The EEA Agreement: how is the EEA structured?*

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The EEA Agreement, often described as the ‘Norwegian model’ extends the Single Market to Norway, Liechtenstein and Iceland. How though is it designed? This Monckton Brexit Blog post sets out the structure and provides insights into one body: the EEA Joint Committee.

The EEA’s structure is straightforward. The EEA Agreement covers all 31 EEA States. That level playing field is safeguarded by separate institutions: in the EU pillar by the European Commission and the ECJ; and in the EFTA pillar by the EFTA Surveillance Authority and EFTA Court.

The most important joint body is the EEA Joint Committee which is the vehicle through which secondary EU law is introduced into the EFTA pillar.¹

The EEA Joint Committee - its role in the introduction of new legislation

The EEA Joint Committee (“EEA JC”) is responsible for the management of the EEA Agreement and typically meets six to eight times a year. It is a forum in which views are exchanged and decisions are taken by consensus to incorporate EU legislation into the EEA Agreement. Following the Lisbon Treaty, the EEA JC is comprised of the ambassadors of the EEA/EFTA States and representatives of the EU’s European External Action Service.² Within the EEA JC, the EEA/EFTA States ‘speak with one voice.’³

Four subcommittees assist the Joint Committee (on the free movement of goods; the free movement of capital and services including company law; the free movement of persons; and horizontal and flanking policies), with numerous expert and working groups reporting to these subcommittees.⁴

The prerequisite for an EU act to be considered for incorporation into the EEA Agreement, i.e. into one of its annexes, is normally whether it is seen as ‘EEA relevant’.⁵ There are two main considerations as to why an EU act is likely to be EEA relevant. First, it may amend or repeal an act already referred to in one of the annexes or protocols to the EEA Agreement. This does not mean however that certain provisions of the act may need amendment as they may be outside of the scope of the Agreement itself.⁶ If an act does not amend another act already referred to in the EEA Agreement, an analysis of the act is required in light of the objectives of the EEA and the means to achieve these objectives.⁷

Whenever an EEA-relevant legal act is amended or a new one adopted by the EU, a corresponding amendment needs to be made to the relevant Annex of the EEA Agreement.⁸ This is essential to maintain the principle of homogeneity of the EEA. The amendment to the EEA Agreement should be taken as closely as possible to the adopted legislation on the EU side, with a view to permitting simultaneous application across the EEA.⁹
The preparatory work for EEA Joint Decisions is the responsibility of the EFTA subcommittees and working groups in which representatives of the EEA/EFTA States are present. The EEA JC makes the decision to incorporate Joint Decisions into the EEA Agreement. A major difference in comparison with the EU is that the EEA does not provide for the transfer of legislative powers of the Contracting Parties to an EEA institution. The EEA Joint Committee therefore plays a key role in the EEA decision-making procedure.

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3 Article 93(2) EEA.
8 Article 98 EEA.
9 Article 102 EEA.
10 16th recital, EEA Agreement.