

**EUROPEAN ECONOMIC AREA**  
**JOINT PARLIAMENTARY COMMITTEE**

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**REPORT  
&  
RESOLUTION**

**on  
the Annual Report on  
the Functioning of the EEA Agreement in 2001**

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## I INTRODUCTION

1. The EEA Joint Parliamentary Committee (EEA JPC) shall according to the EEA Agreement (Article 95, paragraph 4) examine the annual report of the EEA Joint Committee on the functioning and development of the EEA Agreement. The present report examines the Annual Report of the EEA Joint Committee for 2001. As has been done in previous years, the report assesses the functioning of the Agreement and general developments within the EEA, focusing on a number of important areas where progress has in the past been lacking.

## II THE EEA ANNUAL REPORT - SUMMARY

### *General remarks*

2. The Joint Committee Annual Report for 2001 is very similar in structure and content to the Annual Reports between 1996 and 2000. It provides, as did the previous ones, a good factual overview, listing areas where progress has been made and decisions taken. It states that, overall, the EEA functions well, as has been the case in previous reports. The report concludes that the EEA Agreement maintains its original function of securing the extension of the internal market to the whole of the EEA. It also points out, however, that the EFTA side has concerns about the fact that the EEA Agreement does not reflect the drastic changes to the EU Treaties after Maastricht and Amsterdam.

### *Adopted decisions and backlog*

3. The report notes that the Joint Committee in 2001 adopted 165 decisions (compared to 114 in 2000, 192 in 1999, 122 in 1998, 107 in 1997 and 84 in 1996), and incorporated 401 acts, compared to 217 acts in 2000, and 562 acts in 1999 (of which 224 were veterinary acts). The report notes that the rate of *decision making* remains at a high level. The 2001 level is higher than in 2000, and the second highest level in the past six years. An average of 16 decisions were adopted per working month (compared to 11 in 2000, 17 in 1999, 11 in 1998, 9 in 1997 and 7 in 1996). The report notes that there was an increase in the number of EU acts considered on the EFTA side (up from 147 in 2000 to 170 in 2001). In general, it seems that most EEA relevant acts are processed in an efficient manner and that the procedures for the integration of acts in EFTA capitals, the substructures and the Joint Committee function to the satisfaction of the contracting parties. In some areas, the integration takes too long time, thus increasing the average time from identification to integration. The report stresses that the Commission has pointed out the persistent backlog on the EFTA side. The backlog was not caused by political problems, but rather by administrative and technical delays, the report explains.

### *Simplified procedures*

4. The report highlights the simplified procedures for handling certain *acquis* in the veterinary field, adopted in 2001. These procedures mainly relate to acts concerning imports from third countries and safeguard and protective measures on imports from

third countries. The reports notes that the procedures will greatly simplify and speed up decision making in the veterinary field.

#### *Long outstanding issues*

5. The rapporteurs note that some long outstanding political issues were solved during 2001. The directives on the internal market for natural gas and food additives were integrated into the Agreement. The Joint Committee took note of the decision of the European Court of Justice (EJC) on the directive on biotechnical inventions.

#### *Protocols*

6. After nearly ten years, the negotiations regarding Protocol 3 on processed agricultural products came to a conclusion. The report notes that a transitional period of non-application of the provisions of Protocol 3 for Liechtenstein was established between 2002 and 2005. Concerning Protocols 9 (on transit of fish) and 11 (on the issue of control of approved exporters in Norway related to fish) were discussed during the year.

#### *Dispute settlement mechanism*

7. The rapporteurs note that the Commission invoked in 2001 for the first time the dispute settlement mechanism in Article 111 of the EEA Agreement concerning the Eurovignette directive, on the background that Liechtenstein introduced a new regime for toll roads in January 2001. This was contravening the Council directive in question, according to the EU side. The EFTA States did not recognise the disagreement as a dispute under Article 111 and stressed the independent authority of the EFTA Surveillance Authority. The report notes that the situation was resolved during the year with the presentation of a revised draft of the Eurovignette directive.

