

EUROPEAN ECONOMIC AREA

JOINT COMMITTEE

4 November 2016

3 Annexes

Ref. 16-4665

Annual Report of the EEA Joint Committee 2015 The Functioning of the EEA Agreement (Article 94(4))

General overview

1. The main part of this report provides an overview of the work of the EEA Joint Committee in 2015. Annex I contains a review of the activities of the Subcommittees under the EEA Joint Committee, Annex II contains an overview of the state of decision making in 2015, and Annex III presents a list of EEA Joint Committee Decisions (JCDs) adopted in 2015.

2. Throughout the year, the EEA Joint Committee and the Subcommittees focused on several important areas for the European Economic Area. A few examples to highlight include the European Supervisory Authorities in the field of financial services, the monitoring of legal acts awaiting incorporation into the EEA Agreement, and emission performance standards for new passenger cars and light commercial vehicles as part of the Community's integrated approach to reduce CO₂ emissions.

The EEA Joint Committee met eight times in 2015 and adopted 321 decisions incorporating 483¹ legal acts.

3. The EEA Joint Committee adopted several significant decisions in 2015, such as:

- Decision 32/2015 concerning the European Global Navigation Satellite System Agency (GNSS Agency),
- Decision 72/2015 on the Community legal framework for a European Research Infrastructure Consortium (ERIC),
- Decision 102/2015 on administrative cooperation through the Internal Market Information System,
- Decision 147/2015 concerning Novel Foods and Novel Food Ingredients,
- Decision 188/2015 on ship-source pollution and the introduction of penalties for infringement,
- Decision 191/2015 on the protection of the environment through criminal law,
- Decision 197/2015 concerning animal by-products,
- Decision 219/2015 on measures facilitating the exercise of right conferred on workers in the context of freedom of movement for workers,

¹ This figure excludes 71 acts related to construction products which were re-incorporated into the EEA Agreement by the adoption of Decision No 98/2015.

- Decision 306/2015 and No 22/2016 on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products and spirit drinks,
- Decisions containing legislation in the area of energy labelling and eco-design.

4. The European Commission provided information to the EEA Joint Committee on:

- Notifications from Cyprus and Greece regarding the revision of protective measures notified under Article 43 of the EEA Agreement,
- The Transatlantic Trade and Investment Partnership (TTIP).

5. The EEA EFTA States provided information to the EEA Joint Committee on:

- Notifications from Iceland regarding the revision of protective measures notified under Article 43 of the EEA Agreement.

6. The biannual Internal Market Scoreboard, published by the EFTA Surveillance Authority (ESA) in July 2016 and reflecting the state of play on 31 October 2015, shows that the average transposition deficit of the EEA EFTA States decreased slightly from 1.1% in the previous scoreboard to 1%. The deficit decreased from 2.1% to 1.8% for Iceland. The transposition deficit for Norway has remained at the zero level. Liechtenstein's deficit increased from 1.1% to 1.2%. The EU Member States' average transposition deficit remained stable on 0.7%. The deficit target is 1%. It should be noted that the Scoreboard refers exclusively to legal acts already in force under the EEA Agreement. It should also be noted that the Single Market acquis applicable to the EEA EFTA States does not coincide exactly with that applicable to the EU Member States. This situation is due to the time lag between the adoption or abrogation of legal acts by the EU and their incorporation into or deletion from the EEA Agreement. Any comparison of results from the two different scoreboards (i.e. the Internal Market Scoreboard and the EEA EFTA Scoreboard) has to take this difference into account.

Incorporation of acquis into the EEA Agreement

7. In 2015, 483 legal acts were incorporated into the EEA Agreement. This is a decrease of 23% compared to 2014, when 627 legal acts were incorporated. In 2015, 594 legal acts were identified by the EFTA side as possibly being EEA relevant, which is a decrease of 24.8% compared to 2014, when 790 legal acts were identified as possibly being EEA relevant.

8. On 18 November 2015, when the monitoring list was run for the last time in 2015, there were 435 legal acts awaiting incorporation where the compliance date in the EU had passed, compared to 428 acts in November 2014. This represents a slight increase of 1.6%.

9. On 31 December 2015, the number of JCDs awaiting the fulfilment of constitutional requirements for more than six months in line with Article 103 of the EEA Agreement stood at six, compared to three on 31 December 2014. On 31 December 2015 the number of "linked" JCDs, where the entry into force depended on

the entry into force of other JCDs that had already been or would be adopted, has decreased to 17 compared to 30 on 31 December 2014.

