

EEA LAW

Basics of EEA agreement

EUROPEAN ECONOMIC AREA

- Brings together the EU Member States and three of the EFTA States (Iceland, Liechtenstein and Norway) established by the EEA Agreement, which was signed in Porto on 2 May 1992 and entered into force on 1 January 1994. Liechtenstein joined on 1 May 1995.
- EU legislation relating to the internal market becomes part of the legislation of the EEA countries once they have agreed to incorporate it.
- Implementation and enforcement are then monitored by specific EFTA bodies and a Joint Parliamentary Committee.
- Legal basis:
- Art. 217 Treaty of The Treaty on the Functioning of the European Union
- (Association Agreements).

SWITZERLAND CASE

- Switzerland, is not party to the EEA Agreement, but part of EFTA.
- The EU and Switzerland have signed over 120 bilateral agreements, including a free trade agreement in 1972 and two major series of sectoral bilateral agreements that aligned a large portion of Swiss law with that of the EU at the time of signing. All these agreements leads to very similar legal status in all 4 freedoms for Swiss.
- Current situation
- Bilateral relations have been severely strained since the February 2014 anti-immigration initiative, which called for amendment of the constitution to introduce annual quotas on immigration from the EU and to give preference to Swiss citizens in employment matters.

GOALS OF EEA

- The purpose of the European Economic Area (EEA) is to extend the EU's internal market to countries in the European Free Trade Area (EFTA). These countries either do not wish to join the EU or have not yet done so.
- The EEA incorporates the four freedoms of the internal market (free movement of goods, people, services and capital) and related policies

SETTING UP EEA

- In 1992, the then seven members of EFTA negotiated an agreement to allow them to participate in the ambitious project of the European Community's internal market, launched in 1985 and completed at the end of 1992.
- The European Economic Area (EEA) Agreement was signed on 2 May 1992 and entered into force on 1 January 1994.
- The EFTA/EEA members, however, soon saw their numbers reduced: Switzerland chose not to ratify the agreement following a negative referendum on the matter, and Austria, Finland and Sweden joined the European Union in 1995.

ISLAND CASE

- In June 2009, Iceland also applied for EU membership as a way out of the global financial crisis of 2008. The Council accepted Iceland's application on 17 June 2010, and the negotiations started in June 2011. However, following the April 2013 parliamentary elections, the new centre-right coalition of the Independence and Progressive Parties halted the negotiations immediately after coming to power in May 2013.
- Later, in March 2015, the coalition government stated in a letter to the Council of the European Union that 'Iceland should not be regarded as a candidate country for EU membership'.
- Although the government did not officially withdraw the application, the presidency of the Council of the EU took note of the letter, and certain practical adjustments have been made within both the Council and the Commission. Accordingly, the EU does not currently treat Iceland as a candidate country.

SCOPE OF EEA AGREEMENT

- The EEA incorporates the four freedoms of the internal market (free movement of goods, people, services and capital) and related policies (competition, transport, energy, and economic and monetary cooperation).
- The agreement includes horizontal policies strictly related to the four freedoms: social policies (including health and safety at work, labour law and the equal treatment of men and women); policies on consumer protection, the environment, statistics and company law
- number of flanking policies, such as those relating to research and technological development, which are not based on the EU acquis or legally binding acts, but are implemented through cooperation activities

THE LIMITS OF THE EEA

- The EEA Agreement does not establish binding provisions in all sectors of the internal market or in other policies under the EU Treaties. In particular, its binding provisions do not concern:
- the common agricultural policy and the common fisheries policy (although the agreement contains provisions on trade in agricultural and fishery products);
- **the customs union;**
- the common trade policy;
- the common foreign and security policy;
- the field of justice and home affairs (although all the EFTA countries are part of the Schengen area);
or
- the economic and monetary union (EMU).
-

EEA INSTITUTIONS AND MECHANISMS

Joint Committee – composed of representatives of the EU and the three EFTA-EEA states. Meeting once a month, this body decides what legislation — and, more generally, which EU acts (actions, programmes, etc.) — should be incorporated into the EEA. Legislation is formally incorporated by including the relevant acts in lists of protocols and annexes to the EEA Agreement.