#### *Recognition of architects' diplomas*

8. In another matter involving ESA, concerning the approval of diplomas for architects from the Fachhochschule Liechtenstein, the Commission did not recognise the approval by ESA of the diplomas in question. The reports notes that discussions were conducted between Liechtenstein and the Commission to solve the matter.

#### *Constitutional requirements*

9. With regard to the fulfilment of constitutional requirements in the EEA EFTA States, the report notes good progress. At the end of 2001, only two EEA Joint Committee Decisions were awaiting completion of constitutional procedures where the six-month delay had expired.

#### *Transposition*

10. Regarding transposition i.e. incorporation of new EEA legislation into nation law, the report notes that the EEA EFTA States improved their deficits during 2001

from a poor performance for Iceland and Norway in May 2001 to an above average position in November.

#### *Decision shaping*

11. Regarding *decision shaping*, the report lists the issues on which EFTA comments were transmitted to the Commission, 18 in all (compared to 15 in 2000, 16 in 1999, 20 in 1998 and 22 in 1997). The transmission of EFTA comments had seen a steady decrease in the last four years, but was slightly higher last year than in the previous two years. The comments cover a wide range of subjects, but were largely focused on social policy, energy and issues related to the maritime sector. The rapporteurs note that neither analysis nor evaluation of the effect of EFTA participation in decision shaping is provided in the report. The report notes, however, how EFTA comments are elaborated and disseminated. The report describes in a comprehensive way that EFTA experts continue to be associated with the work of a wide range of EC committees and working groups, 323 to be exact; and that the EEA EFTA States could have participated in an additional 57. The reports maps out in detail the main categories of committees, and their legal basis in the Agreement, and breaks down the participation in the various fields covered by the EEA Agreement. Following previous requests from the EEA EFTA States to participate in the Commission's Advisory Committee on State Aid, progress was made during 2001, and the report notes that the Commission in January 2002 reacted affirmatively to future EEA EFTA participation.

#### *EEA enlargement*

10. The report says that preparations for EEA enlargement intensified strongly in 2001, and that most negotiation chapters of EEA relevance were provisionally closed during 2001. The rapporteurs note that concrete work was initiated on the drafting of a legal instrument for EEA enlargement, with a view to completion in the first half of 2002. The EFTA side was given a number of high-level briefings, including sector specific briefings. Commissioner Verheugen equally invited the EEA EFTA States to provide comments on negotiation chapters before EU common positions were finalised. EFTA comments on the free movement of workers were handed over to the Commission in 2001.

#### *Lisbon Strategy*

11. The report includes a section on the EEA EFTA States and the Lisbon Strategy. In 2001, the EEA EFTA States prepared an Action Plan for follow up to the Lisbon Strategy (adopted by the Standing Committee in January 2002). It commits the EEA EFTA States to pursue priorities with three principal elements: the internal market strategy, the European social agenda and the strategy for sustainable development.

#### *EEA JPC resolutions*

12. The report notes that the President-in-office of the Joint Committee responded to the EEA JPC at its 16<sup>th</sup> and 17<sup>th</sup> meeting on the functioning of the EEA Agreement in 2000, EC comitology and the EEA, New governance of the EU and its implications for the EEA and on New competition policies in the EEA.

### **III THE FUNCTIONING OF THE AGREEMENT – EVALUATION AND CONSIDERATIONS**

#### *General assessment*

15. The Annual Report of the EEA Joint Committee gives, as usual, a good factual overview of developments during 2001. The rapporteurs agree to the Report's assessment that, in general, the EEA Agreement functions in the sense that it lives up to its original function of securing the extension of the internal market to the whole of the EEA. The rapporteurs are pleased to see particular sections dedicated to the Lisbon process and enlargement. The number of acts integrated into the Agreement was high thus ensuring the overall aim of homogeneity in the EEA. The rapporteurs are, however, concerned about the fact that EU acts are considered on the EFTA side for a too long time. Timely implementation of EEA relevant acts into the Agreement is essential in keeping the homogeneity of the Area. Although the report points out that the backlog is not due to political points of view, the rapporteurs find it alarming that after eight years of existence, delays are due to administrative and technical procedures. Proper routines and procedures for the integration of EU acts into the Agreement should long have been in place.

