA acts and the need for adaptations”, available at:

<http://www.efta.int/media/documents/eea/1113623-How-EU-acts-become-EEA-acts.pdf>

³ <http://www.efta.int/sites/default/files/documents/legal-texts/eea/the-eea-agreement/Protocols%20to%20the%20Agreement/protocol1.pdf>

⁴ Or the Standing Committee of the EFTA States in fewer cases

to grant authorisations or to issue fines or other pecuniary measures towards an undertaking. Such acts generally require an adaptation text to be included in the JCD, laying down how this should be reflected in the EFTA pillar.

10. By way of example, the power to issue binding decisions or to impose fines addressed to market participants based in the EEA EFTA States have in some cases been vested with national authorities in the EEA EFTA States. In other cases, it is the EFTA Surveillance Authority that has been or will be given the competence to issue binding decisions or to impose fines and periodic penalty payments on persons and undertakings based in an EEA EFTA State.
11. The solutions agreed upon may vary according to the two-pillar issue at hand, and also – in some cases – according to constitutional restraints in the EEA EFTA States.