

EUROPEAN ECONOMIC AREA

JOINT COMMITTEE

18 March 2020

3 Annexes

Ref. 20-678

Annual Report of the EEA Joint Committee 2019 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 2019. 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 2019, and Annex III presents a list of EEA Joint Committee Decisions (JCDs) adopted in 2019.
2. On 22 March 2019, EU heads of state or Government met in Brussels with the Prime Minister of Iceland, Liechtenstein and Norway in the European Council to mark the 25th Anniversary of the EEA Agreement.
3. The EEA Joint Committee met eight times in 2019 and adopted 319 decisions incorporating 708 legal acts, including:
 - Decision No 18/2019 on improving securities settlement in the European Union and on central securities depositories (CSDR),
 - Decision No 21/2019 on interchange fees for card-based payment transactions,
 - Decision No 78/2019 on markets in financial instruments (MiFiD / MiFiR package),
 - Decision No 79/2019 on prudential requirements for credit institutions and investment firms (CRR / CRD IV package),
 - Decision No 165/2019 on payment services in the internal market (the Payment Services Directive),
 - Decision No 190/2019 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds (the EU Benchmark Regulation),
 - Decision Nos 201/2019 - 205/2019 on cooperation in specific fields outside the four freedoms, related to budget lines in the following areas: Preparatory action on defence research, Social Security, Financial Services, Internal Market and Company law,
 - Decision No 210/2019 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products (Official Controls Regulation),
 - Decision Nos 237/2019 - 238/2019 incorporating 28 legal acts in the field of financial services,

- Decision No 246/2019 extending the reinforced EU Civil Protection Mechanism to Iceland and Norway,
 - Decision No 259/2019 on market abuse (Market Abuse Regulation),
 - Decision No 269/2019 extending the cooperation on the inclusion of greenhouse gas emissions and removal from land use, land use change and forestry in the 2030 climate and energy framework (Extended Climate Cooperation EU – Iceland – Norway),
 - Decision No 288/2019 and 301/2019 on Medical Devices and Vitro Diagnostic Medical Devices,
 - Decision No 311/2019 on geo-blocking and other forms of discrimination based on customers nationality,
 - Nineteen decisions incorporating 28 acts containing urgent Brexit-related measures, adopted by written procedure on 29 March 2019 (Decision Nos 30/2019 – 45/2019) on 11 April 2019 (Decision Nos 99/2019 – 106/2019) and on 30 October 2019 (Decision Nos 270/2019 – 272/2019).
4. 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)
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 (capital controls)
6. The biannual Internal Market Scoreboard, published by the EFTA Surveillance Authority (ESA) in March 2020 and reflecting the state of play on 30 November 2019, shows that the average transposition deficit of the EEA EFTA States decreased from 0.7% to 0.6% since the June 2019 Scoreboard. In this period, the deficit of Iceland decreased from 0.7% to 0.6%, the deficit of Norway decreased from 0.4% to 0.3% and the deficit of Liechtenstein remained the same at 0.9%.¹

Incorporation of acquis into the EEA Agreement

7. In 2019, 708 legal acts were incorporated into the EEA Agreement, which is 63% more than in 2018, when 433 legal acts were incorporated. In 2019, 688 legal acts were identified by the EFTA side as possibly being EEA relevant, which is 19% more than in 2018, when 579 legal acts were identified as possibly being EEA relevant.
8. On 14 November 2019, when the monitoring list was run for the last time in 2019, there were 435 legal acts awaiting incorporation where the compliance date in the EU had passed, compared to 612 acts in November 2018. This represents a decrease of 28%.

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.

9. On 31 December 2019, the number of JCDs awaiting the fulfilment of constitutional requirements for more than six months stood at 18, compared to 19 on 31 December 2018. On 31 December 2019, 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 26 compared to 29 on 31 December 2018.
10. In total, 225 legal acts adopted by the EU in 2019 were incorporated into the EEA Agreement in the same year, compared to 162 legal acts in 2018.

EEA EFTA participation in EU agencies and programmes

11. Through the EEA Agreement, the EEA EFTA States participated in 14 EU programmes and 21 agencies, of which 16 were regulatory agencies and five executive agencies (listed in Annex I).

Decision shaping

12. In 2019, the EEA EFTA States submitted five EEA EFTA Comments on the following subjects (in 2018 there were 13 EEA EFTA Comments submitted):
 - The proposed notification procedure for draft national legislation under the Services Directive
 - The Rights and Values Programme
 - Priorities for the Single Market beyond 2019
 - The Creative Europe Programme
 - The Proposal for a Directive on representative actions for the protection of the collective interests of consumers
13. The EU provided oral and/or written reactions to these EEA EFTA Comments in meetings of the Joint Subcommittees.