#### *Homogeneity*

16. Major problems in maintaining the homogeneity of the Area have been avoided, but the rapporteurs agree with the Commission when encouraging the EEA EFTA States to speed up the processing of new acts. The rapporteurs recall previous resolutions adopted by the EEA JPC in which the committee has stressed the importance of reducing the backlog to a minimum. With the imminent enlargement of the EEA, maintaining homogeneity in the Internal Market becomes all the more important. While some outstanding *acquis* may not be seen as a major threat to the integrity of the Agreement, it is most certainly an unsatisfactory state of affairs and a hindrance to a true single, homogeneous market.

#### *Politically difficult issues*

17. It is noted with satisfaction that some long outstanding political difficult issues were solved during 2001. This concerns Protocol 3 on processed agricultural products, the directives on natural gas and food additives. The rapporteurs note that the Annual Report, as did the 2000 Report, takes up two cases involving Liechtenstein and the role of ESA; recognition of diplomas for architects from the Liechtenstein *Fachhochschule* and the implementation of the Eurovignette Directive.

#### *Dispute settlement mechanism – Article 111*

18. For the first time the Commission invoked the dispute settlement mechanism in Article 111 in the Agreement concerning the Eurovignette Directive. The implementation of the directive, which deals with charging of heavy goods vehicles for use of infrastructure, was duly implemented in the EEA EFTA States after a revised

draft of the Eurovignette Directive had been presented. The report fails to explain, however, which changes the revised draft contains. In last year's Report, the rapporteurs regretted the lack of further information in the Annual Report on this issue, and on the possible issues of principle, which were under consideration in the case of the Eurovignette Directive. In the 2001 Report, the information is still scarce, but notes that the EEA EFTA States did not recognise the disagreement as a dispute under Article 111.

#### *Recognition of diplomas*

19. Another issue, which the Annual Report also addressed in 2001, equally concerns the role of ESA. Discussion continued in 2001 between Liechtenstein and the Commission concerning the recognition of the diploma for architects from the Fach-Hochschule Liechtenstein, which was communicated and published in 2000, but for which the Community side expressed doubts as whether it met the criteria of the Architect Directive. The EFTA Surveillance Authority pursuant to procedures laid down in Directive 85/384/EEC had approved the diploma in question, however the Community reserved the right not to recognise these diplomas. This question is of the utmost importance as it highlights the competencies and powers of the EFTA Surveillance Authority and the Commission respectively. The report reads that discussions were conducted between Liechtenstein and the Commission to solve the matter. Again, the rapporteurs would recall the independent role of ESA and urge the contracting parties to find a solution. The rapporteurs regret the lack of more in-depth information in the report on an issue which must be considered as matter of principle.

#### *Translations*

20. The rapporteurs note that the Report does not address the issue of the capacity for translation of acts into Icelandic and Norwegian. This has been of great concern for the EEA JPC in the past.

#### *Decision shaping*

21. The EEA JPC has during the years emphasised many times that the EEA EFTA States are as much part of the internal market as EU member states and as such must participate in the shaping of common rules. Participation of the EEA EFTA States in decision shaping is important at all levels, from the expert level to exchanges in the Joint Committee. The EFTA pillar continued in 2001 to contribute to the EU decision shaping process. It continued to transmit its views to the Commission on a number of issues and took part in an ever-growing number of EU committees. The rapporteurs note, however, that the consultation process is not as regular as was originally assumed in the EEA Agreement. Consequently, the EEA EFTA countries' influence on the shaping of EEA legislation in most areas is limited.

#### *EFTA comments*

22. The rapporteurs have in the past expressed concern about the fact that the number of comments from the EFTA side to the Commission had decreased in the last few years. At the same time the number of acts incorporated into the Agreement

remained high. The rapporteurs are pleased to see that the number of EFTA comments picked up in 2001. There still appears, however, to be a discrepancy between the number of new acts incorporated and the comments provided by the EEA EFTA States in the decision-shaping phase. It appears that the EEA EFTA States could still make better use of the possibility of providing comments on future EEA legislation, even though the legislative proposals from the Commission could be characterised as a revision or an elaboration of already existing Internal Market legislation. The rapporteurs note with satisfaction that for the first time the report explains how EFTA comments are prepared, and would like to see in the future more information about comments, which for some reason did not materialise. The rapporteurs would find it interesting to know if the relatively low number of EFTA input to the EU decision-making process is due to administrative capacity, failure to agree on a common EFTA joint position or any other main reasons.