10. In total, 217 legal acts adopted by the EU in 2015 were incorporated into the EEA Agreement in the same year, compared to 224 legal acts in 2014.

EEA EFTA participation in EU agencies and programmes

11. The EEA EFTA States participated in 14 EU programmes and 18 agencies, of which 13 were regulatory agencies and five executive agencies.

Decision shaping

12. The EEA EFTA States submitted EEA EFTA Comments on the following subjects:

- Internal Market Strategy for Goods and Services.
- Better Regulation,
- Proposal regarding contract rules for online purchases of digital content and tangible goods,
- Public consultation on the evaluation and review of regulatory framework for electronic communications networks and services,

13. The EU side provided oral and/ or written reactions to all of these EEA EFTA Comments in meetings of the EEA Joint Subcommittees.

Status of outstanding issues

14. Good progress was achieved with regard to the incorporation into the EEA Agreement of the EU Regulations establishing the European Supervisory Authorities in the area of financial services ("ESAs Regulations"). The drafting of the relevant Joint Committee Decisions incorporating these EU Regulations into the EEA Agreement was on-going, with the aim of their adoption by the EEA Joint Committee as soon as possible.

15. The discussions on the following issues have not yet been concluded (further information is found in Annex I):

- The Directive on the Deposit Guarantee Scheme,
- The Third Package for the Internal Energy Market,
- The remaining part of the 2009 TELECOM package including the Regulation establishing the Body of European Regulators for Electronic Communications (BEREC),
- The Third Postal Directive,
- The Regulation on Medicinal Products for Paediatric Use,
- The Marine Strategy Framework Directive,
- The Offshore Safety Directive,
- Directive on the assessment and management of flood risks,
- The EU legal acts in the area of organic production.

16. The EEA Joint Committee has reiterated its determination to work towards the rapid conclusion of these issues.

Advisory bodies under the EEA

17. The EEA Consultative Committee held its annual meeting in Zagreb on 4-5 June 2015. The Committee adopted resolutions and reports on:

- The impact of the Transatlantic Trade and Investment Partnership on the EEA Agreement,
- Investing in quality jobs for sustainable growth.

18. The EEA Joint Parliamentary Committee held a meeting in Fredrikstad on 17-18 March 2015, where it adopted resolutions and reports on:

- Industrial Policy in Europe,
- The Transatlantic Trade and Investment Partnership and its possible implications for the EEA EFTA States.

19. The EEA Joint Parliamentary Committee also held a meeting in Brussels on 19 November 2015, where it adopted three resolutions on:

- The Digital Single Market Strategy,
- Energy Union,
- The Annual Report of the EEA Joint Committee on the Functioning of the EEA Agreement in 2014.

The reports and resolutions were subsequently forwarded to the EEA Joint Committee and the EEA Council.

EEA Financial Mechanism

20. As of 31 December 2015, more than 35% of funding for the 2009-2014 EEA Financial Mechanism has been allocated to programmes dealing with environmental issues and climate change. Cultural heritage, civil society, human and social development, and research and scholarships also receive significant funding.

21. Throughout 2015, there was a continued focus on ensuring the bilateral aspects of all programmes. To enhance cooperation and exchange, more than half of the programmes involved cooperation with donor programme partners (DPPs). These partnerships were consolidated throughout 2014. There are 49 programmes with DPPs, involving 15 public entities from the donor countries, as well as the Council of Europe.

22. Negotiations on a continuation of EEA EFTA financial contributions to reduce social and economic disparities in the EEA made good progress. On 17 July 2015, the chief negotiators of the EEA EFTA States and the EU initialled the draft Protocol 38c of the EEA Agreement on an EEA Financial Mechanism for the 2014-2021 period, the draft Agreement on a Norwegian Financial Mechanism for the 2014-2021 period, and draft protocols on trade in fish and fisheries products between Norway and the EU and Iceland and the EU.

Article 19 – Trade in agricultural products

23. Article 19 of the EEA Agreement foresees *inter alia* reviews of conditions of trade in agricultural products at two-yearly intervals. Negotiations with Iceland on further liberalisation of trade in agricultural products under Article 19, which were launched in 2012, were concluded on 17 September 2015. Negotiations between the EU and Norway under Article 19 were launched on 3 February 2015.

