

EUROPEAN ECONOMIC AREA

STANDING COMMITTEE OF THE EFTA STATES

1113525
Brussels, 30 April 2012

1 Annex

**Decision of the Standing Committee of the EFTA States
No 1/2012/SC
of 30 April 2012
on procedures for the incorporation of EU acts into the EEA Agreement**

THE STANDING COMMITTEE OF THE EFTA STATES,

Having regard to the procedures for the incorporation of EC acts into the EEA Agreement adopted in 1996,

Having regard to the subsequent update of these procedures in 2006,

Whereas it has become necessary to further update and streamline the procedures,

HAS DECIDED AS FOLLOWS:

Article 1

The procedures for the incorporation of EU acts into the EEA Agreement are adopted, as described in the Annex to this Decision.

Article 2

This Decision enters into force on the day of its adoption.

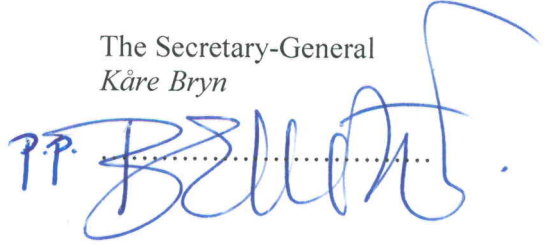
Done at Brussels, 30 April 2012

For the Standing Committee

The Chair
Dórir Þósen



The Secretary-General
Kåre Bryn



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ANNEX

to Decision of the Standing Committee of the EFTA States No 1/2012/SC

Procedures for the incorporation of EU acts into the EEA Agreement

In 1996, the Standing Committee adopted procedures for the incorporation of EC acts into the EEA Agreement. These procedures were updated in 2006. It has become necessary to further update and streamline the procedures due to the factual merger of Subcommittees I-IV in 2009, and also in order to speed up the processing of new acquis on the EEA EFTA side.

PROCEDURES REGARDING RELEVANT EU LEGISLATION

1 EU pipeline legislation

During the pipeline stage, when new EU legislation is being developed, expert/working groups and the Secretariat work together systematically to:

- Ensure that a check is carried out at an early stage to identify possible issues such as two-pillar issues, third country provisions, criminal law issues and fines; and
- Assess the need for EEA EFTA Comments.

This work should take place either by written procedure or at the meetings of the expert/working groups.

2 The Secretariat informs experts of newly adopted EU legislation

With regard to newly adopted legislation, the Secretariat sends a standard sheet to experts containing the following information:

- Title of act
- Celex No
- Reference in the Official Journal of the European Union (OJ), where available
- Adoption date
- Compliance date in the EU
- Indication of declarations in the Council, where these exist
- Suggested placement in the EEA Agreement (annex and chapter/protocol)

The email by which the standard sheet is distributed by the Secretariat indicates the possible general EEA aspects (ref. point 1).

The standard sheet requests the following information from experts:

- EEA relevant (yes/no)
- Adaptations required, if any (technical/other)
- Need for constitutional procedures as referred to in Article 103
- Indication of possible general EEA aspects , such as:
 - Existing adaptation(s)/explanatory note/declaration to former acts
 - Acts referred to which have/are not to be incorporated into the EEA Agreement
 - Two-pillar issues
 - Third country provisions
 - Fines
 - Criminal law sanctions
 - Other

Standard sheets should be sent as soon as possible, at the latest within five working days after the date of publication of the newly adopted legislation in the OJ.

SPECIAL PROCEDURES:

- **Urgent cases:** Standard sheets should be sent to experts before the publication of the legal acts in the OJ.
- **EEA EFTA participation in EU programmes:** Standard sheets should be sent to experts immediately after the European Parliament (EP) has given its opinion in first reading. An estimation of the cost of the programme and a draft Joint Committee Decision (JCD) will also be provided.

If the Council does not approve the EP's opinion in first reading, the EFTA Secretariat will inform the experts about the modified content of the programme immediately after the decision of the EP in second reading. If necessary, a revised estimation of the cost of the programme and a revised draft JCD will also be provided.

3 Experts return the standard sheet to the Secretariat

Expert/working groups provide answers to the questions in the standard sheet at their earliest convenience and in any event within a deadline of 30 working days.

