

# EFTA BULLETIN

DECISION SHAPING IN THE  
EUROPEAN ECONOMIC AREA



1-2009 MARCH



## Decision shaping in the European Economic Area

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# FOREWORD



This edition of the EFTA Bulletin looks at decision shaping in the European Economic Area: 15 years after the inception of the EEA Agreement, it is now timely to revisit this subject.

Over the 15 years of the EEA, thousands of experts from the EEA EFTA States have participated in the preparatory work of new legislation for the Internal Market and the EEA. Dozens of written contributions from the EEA EFTA States on specific initiatives have been submitted and provided input into the EU's elaboration of new initiatives for improvement of the Internal Market.

It should be emphasised that the EEA continues to function well and in accordance with the original intentions. New Internal Market rules are being incorporated into the Agreement on a regular basis. The implementation record of the EEA EFTA States in this regard is consistently above the EU average, and the specific EEA institutions, the EFTA Surveillance Authority and the EFTA Court, continue to perform the tasks accorded to them by the Agreement. Taken together, these factors ensure the credibility of the EEA as a homogenous legal area.

The EEA EFTA States' possibility to participate directly in the continuous development of the EU Internal Market is an essential, and unique, feature of the EEA Agreement. These mechanisms are particularly important for the EEA EFTA States, as they do not participate in the decision-making stage in the EU.

However, over the last 15 years there have been considerable changes in the EU. Enlargement from 12 to 27 Member States, the introduction of the Euro, the development of the Common Foreign and Security Policy, cooperation in the field of justice and home affairs, and indeed the creation of the European Union itself, have all taken place after the EEA Agreement was negotiated in the early 1990s.

This transformation has been accompanied by new policy-making methods and the use of a broader range of policy instruments. The Bulletin therefore devotes both the introduction and the first chapter to *policy-making processes* in the EU and the EEA. A presentation of the various mechanisms available to the EEA EFTA States to contribute to the shaping of Internal Market policies and legislation is provided in the chapter on *decision shaping* in the EEA.

The challenges posed by the new forms of EU governance need to be seen in perspective. In certain cases, changing practices on the EU side could in fact create opportunities and facilitate the contribution of the EEA EFTA States to the development of the EEA. Indeed, time and again the EEA EFTA States and the EU have been able to accommodate developments in EU decision making within the EEA framework.

One example of this is the growing number of European agencies, which was not envisaged when the EEA was concluded. The EEA EFTA States have successfully been able to ensure their participation in EEA relevant agencies.

Another example concerns the increased use of the Open Method of Coordination (OMC), in particular under the Lisbon Strategy for Growth and Jobs. Even though the EEA EFTA States are not formally part of the Lisbon Strategy, it has been possible for them to be included in many OMC processes. These examples attest to the flexibility of the EEA Agreement and the willingness of the two sides to adapt it to new circumstances.

Therefore, in order to highlight the impact of the new forms of EU governance on decision shaping in the EEA, a number of thematic chapters are included, covering agencies and the OMC, the social dialogue, the parliamentary dimension, as well as the emergence of other actors in the policy-shaping process.

These chapters are supplemented by case studies of how the decision-shaping mechanisms work in practice. This Bulletin has also benefited from two seminars on decision shaping in the EEA that took place at the EFTA Secretariat on 11 November 2005 and on 9 December 2008. We would like to thank the participants for their contributions and valuable input at the seminars.

We would in particular like to thank Commissioner Joe Borg for his comments on the role played by the EEA EFTA States in the development of the Integrated Maritime Strategy. We are also very appreciative of the contribution of the Minister of Foreign Affairs of Liechtenstein, H.E. Rita Kieber-Beck, on the importance of decision shaping for the EFTA States.

Kåre Bryn

Secretary-General

# INTRODUCTION: 15 YEARS OF THE EEA



The Agreement on the European Economic Area (EEA) is the most comprehensive treaty ever concluded by the European Union and by the EEA EFTA States. It contains several unique features:

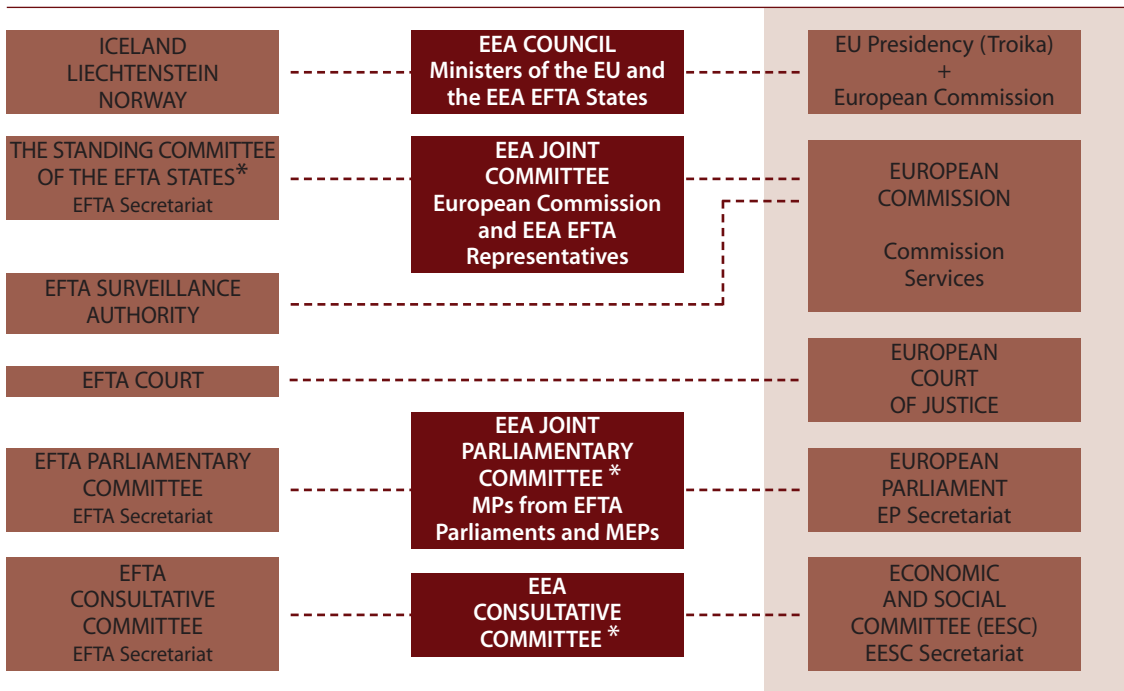
The EEA is dynamic. In order to achieve the goal of a homogenous single market, the EEA Agreement provides for the incorporation of new EU internal market *acquis* – the EU’s rules and regulations – into the EEA through amendments to its numerous annexes and protocols. Since its entry into force in 1994, nearly 6,000 new legal acts have been incorporated into the EEA.

The EEA Agreement is managed by an elaborate institutional framework. A set of common institutions – the ministerial-level EEA Council, the EEA Joint

Committee of senior officials, and subcommittees and working groups of officials and experts – have been created to manage the EEA, with administrative support provided by the EFTA Secretariat, the Commission and the EU Council Secretariat. Institutions mirroring supranational institutions on the EU side – the European Commission and the European Court of Justice – were established on the EFTA side, creating the so-called two-pillar system of the EEA (see figure below). The EFTA Surveillance Authority (ESA) monitors compliance of EEA rules by the EEA EFTA States and in this respect plays a similar role to that of the European Commission vis-à-vis the EU Member States (although of course the European Commission has a number of additional tasks within the EU). The EFTA Court plays a role vis-à-vis the EEA EFTA states comparable to that of the European Court of Justice in the EU’s Internal Market.



## The Two-Pillar EEA Structure



\* Switzerland is an observer

This figure illustrates the management of the EEA Agreement. The left pillar shows the EFTA States and their institutions, while the right pillar shows the EU side. The joint EEA bodies are in the middle.

The EEA Agreement contains provisions for input from the EFTA side before new legislation is adopted. Input can take the form of participation of EFTA experts in European Commission committees or the submission of EEA EFTA comments and the adoption of resolutions responding to Commission initiatives. These decision-shaping mechanisms are an important element of the EEA from the perspective of the EEA EFTA States, as the Agreement grants them no formal access to the decision-making phase in the EU, and they thus have limited ability to influence the outcome of this process. The importance is further underlined by the fact that the Commission has an exclusive right to make proposals for new legislation. The decision-shaping mechanisms provide legitimacy to an inherently asymmetric process whereby the EEA EFTA States adopt legislation which has been decided without their participation.

The negotiations on the EEA Agreement were effectively concluded in February 1992, the same month as the Maastricht Treaty was signed. However, the European Union has evolved considerably since then, including two further revisions to the EU treaties, with a third revision currently awaiting ratification by the Member States. These treaty revisions, combined with other developments, have led to considerable changes to the EU which are relevant to the EEA and the decision-shaping possibilities therein.

First, the influence of the European Parliament has increased. This has had an impact on the legislative process, as new Commission proposals are more often substantially amended by the Council and the European Parliament under the co-decision procedure.

Secondly, the EU has become engaged in a growing number of policy areas as a result of the treaty revisions, notably the Economic and Monetary Union (EMU), the Common Foreign and Security Policy (CFSP) and the field of Justice and Home Affairs (JHA). The Union is now involved in virtually all areas of public policy. One consequence of this is that the Internal Market constitutes only one, albeit important, part of the EU's total activities.

Alongside this 'deepening', the EU has also 'widened'. The EU has been enlarged three times since the entry into force of the EEA, with the number of Member States rising from 12 to 27. This has created a new dynamics in the EU, with new and shifting coalition patterns, and has also altered the way in which the EU deals with non-Member States.

In response to these developments, new forms of governance have gradually emerged, as the EU increasingly makes use of new policy-making methods and new policy instruments. In addition to the growing use of the co-decision procedure (whereby both the Council and the European Parliament must agree on a new legislative act in order for it to be adopted), there are also changes in the way in which the executive functions of the Union are undertaken. These include changes to the way the Commission operates, with a steadily increasing number of expert groups and a decentralisation of functions to autonomous agencies; a growing executive role for the Council Secretariat, in particular in 'new' EU policy areas; and in the way in which the Member States are involved in the running of the Union. The EU increasingly also makes use of new non-legislative instruments referred to collectively as 'soft law'. The broadening of the scope of EU activities has been followed by a greater use of broader cross-cutting strategies and initiatives, with the Lisbon Strategy, the Better Regulation initiative, the energy and climate change policy package and the Maritime Strategy all being current and recent examples.