EUROPEAN ECONOMIC AREA

JOINT COMMITTEE

Annex I to ref. 16-4665

ACTIVITIES OF JOINT SUBCOMMITTEES IN 2015

FREE MOVEMENT OF GOODS

General

1. In 2015, 333² legal acts in the areas covered by Subcommittee I were incorporated into the EEA Agreement.

Veterinary, feedingstuffs and phytosanitary matters

2. 93 legal acts were incorporated in the veterinary field.
3. Regulation (EC) No 1069/2009 laying down health rules as regards animal by-products and derived products not intended for human consumption was incorporated into the EEA Agreement.
4. Each year, a number of legal acts are subject to the simplified procedure. Instead of being incorporated into the EEA Agreement by adoption of a JCD, the procedure requires that the EEA EFTA States take equivalent measures simultaneously with the EU Member States. The EEA EFTA States are therefore invited to implement and apply the measures adopted by the EU in the same manner and within the same deadlines as those applicable to the EU Member States. These legal acts are taken note of by the EEA Joint Committee.

Technical regulations, standards, testing and certification

5. 225 legal acts were incorporated into the EEA Agreement, of which most related to foodstuffs, dangerous substances and medicinal products.
6. In the field of household appliances the EEA Joint Committee incorporated a set of legislative acts in the area of ecodesign and energy labelling. This included for example Commission Regulation (EU) No 801/2013 with regard to ecodesign requirements for standby, off mode electric power consumption of electrical and electronic household and office equipment, Commission Delegated Regulation (EU) No 811/2013 concerning the energy labelling of space heaters, combination heaters and Commission Delegated Regulation (EU) No 65/2014 on the energy labelling of domestic ovens and range hoods.

² This figure does not take into account 71 acts related to construction products which were re-incorporated into the EEA Agreement by the adoption of Decision No 98/2015.

7. In the field of foodstuffs, Regulation (EC) No 258/97 concerning novel foods and novel food ingredients was incorporated. With regard to the legislation on organic farming, further discussions took place on the labelling of organic products as well as the EEA EFTA States' requests for adaptations to certain requirements due to special structural, geographical and climatic factors. These adaptations were however not accepted by the EU side.

8. In the field of medicinal products, with regard to the Paediatric Regulation (EU) No 1901/2006, following constructive discussions in which all EEA EFTA States came to an agreement in granting ESA the competence to impose fines, in September and October 2015, the EFTA side submitted a revised version of the JCD reflecting this agreement. The debate is currently focused on technical aspects linked to the incorporation of this legislation.

9. In the field of dangerous substances, the Plant Protection Package, consisting of 135 legal acts, adopted by the EEA Joint Committee on 30 September 2014, has entered into force on 1 June 2015 following a fulfilment of constitutional requirements under Article 103 EEA on the side of the EEA EFTA States.

Public procurement

10. One legal act, Directive 2014/55/EU on electronic invoicing in public procurement, was incorporated in this field in 2015.

Energy

11. In addition to the legislation in the area of eco-design and energy labelling mentioned above, Commission Decision 2013/114/EU establishing the guidelines for Member States on calculating renewable energy from heat pumps from different heat pump technologies was incorporated.

12. Important work was undertaken towards the incorporation into the EEA Agreement of the Third Package for the Internal Energy Market. Following the reply to the draft JCD submitted to the EU in November 2013, the EEA EFTA States submitted a revised version of the JCD in May 2015. The discussions in 2015 focused on the level of participation of the EEA EFTA States in the Agency for Cooperation of Energy Regulators (ACER) and, more specifically, the modalities related to a mechanism for binding decisions vis-à-vis the National Regulatory Authorities of the EEA EFTA States.

13. Discussions continued on the incorporation of Directive 2010/31/EU on the energy performance of buildings (Recast). In 2015, no JCD was submitted by the EFTA side.

Intellectual property rights

14. Directive 2012/28/EU on orphan works was incorporated into the EEA Agreement on 25 February 2015. The revised draft JCD containing Directive 2014/26/EU on collective management of copyright, which was under discussion between the Parties was submitted by the EFTA side on 10 November 2015. At the end of 2015, the discussion on this revised draft was ongoing.

Customs matters and rules of origin

15. Two JCDs were adopted with the aim of updating Protocol 4 on rules of origin in respect of the accession of Croatia to the EU and aligning the text of Protocol 4 to the text of the Regional Convention on Pan-Euro-Mediterranean Preferential Rules of Origin.