#### *Impact of decision shaping*

23. The EEA JPC has many times during the past years discussed possible effects of the EEA EFTA States' contribution to the EU decision-shaping process. The EEA is a dynamic area in which all contracting parties have the right to equally shape the decisions by which they eventually must abide. No annual reports have attempted to provide analysis of the impact of EEA EFTA comments. Although appreciating the technical and political difficulties involved in conducting analysis of this nature, the rapporteurs would have liked to see examples of vital interests of the EEA EFTA States, which have been addressed in EFTA comments and how the decision on the EU side finally materialised. Such an endeavour would not necessarily guarantee any impact, or lack of it, of the EFTA comment. It would however give the EEA JPC and other readers of the Report, valuable food for thought when discussing the EEA EFTA States' role in shaping EEA relevant EU legislation.

#### *Participation in EC committees*

24. Articles 81b, 99, 100 and 101 of the EEA Agreement address the EEA EFTA States' legal right to participate in various EC committees. There is a long-standing tradition for the participation of the EEA EFTA States in a large amount of EC committees, be it in comitology committees, programme committees, expert committees or non-comitology committees. The rapporteurs are pleased to find a detailed overview of the various committees, and note with satisfaction that the EEA EFTA States participate to a very large extent. The rapporteurs stress that these committees are also important in the EU decision-shaping process and will encourage the EEA EFTA States to make use of the committees to their fullest and to make the adequate preparations and follow-up of the work in their respective countries. On the question concerning EEA EFTA participation in the Advisory Committee on State Aid, which in 2000 seemed to be limited to the EFTA Secretariat and the EFTA Surveillance Authority only, it now seems that the EEA EFTA States may participate in the same manner as in other committees.

#### *Participation in EC programmes*

25. EEA EFTA participation in EU programmes plays an important part in maintaining homogeneity of the EEA. The proper legal basis for EEA EFTA participation in a specific programme is the EEA Joint Committee Decision incorporating the Decision into Protocol 31 EEA. On the EU side, the Decision is often adopted very close to the start-up of the programme. Since the decision-taking process in the EEA can only be completed after adoption on the EU side, the legal basis is often not in place when the programme activities are initiated, and the Joint Committee Decision enters into force several months after the start-up of the programme. The EEA EFTA States are excluded from participating in the management committees until a proper legal basis is in place. They are therefore prevented from participating in the crucial start-up of the programme. In this period priorities and work programmes are discussed and formulated. As in 1999 and 2000, the rapporteurs share the EFTA side's concern over the situation. The rapporteurs appreciate the efforts made on both the EFTA and the EU side to speed up the procedures for the processing of Joint Committee Decisions concerning programmes, as well as the pragmatic approach taken by the Commission in 2001, but note that the problem still persists.

#### *EU agencies*

26. The rapporteurs note that, after Norway and Iceland, Liechtenstein was integrated into the work of the European Agency for the Evaluation of Medicinal Products (EMEA). Two new EU agencies are expected to see the light of day in 2002; the European Maritime Safety Agency (EMSA) and the European Aviation Safety Agency (EASA). The EEA EFTA States have signalled its interest in participating in these agencies. The rapporteurs strongly support EEA EFTA participation in both EMSA and EASA as the important issues they would cover are of a cross-border nature and in the interest of all European citizens. EU agencies play an important role in determining policies, rules and regulations in most areas covered by the EEA Agreement. The rapporteurs also support EEA EFTA participation in the Authority for Food Safety (EFSA).