These changes raise the question as to how this has affected the functioning of the decision-shaping mechanisms in the EEA Agreement.



# THE IMPORTANCE OF DECISION SHAPING FOR THE EFTA STATES



*By Rita Kieber-Beck,  
Foreign Minister of  
Liechtenstein 2005-2009*



We're living in uncertain and challenging times. As the global financial crisis is followed by slowdown in the real economy, the EEA Agreement becomes doubly important, as it provides us – citizens and economic operators of the three EEA EFTA States Iceland, Norway and Liechtenstein – with guaranteed access to our most important markets.

Looking back in time, the EEA Agreement has indeed served our economies and societies well. Its main objective, namely the establishment of a dynamic and homogeneous legal area with common rules and equal conditions for competition with free movement of goods, capital, services and persons, has been accomplished. The EEA has proven itself to be more robust and able in this respect than even its most optimistic supporters had dared to hope for at the time of its foundation.

Moreover, the Agreement has proven to be an effective framework for the development of a high level of protection of health, safety and the environment in our societies and for facilitating social progress, including equal treatment of men and women. In sum, these are major achievements which have enabled the EEA EFTA States over a period of 15 years to enjoy some of the highest standards of living and uninterrupted economic growth.

The institutions established to manage the Agreement function well, and have facilitated the incorporation of thousands of new legal acts and ensured their proper implementation in the EEA EFTA States.

The EEA Agreement is arguably the most far-reaching international economic treaty ever concluded by the EU and by the three EEA EFTA States. Mirroring the extensive commitments we accepted in order to be part of the EEA, the Agreement affords us extensive room for consultations during the preparatory stage of the legislative process in the EU. No other non-EU Member States have such close cooperation procedures in their dealings with the EU. Our absence from the formal decision-making stage in the Union makes these decision-shaping mechanisms all the more important.

The decision-shaping mechanisms are a source of information of new policy developments and legislative initiatives and allow us to contribute to and influence the formation of new EEA relevant policies and legislation at an early stage.

The opportunities for decision-shaping provided by the EEA Agreement are particularly valuable for smaller countries such as the EEA EFTA States. The fact that we are three States together on the EFTA side in the EEA, facilitates the pooling of resources and sharing of information, supported by the EFTA Secretariat. With our 35,000 inhabitants, this is of course of particular importance to Liechtenstein.

But the world has not stood still since the Agreement was negotiated in the early 1990s. Not least the EU has proven to be a 'moving target', undergoing several often fundamental transformations in the same period of time. In light of the considerable changes the EU has gone through, the continued smooth functioning of the EEA is proof of its durability and adaptability. Indeed, there are many examples of how the EEA has adapted to changes to EU governance. Our participation in EU



agencies is one such example. The growth in the number of autonomous agencies on the EU side was not envisaged when EEA was concluded, but we have successfully argued that the EEA EFTA States should be involved in EEA-relevant agencies. We have also adapted to the development of other new forms of EU governance, such as the Open Method of Coordination (OMC). The EEA EFTA States today participate in a number of EEA-relevant OMC processes. The development of contacts with the European Parliament, with its enhanced role as legislator in EEA matters, provides a third example of how pragmatic solutions can be found where there is political will.

Clearly, the EU will continue to evolve and pose fresh challenges for the EEA EFTA States. It is important that we follow developments on the EU side closely to ensure that we continue to make the utmost of the inherent opportunities of the EEA Agreement.

A proactive approach is indeed necessary if we want to ensure that new EU proposals are addressed and deliberated at the national level before they are adopted on the EU side and are incorporated in the EEA Agreement. Awareness of the opportunities to contribute to policy developments in the EU at an early stage and how the decision-shaping mechanisms are affected by developments in the EU constitutes key challenges for Liechtenstein and the other EEA EFTA States in the years to come.

Rita Kieber-Beck



Foreign Minister  
of Liechtenstein

2005-2009



With her fellow EFTA Ministers and the Secretary-General at the EFTA summer Ministerial Meeting in 2008: Rita Kieber-Beck, Minister of Foreign Affairs, Liechtenstein, Doris Leuthard, Federal Councillor, Head of the Federal Department of Economic Affairs, Switzerland, Kåre Bryn, EFTA Secretary-General, Ingibjörg Solrun Gísladóttir, Minister for Foreign Affairs and External Trade of Iceland and Annelene Svingen, State Secretary, Ministry of Trade and Industry, Norway.

# LISTENING TO EFTA – THE VIEW FROM THE EU



*By European  
Commissioner Joe Borg*

The EU has started implementing a new Integrated Maritime Policy as proposed by the Commission in the Blue Paper of 10 October 2007 and endorsed by the European Parliament and the Council. The EU Maritime Policy requires a coordinated implementation so as to protect in a better way the ecological balance of our oceans as a sustainable source of wealth and well-being for future generations.

Since seas and oceans are common spaces that are shared, the EU alone cannot achieve these objectives without the participation of its neighbours. EFTA and EU Member States enjoy a common marine environment and face common threats and challenges together with the EU. The prospects for increased shipping, the exploitation of fishing resources, the opening of new navigation routes, the impacts of climate change, the protection of the marine environment and the expanded exploitation of oil and gas and mineral resources are new challenging developments that need to be addressed.