Key outstanding issues

14. The discussions on the following key issues had not been concluded by 31 December 2019 (further information is found in Annex I):
 - The Regulation on Ship Inspection and Survey Organisations and related acts (Ship Inspection Package)
 - The recast of the acts related to the Single European Railway Area (SERA)
 - The Regulation establishing the Body of European Regulators for Electronic Communications (BEREC) and the European Electronic Communications Code Directive
 - The Third Postal Directive
 - The Off-Shore Safety Directive
 - The Tobacco Products Directive
 - The Energy Efficiency Directive
 - The Energy Performance of Buildings Directive

- The Regulations on the Electricity Network Codes
 - The Regulation on genetically modified food and feed
15. The EEA Joint Committee has reiterated its determination to work towards the rapid conclusion of these issues.

Advisory bodies under the EEA

16. The EEA Consultative Committee held its annual meeting in Brussels, Belgium, on 23 to 24 May 2019. The Committee adopted resolutions and reports on the:
- Benefits of 25 years of the EEA Agreement
 - European Labour Authority (ELA)
17. The EEA Joint Parliamentary Committee held a meeting in Strasbourg, France, on 12 to 13 March 2019, where it adopted a resolution on:
- The Annual Report of the EEA Joint Committee on the Functioning of the EEA Agreement in 2018
18. The EEA Joint Parliamentary Committee also held a meeting in Vaduz, Liechtenstein from 29 to 31 October 2019.
19. The reports and resolutions were subsequently forwarded to the EEA Joint Committee and the EEA Council.

EEA Financial Mechanism

20. 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, entered into force 1 September 2017.
21. As of the end of 2019, Memoranda of Understanding on the EEA Grants have been signed with Bulgaria, Croatia, Cyprus, the Czech Republic, Estonia, Greece, Latvia, Lithuania, Malta, Poland, Portugal, Romania, Slovakia and Slovenia.

Article 19 – Trade in agricultural products

22. 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. 20-678

ACTIVITIES OF JOINT SUBCOMMITTEES IN 2019

FREE MOVEMENT OF GOODS

General

1. In 2019, 309 legal acts in the areas covered by Subcommittee I were incorporated into the EEA Agreement.

Veterinary, feeding stuff and phytosanitary matters

2. 92 legal acts were incorporated in the veterinary and phytosanitary field.
3. Additionally, 82 legal acts were subject to simplified procedure. Instead of being incorporated into the EEA Agreement by adoption of a JCD, the simplified 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. 205 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 8 February 2019 and they entered into force the following day for the EEA EFTA States.
6. In the area of food and feed law, rules on animal health and welfare, plant health and plant protection products, the JCD incorporating the Official Controls Regulation was adopted on 27 September 2019. It had however not entered into force by the end of 2019, due to constitutional requirements.
7. In the field of medicinal products, the JCDs incorporating the Medical Devices Regulation and Vitro Diagnostic Medical Devices Regulation were adopted 13 December 2019. They had however not entered into force by the end of 2019, due to constitutional requirements.

Energy

8. In the field of energy, the JCD incorporating the Third Energy Market Package, which was adopted in May 2017, entered into force on 3 October 2019

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.

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 2019, due to constitutional requirements.

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 and discussions between the EEA EFTA States and EU took place in 2019. The JCD incorporating the Trade Secrets Directive was adopted end of March 2019. It had however not entered into force by the end of 2019, due to constitutional requirements.

14. The JCD incorporating Regulation 2017/1128 on the portability of online services which was adopted in July 2018, entered into force 1 August 2019.

15. The Working Group on IPR started the incorporation process for the newly adopted Directive on copyright in the Digital Single Market (Directive (EU) 2019/790).

FREE MOVEMENT OF CAPITAL AND SERVICES

16. In 2019, 319 legal acts in the areas covered by Subcommittee II were incorporated into the EEA Agreement.

Financial services

17. Incorporation of acts in the field of financial services increased significantly in 2019 with a total of 274 acts incorporated into the EEA Agreement, reducing the number of acts outstanding in the field of financial services by more than fifty percent. This includes the Markets in Financial Instruments Directive and Regulation (MiFIDII/MiFIR), Benchmarks Regulation, Capital Requirements Regulation and Directive (CRR/CRDIV) and Market Abuse Regulation (MAR).

18. 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 2019 six such meetings were held.

19. At the end of 2019 the total backlog of acts awaiting incorporation in the field of financial services amounted to 199 acts, compared to 298 acts in end of 2018.

Electronic communication, audiovisual services, information society and data protection

20. In total, 16 legal acts were incorporated into the EEA Agreement in this field. This included eight acts implementing Regulation 910/2014 on electronic identification and an adequacy Decision for transfer of personal data to Japan.

