

EUROPEAN ECONOMIC AREA

JOINT COMMITTEE

4 February 2019

3 Annexes

Ref. 18-4960

Annual Report of the EEA Joint Committee 2018 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 2018. 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 2018, and Annex III presents a list of EEA Joint Committee Decisions (JCDs) adopted in 2018.
2. The EEA Joint Committee met eight times in 2018 and adopted 258 decisions incorporating 433 legal acts, including:
 - Decisions No 112/2018 and 113/2018 concerning the European Market Infrastructure Regulation (EMIR),
 - Decision No 114/2018 concerning driving licenses,
 - Decision No 119/2018 concerning participation in the preparatory action on defence research,
 - Decision No 146/2018 concerning defence-related products,
 - Decision No 154/2018 concerning the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation),
 - Decision No 158/2018 concerning cross-border portability of online content services,
 - Decisions No 213/2018 and 214/2018 concerning insurance distribution (IDD),
 - Decision No 215/2018 concerning the enforcement of the Posting of Workers Directive,
 - Decision No 247/2018 concerning the powers of the European Supervisory Authorities (Omnibus II),
 - Decisions No 249/2018, 251/2018 and 252/2018 concerning Anti-Money Laundering,
 - Decisions No 257/2018 and 260/2018 concerning Ship Recycling.
3. The European Commission provided information to the EEA Joint Committee on:
 - Notifications from Greece regarding the revision of protective measures notified under Article 43 of the EEA Agreement (capital controls),

- Multiannual Financial Framework 2021-2027.
4. 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 (capital controls).
 5. The biannual Internal Market Scoreboard, published by the EFTA Surveillance Authority (ESA) in July 2018 and reflecting the state of play on 31 May 2018, shows that the average transposition deficit of the EEA EFTA States has been reduced to 0.6% from 1.2% in December 2017. In this period, the deficit of Iceland was reduced from 1.8% to 1%, the deficit of Norway decreased from 0.5% to 0.1% and the deficit of Liechtenstein decreased from 1.3% to 0.7%.¹

Incorporation of *acquis* into the EEA Agreement

6. In 2018, 433 legal acts were incorporated into the EEA Agreement, which is 16% less than in 2017, when 514 legal acts were incorporated. In 2018, 579 legal acts were identified by the EFTA side as possibly being EEA relevant, which is 12% fewer than in 2017, when 659 legal acts were identified as possibly being EEA relevant.
7. On 8 November 2018, when the monitoring list was run for the last time in 2018, there were 612 legal acts awaiting incorporation where the compliance date in the EU had passed, compared to 576 acts in November 2017. This represents an increase of 6.3%.
8. On 31 December 2018, the number of JCDs awaiting the fulfilment of constitutional requirements for more than six months stood at 19, compared to 15 on 31 December 2017. On 31 December 2018, 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 increased to 29, compared to 20 on 31 December 2017.
9. In total, 162 legal acts adopted by the EU in 2018 were incorporated into the EEA Agreement in the same year, compared to 252 legal acts in 2017.

EEA EFTA participation in EU agencies and programmes

10. Through the EEA Agreement, the EEA EFTA States participated in 15 EU programmes and 21 agencies, of which 16 were regulatory agencies and five executive agencies (listed in Annex I).

Decision shaping

11. In 2018, the EEA EFTA States submitted 13 EEA EFTA Comments on the following subjects (the same number of Comments was submitted in 2017):

1. From 2009, ESA used the interim target of 1% set by the European Council in 2007 as a benchmark and is now looking towards a benchmark of 0.5% in line with the European Commission’s Single Market Act proposed in April 2011.

- The European Maritime Single Window environment,
 - The Union Civil Protection Mechanism,
 - The European Supervisory Authorities and European Systemic Risk Board,
 - The Goods Package,
 - The EU Cybersecurity Agency (ENISA) and the Cybersecurity Act,
 - Marketing and use of explosives precursors,
 - Work-life balance,
 - Contracts for the sales of goods,
 - Erasmus programme 2021-2027,
 - Digital Europe programme 2021-2027,
 - Horizon Europe programme 2021-2027,
 - EEA EFTA participation in EU programmes 2021-2027,
 - Better enforcement and modernisation of EU consumer protection rules.
12. The EU provided oral and/or written reactions to these EEA EFTA Comments in meetings of the EEA Joint Subcommittees.