The EU continues to seek close collaboration within EFTA States (most importantly Norway and Iceland) in the implementation of the EU Maritime Policy. This close collaboration in the preparation of the EU Maritime Policy has been put in place in different ways from the beginning of the process back in 2005, and is still very constructive and valuable. Norway and Iceland have taken an active part in the High Level Focal Points Group for Maritime Policy and have participated in the meetings of the Experts Group on

Maritime Policy together with Member States and the European Commission.

Both have contributed to the consultation process launched by the Green Paper of 2006, which started our reflections on this new concept, and their responses, posted on our website, were fully taken into consideration and analysed at the end of the consultation process. The experience of Norway and Iceland on maritime affairs and the constructive proposals and practical information provided in their contributions fed our reflections on the whole subject. Norway prepared a contribution prior to the adoption of the Green Paper and another one during the consultation process launched after the publication of the Green Paper. Both welcomed the initiative for an EU maritime policy based on holistic and integrated management of the seas that includes all relevant sectors and rests on the Lisbon Strategy and the improvement of the status of the ocean itself.

Similarly, Iceland participated in the consultation process through a contribution that welcomed the proposals on an EU maritime policy and its integrated approach. The contribution answered all the questions of the Green Paper and provided very comprehensive information and examples on the functioning of the relevant structures in Iceland. Furthermore, EFTA States have participated in other events that were held during the period when the concept of an Integrated Maritime Policy was being developed. Contacts have been held on a regular basis and at different levels, including several major events:

- A first exchange of views in which I took part was held in Strasbourg on the occasion of the 27<sup>th</sup> meeting of the EEA Joint Parliamentary Committee held on 10 October 2006.
- At the 28<sup>th</sup> meeting of the EEA Joint Parliamentary Committee, held in Vaduz on 28 June 2007 the resolution “The EU Future Maritime Policy: Implications for the EEA” was adopted. Director-General Fokion Fotiadis represented the Commission in the meeting.

- On 22 October 2007, for the first time, EU ministers coordinating maritime matters (including from Norway and Iceland) gathered for a joint discussion during the informal Ministerial meeting on Maritime Policy, held in Lisbon.
- President Barroso visited Norway on 25 February 2008 and met the Icelandic Prime Minister on 27 February and on both occasions he declared that he wanted to keep Iceland and Norway involved in the development of the EU Integrated Maritime Policy.
- On 20 May 2008 Norway and Iceland participated in the first European Maritime Day conference that took place in Brussels.
- On 27 May 2008 the EEA Council held an orientation debate on the Integrated Maritime Policy, with particular focus on the next steps to be taken in implementing Maritime Policy and on cooperation with EEA States. Commissioner Ferrero-Waldner attended the meeting on behalf of the Commission.

Since 2005 Norway has also seconded a national expert to the Directorate-General in charge of developing the EU Integrated Maritime Policy. Iceland has also been invited to second one of its experts to DG MARE to take part in the implementation of our Arctic Communication.

As to the future, the EU would like to ensure the continued involvement of Iceland and Norway in the development of the Integrated Maritime Policy and would like to invite them to participate actively in new maritime policy issues. Five of these issues are particularly promising in this respect:

- The European Commission adopted on 20 November 2008 a Communication to the European Parliament and the Council of the European Union on the Arctic Region. This Communication forms the first layer of an EU Arctic policy and is also an important contribution to implementing the EU Integrated Maritime Policy.

The European Union will continue to address Arctic challenges in a systematic and coordinated manner in areas such as the environment, climate change, maritime affairs, energy, research, fisheries and transport. As proposed in the Communication, protecting the environment and ensuring sustainability should be the European Union's priority goals in the Arctic. Equally, the EU should help to protect the livelihood of indigenous populations and develop a dialogue with them. These goals can only be achieved in close cooperation with all Arctic states and communities.

The European Union is willing to strengthen its contribution to multilateral cooperation in the Arctic, recognising the role of the Arctic Ocean coastal states and its own responsibilities under UNCLOS. In this context the Commission intends to apply for permanent observer status in the Arctic Council. The support of Norway and Iceland on this issue would contribute to enhancing the governance structure for the High North.

- The Commission has just adopted the Communication "Roadmap for maritime spatial planning: achieving common principles in the EU" which aims to encourage a broad debate on how a common approach to maritime spatial planning can be achieved in the EU. Norway's Integrated Management Plan for the Barents Sea and the sea area off the Lofoten Islands is one of the best practices that we looked into while preparing the Communication.

We have planned to set up preparatory or pilot actions to follow up on the road map in 2009. They will most likely be developed in the North and Baltic Sea areas, where the participation of Norway will be of extreme importance.

- Shipping is a thriving sector and, although in general it is very efficient, it still has an important environmental footprint. The development of maritime transport policy is of interest not only to the sector itself but also for the entire European maritime economy. The EU seeks to reinforce the

sector within the EFTA States by ensuring the appropriate development of important initiatives such as the Maritime Space without Barriers, the Motorways of the Sea or the forthcoming Strategy for Maritime Transport.