The time limit runs as of receipt of the standard sheet from the Secretariat.

The day after the deadline to return the standard sheet, the Secretariat systematically sends a reminder to the experts of the EEA EFTA States with a copy to those subcommittee delegates of the EEA EFTA States who have requested it and in addition place the item on a list to be presented to the Subcommittees at the latest two weeks before their meeting.

SPECIAL PROCEDURES:

- **Urgent cases:** The deadline for returning standard sheets is set by the Secretariat in line with the level of urgency.
- **EEA EFTA participation in EU programmes:** The deadline should be 20 working days. If no reply has been sent within 20 working days, the issue should immediately be raised with the subcommittee in question.

For straightforward acts (i.e. acts which do not require further discussions), cf. procedures from point 5 onwards (below)

4 The working group continues the discussions

Upon receiving confirmation that an act requires special adaptations or raises difficulties for one or more EEA EFTA States, the Secretariat forwards the information to the expert/working group, together with a brief description of the issues and an explanation of the necessary adaptations submitted by the experts. The item is put on the agenda of the next meeting of the expert/working group or/and subcommittee, as appropriate. When possible, discussions should take place in the meantime by email to ensure a rapid solution.

Important issues, including those of horizontal nature, are put on the agenda of the subcommittees so that they can monitor progress and provide the necessary guidance, until an EFTA position is reached.

Informal discussions with the European External Action Service (EEAS) and/or the Commission will be taken up when considered necessary. No informal discussions shall take place with the EU on *acquis* with horizontal implications (e.g. two-pillar, criminal sanctions and fines) without prior agreement at subcommittee level.

SPECIAL PROCEDURES:

Important issues: Where an act raises important issues, either among the EEA EFTA States or on the EU side, it is also brought to the attention of the Standing Committee of the EFTA States.

5 Drafting of the JCD

When all standard sheets have been received and once the EEA EFTA States have agreed that an act is EEA relevant and requires no adaptations, or have agreed on the adaptations, the Secretariat drafts a JCD.

If no adaptations are needed or if the adaptations are minor, the Secretariat shall generally draft the JCD within five working days of the date on which it received the necessary information to enable it to do so.

If workload or a backlog so require, priority is given to the preparation of decisions according to the closeness of implementation of the legislation in the EU and the length of implementation time required by the EEA EFTA States, unless other substantive priorities have been indicated by the working group or subcommittee.

Acts should be grouped in “package decisions” where appropriate and of practical benefit. If one act delays the “package”, the Secretariat and the expert/working group analyse whether it is appropriate to split the draft JCD.

The drafting of any JCD shall take no longer than 20 working days from the date on which the Secretariat has received the necessary information to enable the drafting of the adaptation text.

When drafting JCDs, the Secretariat assists in ensuring coherency in the adaptations and checks whether, in the case of amended acts, the basic act(s) have been incorporated with adaptations or declarations, taking this into account in the draft.

SPECIAL PROCEDURES:

- **Urgent cases:** The JCDs may be drafted before the final adoption of the acts on the EU side.
- **EEA EFTA participation in EU programmes:** Upon publication of the EU decision on the programme, the Secretariat inserts the publication reference of the EU act into the draft JCD (which was already prepared and sent out beforehand (cf. *special procedures under 2*) and submits it to the experts for final clearance. The deadline for response should be one or two working days.

6 Legal checking of the draft JCD

The Secretariat reviews and makes the necessary technical changes to the draft JCD.

7 Approval of the draft JCD by experts

If a draft JCD has adaptations, the Secretariat forwards it (and an explanatory note) to the expert/working group for approval, indicating when necessary the latest changes in the draft.

The expert/working group shall respond at its earliest convenience and in any event within a deadline of ten working days.

The day after the deadline to reply, the Secretariat systematically sends a reminder to the experts of the EEA/EFTA States with a copy to the subcommittee delegates and in addition places the item(s) on a list to be presented to the subcommittees at the latest two weeks before their meeting.

When approval is confirmed by the expert/working group, the item is referred to the subcommittee for approval. In the event that no agreement can be reached in the expert/working group, the item is referred to the subcommittee for further discussion.