Key outstanding issues

13. The discussions on the following key issues have not yet been concluded (further information is found in Annex I):
- The Directive and Regulation on Capital Requirements (CRD IV and CRR),
 - The Directive and Regulation on Markets in Financial Instruments (MiFID II and MiFIR),
 - Ship Inspection and Survey Organisations,
 - The Single European Railway Area,
 - The 2009 TELECOM package, including the Regulation establishing the Body of European Regulators for Electronic Communications (BEREC),
 - The Third Postal Directive.
 - The Off-Shore Safety Directive
 - The Tobacco Directive
 - The Energy Efficiency Directive
 - The Energy Performance of buildings Directive
14. The EEA Joint Committee has reiterated its determination to work towards the rapid conclusion of these issues.

Advisory bodies under the EEA

15. The EEA Consultative Committee held its annual meeting in Reykjavik, Iceland, on 2 to 4 May 2018. The Committee adopted resolutions and reports on:
- Work-life balance in the EEA,
 - A socially fair road transport sector in the EEA with effectively enforced common rules.

16. The EEA Joint Parliamentary Committee held a meeting in Stavanger, Norway, on 7 to 9 May 2018, where it adopted a resolution on:
 - The Annual Report of the EEA Joint Committee on the Functioning of the EEA Agreement in 2017.
17. The EEA Joint Parliamentary Committee also held a meeting in Strasbourg, France on 12 to 13 December 2018.
18. The reports and resolutions were subsequently forwarded to the EEA Joint Committee and the EEA Council.

EEA Financial Mechanism

19. The Agreement on the EEA Financial Mechanism for the 2014-2021 period, with a total commitment of EUR 1548.1 million, and the Agreement on the Norwegian Financial Mechanism for the same period, with a total commitment of EUR 1253.7 million, was ratified by all contracting parties and entered into force 1 September 2017.
20. As of the end of 2018, Memoranda of Understanding on the EEA Grants have been signed with Bulgaria, Croatia, the Czech Republic, Estonia, Greece, Latvia, Lithuania, Malta, Poland, Portugal, Romania, Slovakia and Slovenia.

Article 19 – Trade in agricultural products

21. Article 19 of the EEA Agreement foresees *inter alia* reviews of conditions of trade in agricultural products at two-yearly intervals. The Agreement between the European Union and Iceland concerning additional trade preferences in agricultural products as well as the Agreement between the European Union and Iceland on the protection of geographical indications entered into force on 1 May 2018. The Agreement between the European Union and Norway concerning additional trade preferences in agricultural products entered into force on 1 October 2018.

EUROPEAN ECONOMIC AREA

JOINT COMMITTEE

Annex I to ref. 18-4960

ACTIVITIES OF JOINT SUBCOMMITTEES IN 2018

FREE MOVEMENT OF GOODS

General

1. In 2018, 257 legal acts in the areas covered by Subcommittee I were incorporated into the EEA Agreement.

Veterinary, feedingstuffs and phytosanitary matters

2. 81 legal acts were incorporated in the veterinary field.
3. 52 legal acts were subject to 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

4. 165 legal acts were incorporated into the EEA Agreement, of which most related to foodstuffs, dangerous substances and medicinal products.
5. Several Implementing Regulations establishing new procedures for novel food authorisations were adopted by the EEA Joint Committee on 6 July 2018 and they entered into force the following day for the EEA EFTA States.
6. In the field of medicinal products, the JCD incorporating the Paediatrics Regulation, which was adopted in May 2017, entered into force on 1 June 2018.

Public procurement

7. The JCD incorporating four acts amending the application threshold for the award of public contracts was adopted 9 February 2018.

Energy

8. The JCD incorporating the Third Energy Market Package, which was adopted in May 2017, had not yet entered into force by the end of 2018, as it was still awaiting fulfilment of constitutional requirements in Iceland.

9. The EFTA Working Group on Energy Matters continued discussions both internally and with the Commission about the incorporation of the Energy Efficiency Directive 2012/27/EU and the recast Energy Performance of Buildings Directive 2010/31/EU.

10. The EFTA side submitted draft Joint Committee Decisions for four Network Codes in August 2018 to the EEAS. However, by the end of 2018, the EU had not formally reacted to the drafts.

11. The EEA EFTA experts followed closely and discussed with DG Energy all developments related to the Energy Union.

Intellectual property rights

12. The JCD incorporating the Directive on Collective Management of Copyright (Directive 2014/26/EU) was adopted on 22 September 2017. It had however not entered into force by the end of 2018, due to constitutional requirements in Norway who notified a delay in their fulfilment.

13. The Working Group on IPR finalised its discussions on the JCDs incorporating the Trademark Directive (Directive (EU) 2015/2436) and the Trade Secrets Directive (Directive (EU) 2016/943). Draft JCDs were submitted to the EEAS in August 2018 and June 2018 respectively. Replies from the EU side were still awaited at the end of 2018.

