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**REPORT**  
**on**  
**Decision-shaping in the EEA**

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## Decision-Shaping in the EEA

### Introduction

1. Decision-shaping is the phase of preparatory work undertaken by the European Commission to draw up new legislative proposals. The Commission has an exclusive right of making proposals for new legislation. The EEA Agreement contains provisions for input from the EFTA side at various stages before new legislation is adopted. Input can take the form of participation of EFTA experts in EC committees or the submission of EFTA comments and the adoption of resolutions responding to Commission initiatives.
2. The EEA EFTA States have the opportunity to participate in the shaping of decisions at early stages in the formulation of EU legislation. It is at the earliest stages of policy formation, in fact, that EEA EFTA input can have the greatest influence. This is because after the Commission and its advisors have established the content and shape of their legislative proposal, the EEA EFTA States will have very limited ability to influence the outcome of the **decision-making process** for its adoption as a legal act. However, when authors of legislative proposals are considering new laws, good advice from relevant EFTA experts has most often been welcome. This is particularly true in areas where one or more EEA EFTA States have useful experience to share in areas of common interest.
3. The two types of committees in which the EEA EFTA States are most active, Expert Committees and Comitology Committees, are the committees that perhaps have the greatest impact on the shape of EU legislative proposals. It is helpful to remember when considering these two committees that Expert Committees advise the Commission when drafting legislation for adoption by the Council and/or the Parliament, and Comitology Committees assist the Commission in drafting and adopting legislation where the Council has delegated authority to the Commission to legislate.

### Expert Committees

4. Expert Committees are formed to advise the Commission and to assist it with drafting new laws, which will later be adopted by the Council. These committees consist of independent experts who provide their opinions and insights in what is sometimes referred to as the *pre-pipeline stage* of legislation. As the experts are in theory not official government representatives of the Member States, the contributions of experts do not necessarily reflect their country's position.

5. An expert is expected to provide input based on, for example, scientific, ethical, practical, judicial, or sector considerations. Often, however, experts will convey their country's position, if only to pre-empt problems and avoid surprises when the Member States vote on proposals. As these committees are advisory and do not take decisions or vote, all who participate in them have the same formal status, whether from an EU Member State or an EEA EFTA State. Article 99 of the EEA Agreement states:

*As soon as new legislation is being drawn up by the Commission in a field which is governed by this Agreement, the EC Commission shall informally seek advice from experts of the EFTA States in the same way as it seeks advice from experts of the EC Member States for the elaboration of its proposals.*

6. As EEA EFTA experts participate in as many as 119 Expert Committees (according to a recent overview by the EFTA Secretariat, the first of its kind), on an equal footing with experts from EU member States, there is a great possibility for the EEA EFTA States to exert their influence at an early stage through this channel. However, even though Article 99 makes it clear that EFTA experts participate on an equal footing with EU delegates, the quality of participation by EFTA experts may vary widely due to a range of factors. Committee Chairs may differ in their attitude to participation by EFTA experts, notwithstanding the above article. In equal measure, EFTA experts may suppress valuable input unnecessarily, in deference to their colleagues from *fully-fledged* EU Member States. Whilst EU countries will eventually be able to vote on the legislative proposals resulting from Committees, EEA EFTA States will have no vote. Therefore, excellent performance in the decision-shaping stage of pre-pipeline legislation is all –the more important for EEA EFTA States.

### **Comitology Committees**

7. When the Council and the European Parliament have legislated on “what” should be done, they often authorize the Commission to create legislation stipulating “how” it should be done, and giving it the mandate to fill in technical and detailed requirements across a range of issues. Before adopting such measures, the Commission has to present its proposals for review to committees of experts from the EU Member States. “Comitology” is the system of such committees, which assist the Commission in exercising its executive powers. The majority of legal acts established by the EU are conceived through Comitology procedures.

8. According to Article 100 EEA, the Commission “shall ensure experts of the EFTA States as wide a participation as possible” in the Comitology committees. Furthermore, a Declaration of the European Communities attached to the Final Act of the Agreement attempts to clarify the nature of the participation, stating, among other things, that EFTA experts “will be involved on an equal footing together with national experts from the EC Member States in the work preparatory to the convening of the EC committees relevant to the *acquis* in question”.

9. EEA EFTA representatives have the possibility to participate in Comitology Committees. Very often, Working Sessions carry out the preparatory work of Comitology Committees. In these sessions, representatives of EEA EFTA States also have the opportunity to contribute to the deliberations. However, When the Comitology Committee takes a vote, the EEA EFTA representatives are excluded, or even asked to leave the committee room. It is very important for problematical issues for EEA EFTA States to be identified and raised early on in the deliberative stage of the Comitology procedure, and certainly before the committee starts to vote.