EEA Council

composed of representatives of the Council of the EU and the Foreign Ministers of the EFTA-EEA states, meets at least twice a year to draw up political guidelines for the Joint Committee.

APPLICATION OF LEGAL ACTS

Joint Committee decision of approval -> incorporation to agreement-> transposition to the national law (with some exceptions, which become part of national law, IMMEDIATELY)

- Either decision by government,
- might be parliamentary approval needed.
- Transposition is a formal task, and the acts can only be adjusted technically at this point.
- There are provisions specifying that the EFTA countries should be involved in preparing EU acts.
- <https://www.youtube.com/watch?v=Sllgo24kWqU>

MONITORING OF TRANSPOSITION AND APPLICATION

- EFTA Surveillance Authority and the EFTA Court.
- The EFTA Surveillance Authority maintains an internal market scoreboard that tracks the implementation of legislation in the EEA countries.
- The EFTA Court - fulfils the judicial function within the EFTA system, interpreting the Agreement on the European Economic Area with regard to the EFTA States party to the Agreement.

ROLE OF PARLIAMENTS

- Both the European Parliament and the national parliaments of the EFTA-EEA states are closely involved in monitoring the EEA Agreement.
- Article 95 of the agreement establishes an EEA Joint Parliamentary Committee (JPC), which meets twice a year.
- The European Parliament and the EEA national parliaments take turns hosting this committee, whose chair alternates annually between a Member of the European Parliament and an EEA national parliamentarian.
- Each delegation is composed of 12 members. Parliamentarians from the Swiss Federal Assembly attend the meetings as observers.
- All EU legislation that applies to the EEA is scrutinized by the EEA JPC, whose members have the right to put oral and written questions to representatives of the EEA Council and the EEA Joint Committee and to express their views in reports or resolutions.
- The same procedure holds for scrutinizing the implementation of legislation.

PROBLEM OF EU AGENCIES

- We can find lot of agencies in EU for different areas
- adopting various measures or decisions relevant to the EEA, which EFTA states adopt to their own law. The problem is they don't have their own representative with right to vote (these countries have only some kind of assessor) and thus these countries can not express qualified opinion for such acts. Their Vote is only advisory.
- The second obstacle is consequently the fact that once the EEA Joint Committee decides on the implementation of an act into the EEA Agreement, it must be followed by adaptation of the legislative procedure into national law, because the Constitution of EFTA countries does not permit any other possibility.
- In June 2017, the EEA Joint Committee adopted a package of decisions to incorporate 31 EU legal norms establishing the European Financial Supervisory Authorities, uncluding the regulations establishing ESA authorities.

PROBLEM OF IMPLEMENTATION

Implementation of legal norms is quite arduous and complicated

Great delay of EFTA countries with the implementation, especially in legally binding acts of EU agencies

Since 1994 has been implemented more than 7,000 EU legal norms

IMPLEMENTATION “SPECIALITY” IN NORWAY

Norway has a very pragmatic legal system, when we talk about the language versions of the legislation, since a large number of EU law is effective as a part of Norwegian law, before they are translated into Norwegian language.

This legislation at that time already been published in English and Swedish (Official Journal of the EU), which everyone in Norway understands. In Norway, the legal language is not exclusively Norwegian.

The EEA Agreement has no provisions such as Art. 297 TFEU (the procedure adapting legislation). So the decision of the EEA Joint Committee may enter into force even before the legal text of the regulations is published in Norwegian or Icelandic language in the EEA Official Journal (where all new legislation of the EEA is published similarly as is the case with EU rules).

REASONS OF IMPLEMENTATION DELAY

It may be caused by overloaded EEA Joint Committee, but its rather a situation when some of the countries in the of the EEA Joint Committee block or cause delays of transposition intentionally.

EFTA countries may delay the moment when implementation of European regulations come into force even after the agreement was reached in the EEA Joint Committee by applying the need for putting the decision in accordance with the Constitution(e.g. parliamentary ratification).