14. The JCD incorporating Regulation 2017/1128 on the portability of online services was adopted in July 2018. However, it has not yet entered into force as Iceland notified a delay in the fulfilment of its constitutional requirements.

15. The Working Group on IPR continued monitoring closely the proposal for an EU copyright reform (COM (2016) 593) which was debated in the European Parliament in September 2018.

16. The EEA EFTA States followed the ongoing affairs of the EU Observatory on enforcement of IPR in 2018 and participated in its plenary meeting, as well as in a public stakeholder meeting in Sofia.

FREE MOVEMENT OF CAPITAL AND SERVICES

17. In 2018, 130 legal acts in the areas covered by Subcommittee II were incorporated into the EEA Agreement.

Financial services

18. Incorporation of acts in the field of financial services increased considerably in 2018 with a total of 85 acts incorporated and significant advances made on other important draft JCDs. In addition to the three regular meetings of the Working Group on Financial Services, the Financial Services Task Force continued the practice started in late 2017 of having bi-monthly meetings with representatives of the EU where the substance of draft JCDs is discussed. In 2018 seven such meetings were held. At the

end of 2018 the total backlog of acts awaiting incorporation in the field of financial services amounted to 298 acts, of which 209 had already been added to draft JCDs that were at different stages of incorporation. With an informal agreement reached with the EU on important files like MiFID II/MiFIR in the securities sector and CRR/CRD IV in the banking sector further significant advances are expected in 2019.

Company law

19. In the field of company law, two legal acts regarding statutory audits were incorporated into the EEA Agreement in 2018, as well as seven accounting acts. The JCDs on statutory audits are awaiting fulfilment of constitutional requirements. Experts also monitored new developments in the field including the Commission proposal amending Directive (EU) 2017/1132 as regards the use of digital tools and processes in company law, the proposal on cross-border conversions, mergers and divisions, and finally the proposal on preventive restructuring and second chance.

Electronic communication, audiovisual services, information society and data protection

20. In total, nine new legal acts were incorporated in this field. This included Directive 2014/61/EU on measures to reduce the cost of deploying high-speed electronic communications networks, Regulation 910/2014 on electronic identification and trust services for electronic transactions and Regulation 2017/1953 as regards the promotion of internet connectivity in local communities (WiFi4EU).

21. The most important achievement in this area was incorporation of Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation). This Regulation was incorporated and entered into force in the EEA EFTA States shortly after it became applicable in the EU, guaranteeing the same level of protection to individuals in the EEA EFTA States as in the EU.

22. Discussions started on the incorporation of the Directive establishing the European Electronic Communication Code and the Regulation establishing BEREC, which will replace the current regulatory framework on electronic communications. The EEA EFTA States organised several internal meetings to prepare for the incorporation of the two acts. The EEA EFTA States also had a meeting with the Commission on 17 December 2018, when the two acts were published in the EU Official Journal, to discuss the way forward and how to deal with the 2009 Telecom Package repealed by the two acts and which had not been incorporated into the EEA Agreement. The conclusion from that meeting was that focus should be on swift incorporation of the two new acts.

Postal services

23. The Third Postal Services Directive 2008/6/EC still awaits incorporation into the EEA Agreement.

Transport

24. In the field of transport, 27 legal acts were incorporated. These acts covered inland, road, inland waterways, maritime and civil aviation transport. The incorporated

legislation covered *inter alia* amended requirements on driving licences, technical requirements for inland waterway vessels, technical common requirements for providers of air traffic management/air navigation services, classifications of runways, automatic validation of flight crew licences and requirements on training, references to International Civil Aviation Organization (ICAO) provisions as well as legislation laying down requirements for the performance and the interoperability of surveillance for the single European sky.

25. The proposal on adaptations to Directive 2012/34/EU establishing a single European railway area *vis-à-vis* Liechtenstein was assessed by the EU side, and feedback was received in December 2018 indicating that further discussions are needed.

26. 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 organisations, was not yet incorporated into the EEA Agreement in 2018.

Consumer Affairs

27. No legal acts in the field of consumer affairs were incorporated into the EEA Agreement in 2018.

28. The JCD No 187/2017 incorporating the Package Travel and Linked Travel Arrangements Directive was still awaiting the fulfilment of constitutional requirements at the end of 2018 and has not yet entered into force.

Enterprise Policy and Internal Market Affairs

29. No legal acts in the field of enterprise policy and Internal Market affairs were incorporated into the EEA Agreement in 2018

30. Regulation (EU) 2018/302, the Geo-blocking Regulation was still under consideration by EEA EFTA experts at the end of 2018. Work on incorporating Regulation 2018/1724, the Regulation on a Single Digital Gateway, commenced in 2018.