21. Discussions continued 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 numerous internal meetings to prepare for the incorporation of the two acts. The EEA EFTA States organised numerous internal meetings to prepare for the incorporation of the two acts. The EEA EFTA States informally submitted the draft JCD on BEREC to the EEAS and the Commission in March 2019 and also had meetings with the Commission in March and July 2019 to discuss the draft JCD.

Postal services

22. Work on the incorporation of the third Postal Services Directive 2008/6/EC continued in 2019 and good progress was made with finalising the draft JCD.

Transport

23. In the field of transport, 28 legal acts were incorporated into the EEA Agreement. These acts covered inland, road, inland waterways, maritime and civil aviation transport. The incorporated legislation covered *inter alia* amendments to common rules for the operation of air services, legislation laying down a performance and charging scheme in the single European sky, framework for the provision of port services and several Brexit-related contingency acts.

24. Following the feedback received from the EU side in December 2018 on the proposal on adaptations to Directive 2012/34/EU establishing a single European railway area *vis-à-vis* Liechtenstein, a meeting was held with the Commission in February 2019. A revised draft JCD was informally submitted to the EU in December 2019.

25. A draft JCD for the incorporation of the Directive 2009/15/EC on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations and Regulation (EC) No 391/2009 on common rules and standards for ship inspection and survey organisations and related acts, was informally submitted to the EU side in June 2017. Following feedback received from the EU side in May 2019, the EFTA States met with the Commission in September 2019 where it was agreed that the EFTA States would review the draft JCD and provide feedback.

FREE MOVEMENT OF PERSONS

26. In 2019, 15 legal acts were incorporated into the EEA Agreement in the area covered by Subcommittee III. The incorporated legislation covered *inter alia* Regulation (EU) 2016/589 revising the European network of employment services (EURES) as well as several related implementing acts, delegated acts on evidence of formal qualifications and the titles of training courses and several acts concerning social security coordination.

HORIZONTAL AND FLANKING POLICIES

27. In 2019, 65 legal acts were incorporated into the EEA Agreement in the areas covered by Subcommittee IV.

Budgetary matters – programmes and agencies

28. The proportionality factor was 2.42% in 2019, compared to 2.37% in 2018. Through the budgetary procedure, it was agreed that 25 EEA EFTA national experts would be seconded to the various directorates within the European Commission that deal with joint EU programmes and activities.

29. In 2019 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

30. In 2019 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)
- European Union Agency for the Cooperation of Energy Regulators (ACER)

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

31. In the field of environment, 46 legal acts were incorporated into the EEA Agreement, including Regulation (EU) 517/2014 on F-gases, Directive (EU) 2015/1513 amending rules relating to the quality of petrol and diesel fuels, Directive (EU) 2015/412 regarding possibility to restrict or prohibit the cultivation of GMOs.

32. 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 JCD which includes 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) was adopted on 25 October 2019. The JCD had however not entered into force by the end of 2019, due to constitutional requirements.

Statistics

33. Nine acts were incorporated into the EEA Agreement, notably Regulation (EU) 2018/974 on statistics of goods transport by inland waterways, Regulation (EU) 2018/643 on rail transport statistics and Regulation (EU) 2018/1091 on integrated farm statistics.

Health and safety at work and labour law

34. In the field of health and safety at work and labour law, one legal act was incorporated into the EEA Agreement in 2019, namely Directive (EU) 2017/2398

amending a Directive on the protection of workers from the risks related to exposure to carcinogens or mutagens at work.

35. Experts continued examining several legislative files including Directive (EU) 2018/957 amending the Posting of Workers Directive (96/71/EC). In addition, experts started working on the incorporation of Regulation (EU) 2019/1149 establishing a European Labour Authority, Regulation (EU) 2019/126 establishing EU-OSHA, Regulation (EU) 2019/127 establishing Eurofound, Directive (EU) 2019/1152 on transparent and predictable working conditions and Directive (EU) 2019/1937 on protection of persons reporting on breaches of Union law.

Consumer Affairs

36. Three legal acts in the field of consumer affairs were incorporated into the EEA Agreement in 2019. The legislation covered rules on credit agreements for consumers relating to residential immovable property and cooperation between national authorities responsible for the enforcement of consumer protection law. They had however not entered into force by the end of 2019, due to constitutional requirements.

37. The last notification of fulfilment of constitutional requirements for the JCD No 187/2017 incorporating the Package Travel and Linked Travel Arrangements Directive was sent in December 2019. The JCD will thus enter into force 1 February 2020.

Enterprise Policy and Internal Market Affairs

38. The JCD incorporating Regulation (EU) 2018/302, the Geo-blocking Regulation into the EEA Agreement was adopted on 13 December 2019. It had however not entered into force by the end of 2019, due to constitutional requirements.

LEGAL AND INSTITUTIONAL MATTERS

39. No meeting of the Joint Subcommittee V took place in 2019.