



EEA DECISION-MAKING

The central plank of the EEA is the **principle of homogeneity**. This is to be achieved by the timely incorporation of EC legislation (*acquis communautaire*) into the EEA Agreement. This means that as soon as a relevant EC legal act has been formally adopted by the Council of European Ministers and the European Parliament, or by the European Commission, the EEA Joint Committee is to take a decision concerning the appropriate amendment of the EEA Agreement “with a view to permitting a **simultaneous application**” of legislation in the EU and the EEA EFTA States (Art 102(1) EEA).

▼ The Decision-making Phase in the Community

Council/European Parliament Legislative Procedure

It is the role of the European Commission to propose legislation. When a proposal has been agreed internally in the Commission, it is presented to the Council and to the European Parliament. In the case of most Internal Market/EEA legislation, the Council and the Parliament are co-legislators with equal rights to adopt the legislation. This decision-making procedure – co-decision (Art. 251 EC) – was introduced by the Treaty of Maastricht, and increased the legislative powers of the European Parliament considerably. The co-decision procedure was further strengthened by the Treaty of Amsterdam and the Treaty of Nice.

Comitology Procedure

Not all EEA-relevant *acquis communautaire* contains legislation adopted by the Council and the Parliament. In fact, the Commission, by virtue of competencies delegated to it, adopts a far larger number of legislative acts than the Council. This takes place within the framework of adopted Council/EP regulations, directives or decisions. In other words, when the Council and the European Parliament have decided on “what” should be done, they authorise the Commission to create legislation stipulating “how” it should be done and give it the mandate to fill in technical and detailed requirements across a range of issues. Before adopting such a measure, the Commission must present a draft to a committee of experts from the EU Member States, to ensure the control by the latter of the development of legislation. “Comitology” is a system

of such committees assisting the Commission in exercising its executive powers.

During the decision-making process on the EU side, the EEA EFTA States have little, or no formal, opportunity to influence the Council and the European Parliament. This is very different from the pre-pipeline or preparatory stage, where the EEA EFTA States actively take part in the shaping of decisions relating to EEA legislation. This is specifically the case with the comitology procedure where EEA EFTA experts have access to the Commission comitology committees mentioned above (see chapter on EEA Decision-shaping).

▼ Incorporation of EC Legislation into the EEA Agreement

After an EEA-relevant EC act has gone through the EC procedures and been adopted, the Desk Officer at the EFTA Secretariat responsible for that area prepares a **standard sheet** on this particular act normally upon publication in the Official Journal of the EU. The standard sheet is a form where all references and vital information on the act in question is recorded. The EFTA experts in their respective capitals need to answer a number of questions such as whether the act is EEA-relevant, whether it requires technical adaptations for incorporation in the EEA EFTA States and whether it is likely to have constitutional requirements (see Art. 103 EEA).

Once the Secretariat receives confirmation from all three EFTA States that an act is EEA-relevant and that it requires no adaptations or the EFTA States have agreed on the adaptations, it drafts a Joint Committee Decision. The draft Decision undergoes legal scrutiny in the Secretariat and then is sent to experts for approval. When the experts return the Decision, it is sent to the relevant Subcommittee for immediate approval, as appropriate, or is placed on the agenda for a meeting. Once the draft Decision has been cleared by a Subcommittee, it is handed over to the Commission. The Secretariat then consults the Commission on the timing of adoption in the EEA Joint Committee. All the Contracting Parties must be in agreement in order for the EEA Joint Committee to take a decision.



▼ Constitutional Requirements

The contracting parties have not transferred any legislative powers to the EEA Joint Committee. It has therefore been necessary to regulate the situation in which, according to their constitutions, an EEA Joint Committee Decision can only be binding on one or the other contracting party after being approved by parliament or by a referendum (Art. 103 EEA).

The fulfilment of constitutional requirements affects the date of entry into force of the Joint Committee Decision. Where one of the contracting parties needs to fulfil constitutional requirements and notification of fulfilment is received after the date of entry into force stated in the Decision, the confirmed date of entry into force will be the first day of the second month following the last notification. If such notification has not been received within six months after the adoption of an EEA Joint Committee Decision, the Decision is to be applied provisionally pending the fulfilment of constitutional requirements, unless a contracting party notifies the other parties that provisional application cannot take place.

In order to clarify issues and to shorten the length of time needed for parliamentary approval, the EEA EFTA States have introduced procedures to inform and consult with their parliaments at an early stage. In this way, the date of entry into force can be set as close as possible to the expected date of completion of parliamentary procedures.

Once the procedures for fulfilment of constitutional requirements are completed in an EEA EFTA State, it notifies the EFTA Secretariat, which forwards the information to the Commission and to the other EEA EFTA States.

▼ EEA Joint Committee Decisions

The Secretariat produces a list showing the decisions by year of adoption. The list is updated after every EEA Joint Committee meeting. In order to keep track of those EEA Joint Committee Decisions awaiting fulfilment of constitutional requirements, the Secretariat produces a list of "Awaited notifications under Article 103 of the EEA Agreement". For this and other legal information, we refer to our online [Legal documents \(http://secretariat.efta.int\)](http://secretariat.efta.int).