FREE MOVEMENT OF PERSONS

31. In 2018, one legal act was incorporated into the EEA Agreement in the area covered by Subcommittee III (Commission Regulation 2017/492 regarding the coordination of social security systems).

32. The EEA EFTA States worked towards incorporating Regulation (EU) 2016/589 revising the European network of employment services (EURES) as well as several related implementing acts. It was decided with the EU side that the EURES Regulation would be incorporated jointly with several implementing acts once the reply from the Member States on these had been received.

HORIZONTAL AND FLANKING POLICIES

33. In 2018, 45 legal acts were incorporated into the EEA Agreement in the areas covered by Subcommittee IV.

Budgetary matters – programmes and agencies

34. The 2018 proportionality factor was 2.37%, compared to 2.47%, in 2017. Through the budgetary procedure, it was agreed that 27 EEA EFTA national experts would be seconded to the various directorates within the European Commission that deal with joint EU programmes and activities.

35. In 2018 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
- Interoperability solutions for European public administrations, businesses and citizens (ISA²)
- Preparatory Action on Defence Research

36. In 2018 the EEA EFTA States participated in the following EU agencies:

Regulatory agencies:

- European Foundation for Improvement of Living and Working Conditions (EUROFOUND)
- European Centre for Development of Vocational Training (CEDEFOP)
- European Environment Agency (EEA)
- European Medicine Agency (EMA)
- European Maritime Safety Agency (EMSA)
- European Aviation Safety Agency (EASA)
- European Centre for Disease Prevention and Control (ECDC)
- European Network and Information Security Agency (ENISA)
- European Railway Agency (ERA)
- European Chemicals Agency (ECHA)
- European GNSS Agency (GSA)
- European Food Safety Authority (EFSA)

- European Agency for Safety and Health at Work (EU-OSHA)
- European Banking Authority (EBA)
- European Insurance and Occupational Pensions Authority (EIOPA)
- European Securities and Markets Authority (ESMA)

Executive agencies:

- Executive Agency for Competitiveness and Innovation (EACI)
- Education, Audiovisual and Culture Executive Agency (EACEA)
- Executive Agency for Health and Consumers (EAHC)
- European Research Council Executive Agency (ERC)
- Research Executive Agency (REA)

Environment

37. In the field of the environment, 26 legal acts were incorporated into the EEA Agreement, including Regulation 1257/2013 on ship recycling, Directive 2015/720 on plastic bags and Regulation 2017/1902 on auctioning of ETS allowances as well as several Decisions establishing or prolonging the validity of the ecological criteria for the award of the EU Ecolabel.

38. Experts got the draft JCD on Regulation 517/2014 on F-gases ready for submission of a draft JCD early 2019.

39. In the second half of 2018, experts worked intensively to prepare a political agreement in COP-24 and a draft JCD for the purpose of joint fulfilment of the emission reduction targets for 2030 under the Paris Agreement. The draft JCD to include Regulations 841/2018 on the inclusion of greenhouse gas emissions and removals from land use, land use change and forestry (LULUCF) and 842/2018 (Effort-sharing) in Protocol 31 was brought close to finalisation in informal discussions with the EU.

40. Experts monitored all relevant developments, including the Energy Union and the Regulation on Governance of the Energy Union and Climate Change.

Statistics

41. 12 acts were incorporated into Annex XXI, notably Regulation (EU) 2016/792 on harmonised indices of consumer prices and the house price index. Protocol 30 on specific provisions on the organisation of cooperation in the field of statistics was updated in accordance with Regulation (EU) 2017/1951 on the extension of the European Statistical Programme (ESP) to 2018-2020, thereby ensuring continued participation of the EEA EFTA States in the ESP.

Health and safety at work and labour law

42. In the field of health and safety at work and labour law, three legal acts were incorporated into the EEA Agreement: Directive (EU) 2015/1794 to include seafarers in the scope of five labour law directives, Directive 2014/67/EU on the enforcement of the Posting of Workers Directive (96/71/EC), and Directive (EU) 2017/164 establishing a fourth list of indicative occupational exposure limit values.

43. Experts examined several new legislative files including Directive (EU) 2018/957 amending the Posting of Workers Directive (96/71/EC), and Commission proposals on transparent and predictable working conditions, whistleblower protection, and the European Labour Authority. Experts further examined the Commission proposal to amend the Carcinogens and Mutagens Directive 2004/37 and the proposals for new founding regulations for the European Foundation for the improvement of living and working conditions (Eurofound) and the European Agency for Safety and Health at Work (EU-OSHA).

LEGAL AND INSTITUTIONAL MATTERS

44. No meeting of the Joint Subcommittee V took place in 2018 (the internal EFTA Subcommittee V had four meetings in 2018).