FREE MOVEMENT OF CAPITAL AND SERVICES

16. In 2015, 73 legal acts in the areas covered by Subcommittee II were incorporated into the EEA Agreement.

Financial services and company law

17. On the basis of the political agreement on the principles underlying the incorporation into the EEA Agreement of the EU Regulations establishing the European Supervisory Authorities in the area of financial services, discussions continued on the incorporation of new EU acts, with a particular focus on the Regulations establishing the new EU system of financial supervision (consisting of the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority and the European Systemic Risk Board), the Directive on Alternative Investment Fund Managers, the Regulation on European Market Infrastructure, the Regulation on Credit Rating Agencies, and several delegated acts related to it, and the Regulation on Short Selling.

Electronic communication, audiovisual services, information society and data privacy

18. Nine new legal acts were incorporated in this field. Including Commission Implementing Regulation (EU) No 1203/2012 on the separate sale of regulated retail roaming services within the Union. The other incorporated legal acts concerned establishing of the multiannual radio spectrum policy programme, and establishing the European Regulators Group for Electronic Communications Networks and Services.

19. Discussions continued on the incorporation of the Telecom Package, in particular on modalities of EEA EFTA participation in the Body of European Regulators for Electronic Communications (BEREC), which commenced its activities in the EU in January 2010. The EU side and the EEA EFTA side maintained diverging views on the level of participation of the EEA EFTA countries in the BEREC meetings. The EU Regulation stipulates that NRAs (National Regulatory Authorities) from the EEA EFTA States shall have "*observer status and shall be represented at an appropriate level*". The EEA EFTA countries insisted on "*full participation without the right to vote*", as in other EU agencies, in which they participate.

Postal services

20. Already in 2014, Norway lifted its reservation with respect to the incorporation of the Third Postal Services Directive 2008/6/EC into the EEA Agreement. However, the debate in Iceland and in Liechtenstein on whether to request adaptations to the Directive, was still ongoing at the end of 2015.

Transport

21. In the field of transport, 59 legal acts were incorporated, including legislation laying down technical requirements and administrative procedures related to air operations of third country operators, setting the minimum level of training of seafarers, and legislation on periodic roadworthiness tests for motor vehicles and their trailers. Several legal acts in the area of rail transport were incorporated. These covered inter alia aspects of the interoperability of the rail systems, and rail infrastructure.

22. Issues related to Norwegian obligations to the International Maritime Organization and the Regulation on common rules and standards for ship inspection and survey organisations were discussed, so far without reaching a conclusion.

23. The Directive 2009/15/EC on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations, which is linked to the Regulation (EC) No 391/2009 on common rules and standards for ship inspection and survey organizations, was not incorporated into the EEA Agreement in 2015. The position of the EFTA side concerning incorporation this act was not finalised.

24. Regulation (EC) No 80/2009 on a Code of Conduct for computerised reservation systems was after complex discussions incorporated into the EEA Agreement, on 11 December 2015.

25. JCD No 88/2014 containing legal acts establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator adopted on 16 May 2014 entered into force on 1 August 2015. The six months period for notifying constitutional requirements expired on 16 November 2014.

26. JCD No 116/2105 incorporating Regulation (EU) No 1177/2010 concerning the rights of passengers when travelling by sea and inland was adopted on 30. April 2015 and JCD No 228/2015 incorporating Commission Regulation (EU) No 73/2010 laying down requirements on the quality of aeronautical data and aeronautical information for the single European sky was adopted on 25 September 2015. The two legal acts did not enter into force in 2015 due to the need for fulfilment of constitutional requirements.

FREE MOVEMENT OF PERSONS

27. One legal act in the area of free movement of workers was incorporated into the EEA Agreement in 2015. It concerned Directive 2014/54/EU on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers. This directive however did not entered into force in the EEA EFTA States at the end of 2015 due to the need for fulfilment of constitutional requirements.