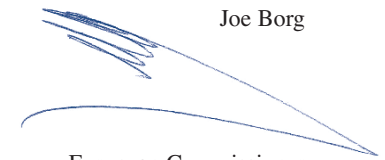
Scientific research is another area with a very high potential for cooperation. As full members of the 7<sup>th</sup> Framework Programme (FP7), the EFTA States have an important role to play in the development of the Marine and Maritime Research Strategy, underpinning key topics like the development of the European Marine Observation and Data Network (EMODNET), ecosystem-based fisheries management, sustainable growth in the marine and maritime sector, greener maritime transport, climate change monitoring and mitigation (e.g. Carbon Capture and Storage) renewable energy as well as capacity- building of human resources and infrastructures.

An obvious area of scientific cooperation could be the Arctic region, in which our Communication calls for the creation of new research infrastructures and for enhancing monitoring and surveillance capabilities in the Arctic. Furthermore, Norway has contributed valuably to developing the marine and maritime research communication through its participation in a number of key stakeholder activities. It is also worth noting that Norway and Iceland are actively participating in the development of a knowledge base for a sustainable thriving marine and maritime economy and in formulating policy advice for the future.

- There is already substantial cooperation taking place between EU and EFTA States on specific maritime surveillance matters (e.g. implementation of Directive 2002/59/BC on the exchange of information between Member States' maritime authorities to help prevent pollution and accidents at sea). Further collaboration between the EU, Norway and Iceland can be envisaged in order to achieve even greater integration of maritime surveillance systems and the establishment of an integrated EU maritime surveillance network.

This list is not comprehensive and the Commission is also looking into new maritime policy areas where cooperation with EFTA Member States can be further enhanced. One reflection that EFTA partners may find of interest is whether it could be of use to launch an OECD group on integrated maritime policy which would subscribe to a regular and structured exchange of best practices, as well as bring together some conceptual work of common interest.

Joe Borg



European Commissioner  
Fisheries and Maritime Affairs

# DECISION MAKING IN THE EU AND THE EEA

The policy process in the EU consists of three stages: the Commission proposes; the Council and the European Parliament adopt; and the Commission and the Member States implement. However, there are a number of complicating factors:

- The Treaties provide for different procedures depending on the policy area. The key differences concern the method of adoption in the Council – with decisions made either by qualified majority voting (QMV) or by unanimity – and the role of the European Parliament (ranging from equal status with the Council to being informed of decisions made by the Council).
- There is a special procedure known as comitology to determine detailed and technical measures required to implement framework legislation adopted by the Council and the Parliament.
- The formal procedures have been changed with relatively frequent amendments of the Treaties (new Treaties have entered into force in 1993, 1999, and 2003). These have broadened the scope for majority voting in the Council (although most decisions are adopted by consensus), and increased the power of the European Parliament in the legislative process.
- The rotating Presidency sets the agenda for the Council and thus plays an important role in the launching and development of new EU initiatives. The Council and the European Parliament have the right to request a proposal from the Commission on a given topic, even though the Commission formally retains the sole right of legislative proposals.
- In addition to the three EU institutions – the Commission, the Council and the European Parliament – there are numerous other actors involved, including the advisory bodies (the Committee of Regions and the Economic and Social

Committee), the growing number of EU agencies, various interest groups and non-governmental organisations, and increasingly also the general public through public consultations.

- The European Council – the regular meetings of the heads of State and Government of the Member States – plays a central role in the strategic development of the Union, even though it is not formally an EU institution.
- Informal channels of consultation play an important role alongside the official, treaty-based decision-making mechanisms.

Thus, within the framework of the basic three-stage process, one is faced with a series of parallel yet interlinked processes, both formal and informal, both within and between the EU institutions as well as between the EU institutions and other stakeholders.



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## Brussels – the heart of Europe

EU policy is determined in these three buildings: the Berlaymont building houses the European Commissioners, who propose new EU policy initiatives. EU summits take place in the Justus Lipsius building, which is also where the Council of Ministers makes decisions. Increasingly, such decisions require the approval of the European Parliament in order to be adopted.