10. EFTA representatives may have more or less experience in EU committees, or may have more or less time to prepare for and follow up from meetings. Language competence and networking skills will undoubtedly affect performance in the committee room. Representatives from EEA EFTA States may suffer from poor co-ordination of policy issues within their governments, departments or even subordinate agencies. Turf battles between offices can make it difficult for an expert to inform a committee about the national point of view, if called upon to do so. Many of these factors will apply equally to representatives from EU Member States.

### **Other Committees**

11. The Commission consults committees that fall into neither of the categories mentioned above. These committees often fulfil the Commission's requirement for ongoing advice on complex scientific, technical or legal issues, such as veterinary and pharmaceutical matters, money laundering, social security for migrant workers, in all of which the EEA EFTA States participate. A full list of such Committees to which the EFTA States have access is included in Protocol 37 of the EEA Agreement. Article 101 of the Agreement states:

*In respect of committees which are covered neither by Article 81 nor Article 100 experts from EFTA States shall be associated with the work when this is called for by the good functioning of this agreement.*

12. EEA EFTA experts are represented in 26 such committees. This participation guarantees that the EEA EFTA States can discuss and keep abreast of important issues requiring continual policy assessment. Many committees falling under Article 101 are of great relevance to the EEA but EEA EFTA participation in is not always granted. The committees play various roles both in the decision-shaping process but also in the *decision-making* process in the EU.

## **Influencing the Management of Programmes**

13. Part VI of the EEA Agreement ensures EEA EFTA participation in EU activities outside the four freedoms, in the so-called flanking areas. These activities come under the “internal policies” of the EU, and they are often implemented through multi-annual programmes.

14. In the same way as EU directives and regulations, programmes are set up by legal decisions in the EU institutions, decisions which normally also establish a programme committee or an agency board with representatives of the participating states. In theory, they are ‘comitology’ committees, just like a committee established by a legislative directive or regulation. However, the role of the programme committees is not of a legislative nature. They do not assist the Commission in amending EU legislation; in fact they will not even be consulted in the case the Commission drafts a text for a prolongation or a new phase of the running programme. Instead, the responsibility of these committees is to manage the programme by assisting the Commission in tasks like specifying the content of the programme (on a more detailed level than fixed in the decision establishing the programme), drafting texts for public call for proposals or selecting projects for funding.

15. The rapporteurs stress that the involvement in management committees is not strictly decision-shaping, as these committees have no legislative role. However, the rapporteurs would like to recall the EEA JPC Resolution on EFTA participation in EC programmes adopted at its 15<sup>th</sup> meeting on 28 November 2000, in which the EEA JPC noted that new Community programmes may influence relevant policies in the EU Member States and may represent a new formulation of European policy in the area concerned.

16. When the EEA EFTA States contribute financially to an EU programme, Article 81 of the EEA Agreement provides for full participation in the programme committee, except for voting rights. However, a Joint Declaration in the Final Act of the Agreement states that in reaching its decision, the Commission shall take due account of the views expressed by the EEA EFTA States in the same manner as of the views expressed by the EU Member States before voting. Also, in cases where an issue is referred to the Council because the vote of the committee conflicts with the opinion of the Commission, the Joint Declaration enables the EEA EFTA States to refer the matter to the EEA Joint Committee. This has never happened, but the provisions illustrate the intention of the EEA Agreement to include the EEA EFTA States fully in the management of the programmes.

17. As the procedures needed to establish a legal basis for EEA EFTA participation in a programme can only be completed after a programme has been legally established by the EU institutions, representatives of the EEA EFTA States will often formally join the committee somewhat later than their colleagues from the EU Member States. This is not

an ideal situation, as important discussions are often taking place in the committee in the start-up of a programme. However, in some cases participants from the EEA EFTA States have been invited to the committee as 'guests' or 'observers', awaiting their formal entry. In particular this has become a common practice when a programme is followed by a new programme, to secure the continuous participation of the EEA EFTA States.

18. When new programmes in the fields covered by the EEA Agreement are being prepared by the Commission, experts from the EEA EFTA States are consulted in the same manner as experts from the EU Member States. Article 79 of the Agreement also provides for formal input or discussions on new programmes from the EEA EFTA States through the EEA Joint Committee structure, a possibility that is frequently used.

### **Other channels for influence – Comments and written contributions**

19. Participation in Committees is not the only channel for EEA EFTA influence. Very often EU Member States are asked to provide comments on policy issues. Depending on relevance to the EEA Agreement, the EEA EFTA States are usually also invited to provide written comments to a legislative proposal or programme. Comments may be sent individually by each EEA EFTA State or they may be coordinated at the EEA EFTA level.