HORIZONTAL AND FLANKING POLICIES

28. In 2015, 72 legal acts were incorporated into the EEA Agreement in the areas covered by Subcommittee IV.

Budgetary matters

29. The 2015 proportionality factor was 2.97%, compared to 3.03%, in 2014. Through the budgetary procedure, it was agreed that 30 EEA EFTA national experts would be seconded to the various directorates within the European Commission that deal with joint EU programmes and activities. Furthermore, efforts were made to coordinate the participation of the EEA EFTA States in the new programmes established under the MFF 2014-2020. In 2015, the EEA EFTA States participated and contributed to the following programmes:

- Connecting Europe Facility (ICT Part)
- Competitiveness of Enterprises and Small and Medium-sized Enterprises (COSME)
- Creative Europe
- Employment and Social Innovation
- Erasmus+
- European Statistical Programme
- Horizon 2020
- Rights, Equality and Citizenship
- Union Civil Protection Mechanism
- Consumer Programme
- Copernicus
- Galileo
- Health Programme

Environment

30. In the field of environment, 53 legal acts were incorporated into the EEA Agreement, including the Fuel Quality Directive (2009/30/EC), the Directive on waste electrical and electronic equipment (2012/19/EU), the Directive 2014/101/EU concerning a framework for Community action in the field of water policy, Commission Decisions establishing the ecological criteria for the award of the EU Ecolabel and Commission Implementing Decision 2013/727/EU establishing a format for notifying the information on the adoption and substantial revisions of the waste management plans and the waste prevention Programmes.

31. The JCD 191/2015 containing Directive 2008/99/EC on the protection of the environment through criminal law was adopted on 10. July 2015. The legal act in question however did not enter into force in 2015, due to the need for fulfilment of constitutional requirements by Iceland and Liechtenstein.

32. Good progress was made in view of incorporating the Regulations on carbon dioxide emissions from new passenger cars and new light commercial vehicles. The discussion was not conclusive at the end of 2015.

33. The JCD 229/2015 containing the Industrial Emissions Directive (Directive 2010/75/EU) was incorporated on 25 September 2015. In 2015, this JCD however could not enter into force due to the need for fulfilment of constitutional requirements by Iceland and Liechtenstein.

34. The JCD incorporating Regulation 995/2010 laying down the obligations of operators who place timber and timber products on the market was adopted on 3rd May 2013. Due to the need fulfil constitutional requirements by Iceland and Norway, the JCD entered into force on 1 May 2015, two years after its adoption.

35. JCD 173/2013 incorporating Directive 2009/33/EC on promotion of clean and energy-efficient road transport vehicles adopted on 8 October 2013 had not entered into force at the end of 2015. Notification of fulfilment of constitutional requirements, for which the six-months deadline expired on 8 April 2014, was still expected from Norway.

36. Directive 2007/60/EC on the assessment and management of flood risks as well as Directive 2008/56/EC establishing a framework for community action in the field of marine environmental policy (Marine Strategy Framework Directive) were not incorporated into the EEA Agreement in 2015.

37. In the area of EU nature legislation, the Birds Directive 2009/147/EC and the Habitats Directive 92/43/EEC, which form the basis on the legislation, were not incorporated by the end of 2015.

Public health

38. A number of legal acts in the area of public health were incorporated into the EEA Agreement in 2015, including Decision No 1082/2013/EU on serious cross-border threats to health.

Statistics

39. 15 acts were incorporated in the field of statistics, notably Commission Regulation (EU) No 1209/2014 establishing a new statistical classification of products by activity (CPA) and Commission Implementing Regulation (EU) 2015/459 specifying the technical characteristics of the 2016 ad hoc module on young people on the labour market.

40. At the same time nine legal acts become obsolete and therefore they were deleted from the EEA Agreement.

Health and safety at work and labour law

41. One legal act in the field of health and safety at work and labour law was incorporated in 2015. It was Council Directive 2014/112/EU implementing the European Agreement concerning certain aspects of the organisation of working time in inland waterway transport, concluded by the European Barge Union (EBU), the European Skippers Organisation (ESO) and the European Transport Workers' Federation (ETF).

LEGAL AND INSTITUTIONAL MATTERS

42. No meeting of Subcommittee V took place in 2015. The discussion on *inter alia* the incorporation of the Marine Strategy Framework Directive and the Offshore Directive into the EEA Agreement, therefore remained open. In these cases, the Parties

continue to have diverging views on the EEA relevance of these legislative acts. The EFTA side argues that they fall outside the scope of the EEA Agreement. The EU side is of the opinion that these legislative acts fall under the scope of the EEA agreement and they form an important part of the EU's *acquis* with an impact of homogeneity of the internal market.