Subsequently, the deadline for transposition of such a decision into national law is six months, but if the delay is announced in advance of this deadline, the decision of the EEA Joint Committee will remain ineffective.

POSSIBLE SOLUTION

- EFTA countries has tried to solve this problem several times by adopting unilateral transposition of some provisions into their national law, but these are only temporary solutions with unclear legal basis.
 - -> why?
- Mainly because they do not guarantee that the EU and member states recognize such acts as equivalent to a legally binding EU / EEA regulations.
- Equally they do not provide to economic entities the EFTA countries any rights that can be invoked within the EU pillar relating to the the EEA

ANOTHER SOLUTION - EU AGENCIES

- **SOLUTION:** if the representatives of the competent national authorities of EFTA countries would have become full members of the EU agencies, including the right to vote and decide. From the perspective of Norwegian constitutional law, this would open up the possibility to transfer sovereignty to these authorities, which could be recognized as joint the EEA bodies
- **Problem:** In this case, there would have to be resolved task. What to do in cases where the European Commission or the Council may affect EU authorities. Probably the best would be to transfer this authority to the the EEA Joint Committee . This also is not an ideal solution, particularly in the case of urgent situations where national interests are at stake, but it is difficult in the structure of the EEA find a better alternative.
- * It shouldn't be problem in the case when EU agencies decision-making procedure may by intervened by the European Commission (the same matter would be decided by EFTA Surveillance Authority) but when Council is in charge? Then there is the problem because there is thus a mismatch with the EEA Agreement due to "influence" of foreign incompetent Authority (European Council).

INCORPORATION OF EU AGENCIES INTO EEA AGREEMENT

- So far only ESAs were incorporated, not all EU agencies.
- It is only a partial solution and only in matters related to EU decision-making agencies. It is necessary to adopt a more comprehensive solution that will cover generally all EU authorities, which can make a decision EEA relevant.

FINANCIAL MECHANISMS

- On the basis of the the EEA Agreement, the EFTA countries contribute three old (Greece, Portugal and Spain) and all new Member States within the EEA for projects in priority areas. The Agreement states, that the financial contribution will be closely coordinated with the bilateral contribution that will provide Norway on the basis of Norwegian Financial Mechanism
- Supplemented by bilateral legal instruments - Memoranda of Understanding

GRANTS / NORWAY GRANTS

- In the first round of the program in the years 2004 - 2009 grants awarded exhausted 100% of the total allocation, which was intended for the Czech Republic (104,580 mil. EUR). Within the priority of environmental protection and sustainable development were supported 17 projects worth nearly than 8,2 mil. EUR.
- 2009 - 2014. The total amount of support for the Czech Republic was 131.80 mil. Eur. Mostly environmental protection, preservation of cultural heritage

NORTHERN POLICIES

EU is also linked with two partners in the EEA - Norway and Iceland in different areas of the EU "northern policy" and forums, that focus on the rapidly developing northern part of Europe and the whole Arctic region

Through various initiatives

NORTHERN INITIATIVES

- **The 'Northern Dimension'**, which has served since 2007 as a common policy for the EU, Russia, Norway and Iceland. This policy complements the EU-Russia dialogue and has led to effective sector partnerships for cooperation in the Baltic and Barents regions. The Northern Dimension includes a parliamentary body — the Northern Dimension Parliamentary Forum — of which the European Parliament is a founding member.

NORTHERN INITIATIVES

- **The Council of the Baltic Sea States (CBSS)**, launched in 1992 by the EU and the riparian states following the dissolution of the USSR. All CBSS member states participate in the Baltic Sea Parliamentary Conference (BSPC), of which the European Parliament is also a member.
- 27 April 2016 "Single EU policy for the Arctic region"

NORDIC - BALTIC COOPERATION

- Nordic – Baltic Stability Group - participating representatives of finance ministries, central banks and supervisory authorities of the Nordic - Baltic countries. Legal framework for international cooperation in tackling the crisis situation in the case of internationally active financial institutions
- Nordic – Baltic Macro prudential Forum, within which meets senior management representatives of central banks and supervisory authorities to discuss macro-prudential supervision and other supervisory activities in the Nordic - Baltic region