20. Joint EEA EFTA comments are a particularly important way for EEA EFTA States to provide input to emerging EU policy, once the opportunity for input at the Committee stage has passed. Joint EEA EFTA comments are usually elaborated by working groups with the help of the EFTA Secretariat, then cleared by the appropriate subcommittee before being sent to the relevant services in the Commission, the European Parliament and the Council. The joint EEA EFTA Comments are endorsed by the Standing Committee and officially taken note of by the EEA Joint Committee.

21. Joint EEA EFTA Comments are obviously a result of a compromise between the EEA EFTA States on the issue in question, and it may take some time to finalise the joint comments. As mentioned above, they are often sent after a proposal has been presented by the Commission to Council and Parliament, or as a response to a consultation procedure. Deadlines for comments may often be very short, making it difficult to devise joint comments of substance.

22. It is important that comments are addressed directly to the relevant Commission services dealing with the subject matter. Such comments might be most effective during the drafting stage of a proposal. It is hence of utmost importance that the EEA EFTA States contribute whenever the Commission requests answers to questionnaires or comments on specific issues from Committees or expert groups. It might seem that the EEA EFTA States do not always reply to these invitations from the Commission, believing that it is not relevant to do so since they are mere observers in the Committee or expert group. However, the Commission is usually willing to include the EEA EFTA

States in such exercises, and this affords an excellent opportunity for the EEA EFTA States to present their views and perhaps influence the decision shaping process.

23. To promote transparency of the EU legislative process, and to encourage the public to take part in the decision shaping process, the Commission is increasingly undertaking public consultations, prior to the drafting of EU legislation. Stakeholders in the EEA EFTA States – consumers, interest organisations, private and public sector alike - are encouraged to take part in these public consultations.

### **Further considerations<sup>1</sup>**

24. The institutional framework, i.e., the limits of the Agreement and lack of access to the decision-making bodies of the EU, has clearly made EEA EFTA influence on EEA legislation a very challenging task. In spite of the deficiency of the Agreement in terms of political influence, the question is if it is still possible to improve the EEA decision-shaping phase. In many areas, the workload related to implementation of already approved EEA legislation could represent a barrier to more active work in the decision-shaping phase.

25. The legitimacy of the Agreement is strongly linked to whether EEA EFTA States fulfil their obligations. Hence meeting deadlines for implementation, and implementing in compliance with EEA law will still have to be the number one priority. But procedures for implementation could be simplified where possible, in order to avoid unnecessary and time-consuming red tape. The procedures related to the public hearings of EEA legislation are one example. Most new EEA legislation consists of technical implementing measures, but existing rules, at least in Norway, state that all legal acts, regardless of their political or economic significance, need to be the subject of a formal public hearing. The question may be asked whether this is a sensible way of applying scarce resources, especially since public hearings often start when the decision on the incorporation of an EU act into the EEA Agreement has already been taken by the EEA Joint Committee.

26. Other factors that could make implementation of EEA legal acts simpler would be to improve communication with the EFTA Surveillance Authority (ESA) during the process of implementation. In addition, better training in Community law might be needed, given the different legal traditions underpinning Community law (Roman law tradition) and Norwegian/ Icelandic/Liechtenstein law (the Nordic/German legal tradition). As the EEA JPC has drawn attention to several times in the past, there is also a problem linked to the late translations of legal texts. Translations are also often carried out without any dialogue between the translators and the Commission official responsible for drafting the text. Translators in the EU institutions communicate on a routine basis with those responsible for finalising texts. The EEA status of course makes a similar system difficult, but Norwegian and Icelandic translations could benefit from closer co-operation

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<sup>1</sup> Sources: Reports from *Statskonsult*, a Norwegian Directorate placed under the Ministry for Labour and Government Administration

with translators and participants in the committees and those responsible for incorporation into national legislation.

27. The above-mentioned measures could, if followed, make implementation simpler and less time-consuming. Also, more attention could be given to work in the decision-shaping phase.

28. More active involvement in the decision-shaping phase is dependent on clear political leadership and clearly defined strategies both within and across policy sectors. Many EU initiatives are cross-sectoral, and affected ministries need to reach agreement on which view to present before the Commission at an early stage of the preparation of a given proposal. In addition, the ministries involved need to have a common strategy on how to convey the EEA EFTA view through the available channels. Given that expert consultation is the main channel for expressing EEA EFTA views vis-à-vis the Commission, participating experts need to have clear guidelines when issues with a political content are on the agenda. That does not mean that experts need to be censured or put under a rigid regime of control. However, as their views are interpreted by the Commission as being the official Norwegian, Icelandic or Liechtenstein position, experts need to have a proper understanding of their role and the political context and government policy within their area of expertise. This will in turn require a clearer division of labour between ministries and directorates.