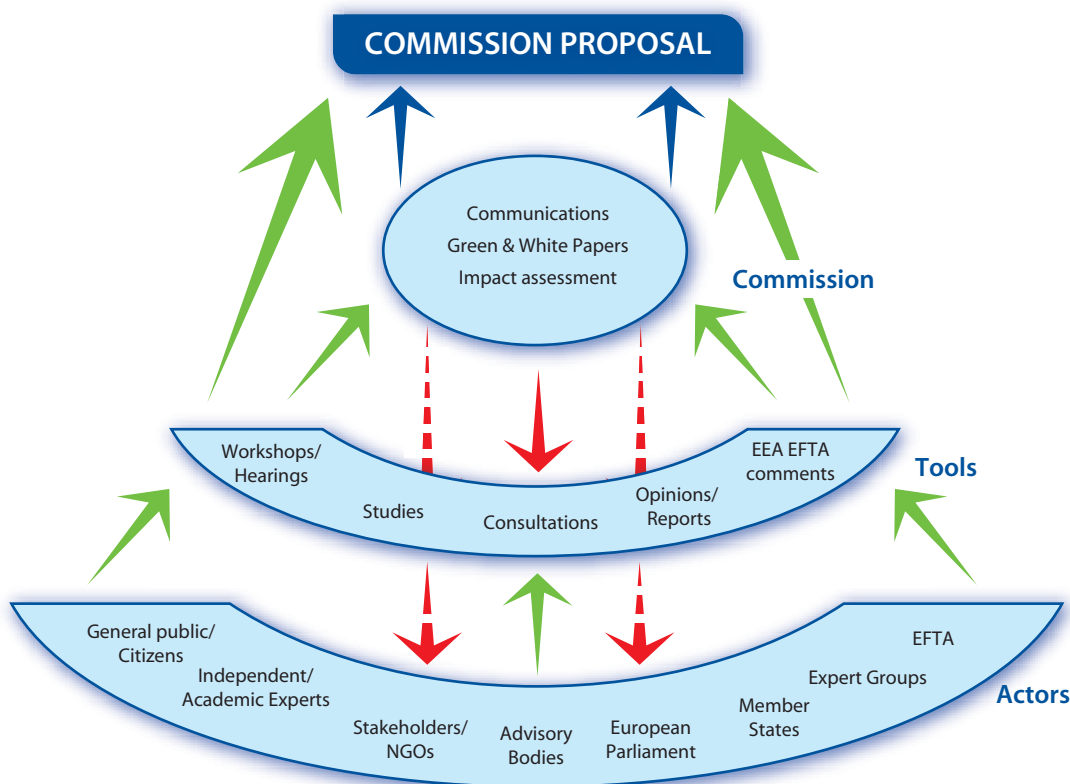
## The proposal stage

The first stage of the decision-making process is the drafting of a proposal by the Commission. This is the first phase during which decision shaping takes place and for which the EEA Agreement contains provisions for input from the EEA EFTA States (see next chapter). The development of a new policy initiative can be, and often is, a drawn-out process. It has arguably become even more so in recent years, due to demands for transparency and public consultations, and the requirement of impact assessments of legislative proposals.

Specific EU policy initiatives are often launched as a result of the regular planning process in the Commission, announced either in the five-year strategies adopted by each incoming Commission and/or in the annual strategies and work programmes. Even though the Commission formally has the sole right of initiative, other EU institutions and external actors are involved in the initial phase, during which an EU policy initiative

emerges. The rotating Presidency of the EU Council plays a particularly important role in this regard.

The first concrete step on the Commission side is sometimes the issuing of a **green paper**, in particular to launch a new and major policy initiative. A green paper serves as a discussion document intended to stimulate debate and launch a process of consultation. It is usually followed by a **white paper**, which contains official proposals for EU action. In the development of new proposals, the Commission conducts extensive **consultations** with various actors, such as the other EU institutions, experts in the Member States, interest groups, and, increasingly, with the general public through a public consultation process. **Studies** by external experts can be commissioned by the Commission before concrete proposals are developed. These complement the **impact assessments** conducted by the Commission. Such assessments of the economic, social and environmental impact have been obligatory for all initiatives included in the Commission's annual Work and Legislative Programme since 2005.



The first consultations typically culminate with the adoption by the Commission of a **communication** where specific policy measures are proposed. These are transmitted to the Council and the European Parliament for their endorsement, either to initiate debate or to propose policy measures. One recent trend is that such proposals are presented in **packages** in which formal Communications are supplemented by Commission staff working documents, and which contain both legislative and non-legislative measures.

Following the endorsement of a communication or a policy package by the Council and the Parliament, the relevant Directorate-General (DG) of the Commission responsible for the policy dossier starts work on a first draft of a legislative proposal. In case other DGs are affected by the planned measure, these are brought into the process via ad hoc **inter-service groups**. There are extensive consultations also during this stage, which are run in parallel with the impact assessment and proposal drafting process.

In the drafting of new legislation, the Commission avails itself extensively of external experts, normally through **expert groups** created by the Commission. This is typically the first step for legislative proposals in established policy areas. The expert groups provide technical expertise, but as they consist of national experts these groups also provide the Commission with input concerning the positions of the Member States on the proposal in question. After the draft is finalised it goes through the so-called **inter-service consultation procedure**. In addition to other DGs it also passes through the Commission's Secretariat-General and Legal Service.

Following this, the proposal is put before the College of Commissioners for formal adoption.

## The adoption stage

Once a measure has been adopted by the Commission it is transmitted to the Council and the European Parliament. The advisory bodies, the Committee of the Regions and the Economic and Social Committee, are in many cases invited to provide their opinion on the Commission proposal.

There are three methods of adopting legislative acts in the EU: **co-decision**, **consultation** and **assent**. Virtually all Internal Market (and thus EEA) relevant legislation is adopted by co-decision. If and when the Lisbon Treaty

enters into force, the co-decision procedure will become even more prevalent and re-named as the 'ordinary legislative procedure'. During this crucial stage, the EEA EFTA States have no formal mechanism allowing them to participate in the decision-making process in the Council and the European Parliament.

## Co-Decision

Under the co-decision procedure, both the Council and the European Parliament must agree on a new legislative act in order for it to be adopted. It was introduced by the Maastricht Treaty in 1993, i.e. after the EEA Agreement was negotiated, and was later revised through the Treaty of Amsterdam. Article 251 EC sets out the co-decision procedure (see figure page 16).