#### *EEA enlargement*

27. The rapporteurs note with satisfaction that briefings on enlargement, including sector specific issues were provided during the course of 2001. The rapporteurs stress the need for continuous briefings, as new EU Member States will also adhere to the EEA Agreement. The rapporteurs appreciate the fact that concrete work was initiated on the drafting of legal instrument for the simultaneous enlargement of the EU and the EEA, in accordance with Article 128 of the EEA Agreement. The rapporteurs welcome the comment on the Free Movement of Workers provided by the EEA EFTA States, however, they question if the opportunity to submit comments was fully seized by the EEA EFTA States as only one comment has been made. Where participation is possible, the rapporteurs stress that it is of utmost importance that the EEA EFTA countries make use of such opportunities to the fullest. In this regard, however, the rapporteurs also note that the EEA EFTA countries have, indeed, rather limited opportunities for direct participation in the forthcoming EU enlargement, as well as in a number of other important areas.

#### *EFTA and the Lisbon Strategy*

28. The Annual Report devotes a chapter to the EFTA follow-up to the Lisbon Strategy. The Lisbon Process, which is intrinsically linked to the development of the Internal Market, is equally important to the EEA EFTA States as it is for the EU Member States. The EEA JPC concurs with the aim of making the EU the most competitive, dynamic and knowledge based society by the end of the decade. If the aim is to make the whole of the EEA the most competitive area in the world by 2010, the EEA EFTA States must commit themselves to taking part in or shadowing every aspect of the Lisbon Strategy.

#### *EU developments*

29. The EEA JPC spent considerable time during 2001 to assess developments in the EU and their impact on the functioning of the EEA Agreement, notably enlargement, justice and home affairs, the Amsterdam and Nice treaties, the Lisbon strategy, EMU and the euro and the new working methods of soft law and the open method of co-ordination. The rapporteurs note that these developments might in the medium and long-term affect the functioning of the EEA Agreement, and point out that EEA EFTA participation is limited in a number of such areas of great significance in today's EU. The single most discussed topic of the EEA JPC in the last year, was the possible updating of the EEA Agreement in light of the above mentioned EU developments. As the EEA EFTA States have yet to make any formal request to the Commission, the issue is naturally not dealt with in the Annual Report. The Annual Report as such deals with the EEA Agreement and the EU anno 2001 and possible shortcomings of the Agreement as a result of the developments in the past decade have not been addressed. The EEA JPC will continue to scrutinise the EEA Agreement and its functioning, in the context of a new, larger and more comprehensive EU. From the EEA EFTA side the possible updating of the EEA Agreement will continue to be a topic of great importance.

#### **IV THE EEA JPC AND ITS RESOLUTIONS**

30. The EEA JPC's institutional relationship with the EEA Joint Committee and the EEA Council has been good. The current practice of distribution of Joint Committee statements on JPC resolutions before JPC meetings makes it possible for members to prepare themselves for a dialogue with Joint Committee representatives, and is highly appreciated. The responses provided by the President-in-Office of the EEA Joint Committee and by the representatives of the EEA Council have been comprehensive, allowing ample time for discussion and an exchange of views.

31. The EEA Agreement has completed its first eight years of operation, having entered into force on 1 January 1994. The EEA JPC is mindful of its role as a contributor to a better understanding between the Community and the EFTA States in the fields covered by the Agreement. It has a democratic parliamentary control function and has the right to scrutinise all EC legislation applying to the EEA as well as its implementation. Transparency and access to EEA relevant documents are therefore essential. The rapporteurs note that the issue of transparency and access to documents are not dealt with in the Annual Report. The EEA JPC welcomes progress made on many of its resolutions during 2001, in particular Protocol 3 and on some long-

outstanding politically sensitive directives. The rapporteurs highlight that the EU is rapidly changing both its scope of issues covered and its working methods, and that these developments could influence the functioning of the EEA Agreement, certainly from a political point of view and once enlargement is a fact.