8 Approval of the draft JCD by the subcommittee

Once a draft JCD with adaptations has been cleared by the relevant expert/working group, it is submitted to the subcommittee for approval, with a deadline of maximum ten working days.

If a draft JCD has no adaptations, the Secretariat forwards it directly to the subcommittee, with a deadline of maximum ten working days, copying the expert/working group in question.

The day after the deadline for response, the Secretariat systematically sends a reminder to the subcommittee delegates.

If after the reminder no approval has been received by one or more EEA EFTA States, the matter shall be reported to the Standing Committee.

Once a draft JCD has been cleared by a subcommittee, either by written procedure or in its meeting, the Secretariat transmits the draft JCD to the EEAS.

SPECIAL PROCEDURES:

- **EEA EFTA participation in EU programmes:** The draft JCDs can always be cleared by written procedure. The deadline for response is **five working days, or less if necessary**.

9 Adoption of a JCD by the Joint Committee

Approximately 25 working days before the Joint Committee meeting, the Secretariat drafts the preliminary long list and circulates it internally for scrutiny. Three working days later, the long list is sent to the EEA EFTA States for their preliminary observations and returned to the Secretariat within a further five working days. The Secretariat then forwards the amended preliminary long list to the EEAS for review. 12 working days before the Joint Committee meeting, the EEA EFTA States and the EEAS send their final comments on the long list to the Secretariat. The Secretariat sends out the confirmed long list 12 working days before the Joint Committee meeting.

The timing of adoption may, where necessary, be addressed in the Joint Subcommittee.

Concerning decisions that the EEAS can adopt without presenting them to the Council (i.e. most decisions), priority is given according to the implementation date of the EU legislation and the time needed for implementation in the EEA EFTA States, unless substantive priorities have been indicated by the EEA EFTA States in the subcommittees. The date of entry into force of a decision takes these factors into account.

Full use should be made of the option to set the date of entry into force of a JCD after the expected completion of parliamentary procedures.

SPECIAL PROCEDURES:

JCDs requiring parliamentary procedures: The EEA EFTA States do their utmost to complete their constitutional requirements under Article 103 of the EEA Agreement before the expiry of the six-month period referred to in Article 103 EEA.

EEA EFTA participation in EU programmes: The EFTA States should seek parliamentary approval before a JCD is adopted.

PROCEDURES RELATING TO LEGISLATION UNDER PREPARATION (PIPELINE ACQUIS)

I Proposals for Council and/or Parliament legislation

1 The Secretariat updates experts on new proposals

The Secretariat regularly distributes an updated list of proposals for new legislation. In addition, copies of new proposals are provided by the Secretariat to experts and in some cases an analysis of the proposed legislation.

2 EEA EFTA Comments

The working group may decide on its own initiative to draft EEA EFTA Comments to a proposal (or on any other items such as green or white papers). A subcommittee may decide to raise an issue for discussion in the Standing Committee, or invite a working group to draft EEA EFTA Comments.

3 Approval of comments by the subcommittee

Before written comments, which are associated with the name of EFTA and are of more than a purely technical nature, are transmitted to the EU side, they shall be sent for approval by written procedure to the subcommittee responsible. They are also sent to the Standing Committee for information purposes.

4 Taking note that comments have been transmitted

Where written EEA EFTA Comments have been sent, they are noted in the Joint Subcommittee and the Joint Committee.

5 Amendments to proposals

The Secretariat updates experts on amendments to proposals on a regular basis.

II Commission legislation

Pipeline Commission legislation requires different procedures as no proposals are published. Attendance by EEA EFTA experts at Commission committee meetings and other channels of information with the Commission must be used.

- EEA EFTA experts inform the Secretariat of legislation under preparation by the Commission that may be of importance to the EEA EFTA States.
- Where the EU Member States are known to have forwarded declarations of legislation to the Commission on its adoption, the texts of such declarations are forwarded by the Secretariat to the subcommittee and relevant EEA EFTA experts. At its next meeting, the relevant working group discusses the possible need for EFTA statements in relation to any subsequent JCD (see points 2 and 3 above for adopted acquis).
- Where problems are signalled by EFTA experts the item is placed on the agenda of the working group and subcommittee responsible.

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