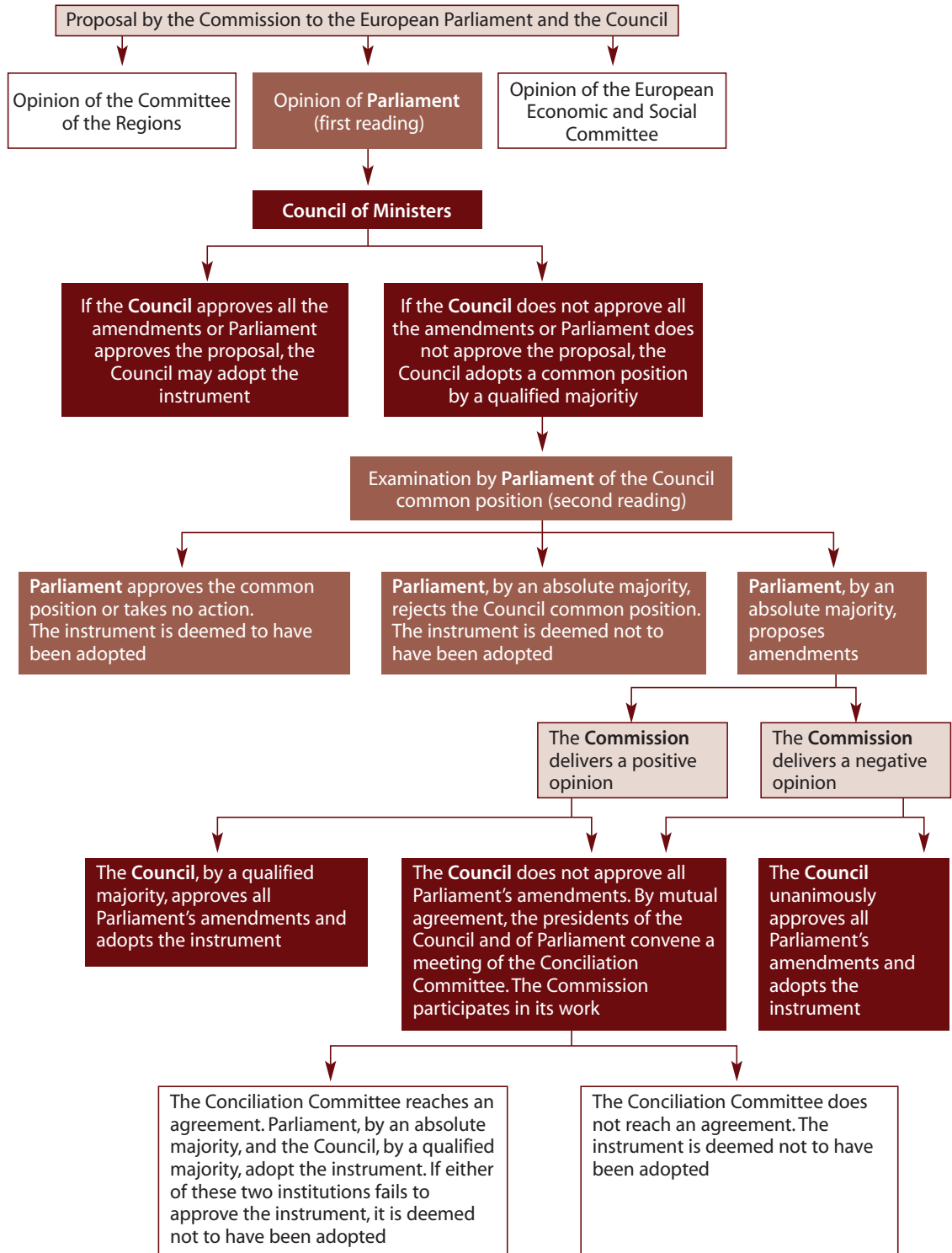
On average, it takes almost two years for an act to be adopted (i.e. the time lag between the presentation of a Commission proposal and its adoption by the Council and the Parliament) in the EU.

The process in the European Parliament (EP) begins with a first reading and a subsequent opinion of the legislative proposal. The parliamentary committee responsible for the dossier selects a rapporteur to draft a report on the proposal, which is discussed by the committee and is placed on the plenary agenda after being passed by the parliamentary committee by simple majority. At the plenary session, the Commissioner responsible gives the Commission's position on the European Parliament's proposed amendments and after a debate, the amendments are approved by a simple majority. Although formal approval is made in the plenary, it is important to note the pivotal role played by the relevant parliamentary committee in the process.

The Council reviews the Commission's proposal and prepares a position simultaneously with the first reading in the Parliament. In the case that the Council does not agree with the parliamentary amendments, it produces a common position and sends it to the European Parliament for a second reading along with the Commission's comments on the Council's position. The Council working groups, which consist of lower-level officials from the Member States, play a key role in the system. These constitute a vital arena for negotiations among the Member States, and although no vote takes place in the working groups, a large share of decisions is in practice cleared at this level.