29. Evidence shows that the experience of EEA EFTA participants is by and large of a lower level than that of their Member State counterparts. Many Member State committee members have 10-15 years of experience in the same committee, something that of course gives them considerable influence. There is a potential for greater influence, but it would require that more senior officials and especially officials with management responsibilities involve themselves directly in committee work.

30. More optimal use of existing resources, knowledge and available information about the pre-pipe-line stage of EU policy-making would strengthen the possibilities for more efficient participation in work leading up to EEA legislation. To achieve that, better co-ordination and communication between ministries, directorates, participants in committees and the EFTA Missions to the EU in the daily workings of the EEA is needed. Better internal communication at government level between the various bodies concerned with the EEA with improved Internet and Intranet solutions, would also enhance the quality of information to NGOs, the social partners, political parties and the wider public affected by the EEA.

31. Better training and skills are also needed for a more pro-active approach. Today, knowledge and hands-on experience of the EU/EEA is most widespread among middle level staff throughout ministries and directorates. Training specifically targeted at top-management level must become a priority, because better results ultimately depend on clear strategies that involve those who are in a position to set the priorities. Training programmes tailored to meet the particular concerns of leaders need to be developed. Their training in EU/EEA affairs needs to highlight aspects related to what should be the

strategic priorities, commitment of resources, requirements for handling EEA-related dossiers, reporting from meetings, information routines vis-à-vis the political level. Other important management tasks that need to be addressed in a systematic fashion are for example the management of external bodies, how and when to communicate with ESA, and routines for contact with affected interests.

32. Enlargement of the EU and the EEA, the Convention of the Future of Europe, the enhanced role of the European Parliament in the EU decision-making phase, the increase role of the social partners in social policy making, new working methods in the EU and the Treaty changes made after the entry into force of the EEA Agreement, all represent major challenges for the EEA EFTA States in shaping and influencing future EEA relevant EU legislation and policies. All the more important it will be to raise the awareness and knowledge of the EEA EFTA involvement in the EEA decision-shaping phase, and to use the possibilities to their fullest.

## **RESOLUTION**

### **On The decision shaping in the EEA**

The Joint Parliamentary Committee of the European Economic Area:

- A. noting that the EEA Agreement contains provisions for input from the EEA EFTA States at various stages before new EU legislation is adopted,
- B. having regarding to Article 99 on EEA EFTA participation in expert committees, Article 100 on EEA EFTA participation in comitology committees, Article 101 and Protocol 37 on EEA EFTA participation in other committees to ensure the good functioning of the Agreement, Article 81 on EEA EFTA participation in programme committees, and Article 79 on EEA EFTA input on new Community programmes,
- C. noting that the EEA EFTA States may provide written input on new EEA relevant policies,
- D. recalling its Resolution on EFTA participation in EC programmes adopted at the 15<sup>th</sup> EEA JPC and its Resolution on EC comitology and the EEA adopted at the 16<sup>th</sup> EEA JPC,
  1. welcomes the extensive participation from the EEA EFTA States in a vast number of EU committees as it ensures valuable contribution to the shaping of EU and EEA legislation;
  2. welcomes EEA EFTA comments on new EU policies, and recalls its resolution adopted at the 16<sup>th</sup> EEA JPC urging the EEA EFTA States to take actions with a view to enhanced participation in the EEA decision-shaping process at the earliest possible stage in the legislative process;
  3. welcomes the overview made by the EFTA Secretariat on actual EEA EFTA participation in EU committees under Articles 99, 100, 101, 81 and 79 EEA as called for by the EEA JPC in its resolution adopted at the 16<sup>th</sup> EEA JPC, and calls on the EEA EFTA States to update the overview annually as the overview increases the transparency of the EEA decision-shaping process;
  4. calls on the EEA EFTA States to make efforts to increase the awareness about the significance of EEA EFTA participation in the decision-shaping process;
  5. calls on the EEA EFTA States to secure adequate training of representatives in EU committees, and to ensure the appropriate level of the EEA EFTA

- representatives, and furthermore to coordinate national views within and between ministries and between the relevant ministries and the Committee representative;
6. calls on the EU and the EEA EFTA States to scrutinise procedures concerning translations into Norwegian and Iceland in decision-shaping process with a view to ensuring the smooth functioning of EEA EFTA influence according to the relevant provisions of the EEA Agreement;
  7. calls on the EEA EFTA States to use the opportunities to participate in the EEA decision-shaping process to their fullest and at the earliest possible stage in the process;
  8. calls on the contracting parties, in view of EU and EEA enlargement, to promote and safeguard the right of EEA EFTA participation in the decision-shaping process.