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**RESOLUTION****ON THE ANNUAL REPORT ON THE FUNCTIONING OF THE EEA AGREEMENT IN 2001**

The Joint Parliamentary Committee of the European Economic Area:

- A. in accordance with its task laid out by the EEA Agreement (Article 95, paragraph 4),
- B. emphasising that the EEA EFTA States are not third countries in matters concerning the internal market, but full participants,
- C. mindful of the importance of maintaining homogeneity within the EEA,
- D. noting that the information and consultation process provided for by the EEA Agreement is an essential tool for the EFTA States for the shaping of common rules,
- E. recalling its resolution on the functioning of the EEA in 1994 (adopted 29 May 1995), in 1995 (adopted 3 June 1996), in 1996 (adopted 14 April 1997) in 1997 (adopted 25 May 1998) and in 1999 (adopted 16 March 1999), in 2000 (adopted 24 May 2000) and in 2001 (adopted 20 June 2001),
  1. welcomes the Annual Report of the EEA Joint Committee for 2001 and agrees with the general assessment that the EEA is functioning in the sense that it lives up to its original function of securing the extension of the internal market to the whole of the EEA;
  2. appreciates the statement delivered by the President-in-office of the EEA Joint Committee at the 16<sup>th</sup> EEA JPC, following the JPC resolutions adopted at the 15<sup>th</sup> meeting of the EEA JPC concerning the functioning of the EEA Agreement in 2000, and EC comitology and the EEA;
  3. welcomes the high, and increased, number of acts incorporated into the EEA Agreement during 2001;
  4. welcomes the closure of the negotiations on Protocol 3, the incorporation of the directives on the internal market for natural gas and food additives into the EEA Agreement, but notes that no solution has yet been found on integration the biotechnical inventions directive;
  5. reiterates its warning that incompleteness in the homogeneity of the Internal Market within the EEA at the time of the next enlargement of the EU could have serious consequences for the functioning of the market, but notes with satisfaction that transposition of EEA legislation has improved significantly for Norway and Iceland during 2001;

6. reiterates its concern about backlog on the EFTA side as integration of new EU acts into the Agreement takes too long time in some areas, and calls upon the EEA EFTA States to improve their administrative procedures;
7. welcomes the increase in the number of EFTA comments on EC legislation which have been submitted to the Commission, but still urges 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;
8. welcomes the high-level briefings provided by the Commission to the EEA EFTA States on enlargement, welcomes the EEA EFTA comment on the free movement of workers, regrets that fact that only one comment has been made and urges the EEA EFTA States to make use of this opportunity to its fullest;
9. underlines the importance of safe-guarding the basic principle of the two-pillar system as a cornerstone in the EEA co-operation, and reiterates its call on the contracting parties to find a permanent solution to the problem concerning the recognition of diplomas throughout the EEA for architects from the Liechtenstein *Fachhochschule*;
10. welcomes the solution found on the implementation of the Eurovignette directive, but calls on the Joint Committee to clarify the issues of principle in this case and to report back to the EEA JPC;
11. regrets the exclusion of the EEA EFTA States in some programme management committees in the crucial, initial stages of a programme, but appreciates the pragmatic approach taken by the Commission in certain cases;
12. welcomes the EEA EFTA States' participation in over 300 committees, welcomes the solution which will allow EEA EFTA States to be involved in the work of the Commission's Advisory Committee on State Aid;
13. calls for the participation of the EEA EFTA States in the European Agencies on Maritime and Aviation Safety (EMSA and EASA) and in the European Authority for Food Safety (EFSA);
14. calls on the Joint Committee to inform the EEA JPC on the modalities of implementing Article 128 of the EEA Agreement on enlargement of the EEA at its 19<sup>th</sup> meeting in the Autumn of 2002;
15. calls on the EEA EFTA States to fully commit themselves to the goals and actions of the EU's Lisbon Strategy in order to make the whole of the EEA the most competitive, dynamic and knowledge-based society by the end of the decade;

16. emphasises that the EEA Agreement is a dynamic Agreement evolving in a changing Europe, and calls on the EEA Council and the EEA Joint Committee to address recent and future developments in the EU and the possible impact on the EEA Agreement, and to inform the EEA JPC;
  17. calls on the contracting parties to outline an information strategy for public access to EEA relevant documents in the name of transparency, and to provide the EEA JPC with all relevant documents in order for the EEA JPC to execute its democratic scrutiny and control of the functioning of the EEA Agreement;
  18. calls on the EEA EFTA States to agree on a common position for the updating of the EEA Agreement to counteract breaches in the legal homogeneity of the Internal Market as a result of EC Treaty changes after the entry into force of the EEA Agreement, and to submit its proposal to the Commission at the earliest possible stage.
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