If the Council does not agree with the Commission proposal as amended by the European Parliament, the

## Co-decision procedure





European Parliament has three months to review the Council's amended text. In doing so, it follows the same procedure as with the first reading, with the work first being done by the parliamentary committee, before the proposed amendments are put before the plenary to be adopted by absolute majority. Should the European Parliament reject the Council's position, the act is not adopted. But if the European Parliament adopts its own amendments, the revised text goes to the Council and Commission. The Commission then provides its opinion on the amended text; the Council can only adopt the act unanimously. However, if the Commission reaction is positive, the Council may adopt the act by qualified majority. However, if the act is not approved by the Council, the conciliation procedure begins.

## Assent and consultation

For those areas which do not fall under the co-decision procedure, the assent, consultation or cooperation procedures are used, depending on the field.

Under the assent procedure, the European Parliament may accept or reject Council drafts but it cannot suggest amendments. It is currently used to approve some international agreements, the Structural and Cohesion Funds, and the accession of new Member States.

The consultation procedure is the original legislative procedure. It is currently utilised only when the Treaty

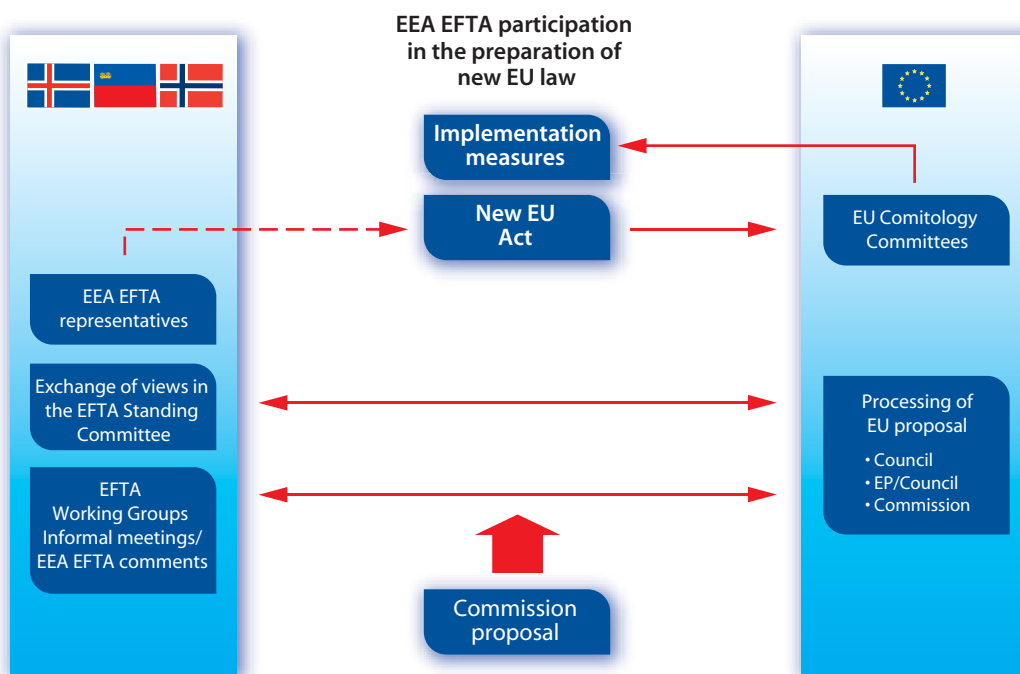
does not specify any of the other procedures. The Council requests the EP's opinion on a proposal but is not required to follow it. However, if the Council does amend the proposal in accordance with the EP's opinion, it can only do so by unanimity.

## Comitology

Many of the legislative acts adopted in the EU require more detailed technical measures in order to be implemented. Such implementation or execution measures are decided by the Commission. They are sometimes also referred to as 'derived' legislation, as they refer to already adopted legislative acts. Article 202 of the EC Treaty was modified by the Single European Act, which entered into force in 1987, to read:

*The Council shall confer on the Commission, in the acts which the Council adopts, powers for the implementation of the rules which the Council lays down.*

The Commission is assisted in this task by comitology committees. These are presided over by the Commission and consist of Member States officials. EEA EFTA officials are usually present in the comitology committees of relevance to the EEA (see next chapter). Established in order for the Council to supervise the implementation work, the Committees have the power to approve or reject the measures proposed by the Commission.





The meetings of the numerous EFTA committees established to manage the EEA Agreement on the EFTA side take place at the EFTA Secretariat in Brussels.

The comitology system plays an important but often overlooked role in the legislative work in the EU, adopting more than 2500 measures every year, which is approximately 30 times as many as the acts adopted by the Council and the European Parliament.

There are three types of comitology committees – Advisory, Management, and Regulatory – each with different procedures for the adoption of execution measures. There are approximately 200 comitology committees in operation.

EU comitology has been reformed twice – in 1999 and 2006 – since the entry into force of the EEA. Both were introduced at the behest of the European Parliament, as it sought a greater role in the implementation stage. The reforms introduce new procedures whereby certain implementation measures must be approved by both the Council and the European Parliament in order to be adopted. In this connection, all legislation adopted by co-decision will be screened in order to assess whether the new procedure should be applied.

## EEA decision making

The adoption of an EEA-relevant legal act by the Council and the European Parliament launches the decision-making process proper in the EEA. After such an act has been adopted, the EFTA Secretariat prepares a **standard sheet**, which is a form where all references and vital information about the act in question is recorded. Experts in the EEA EFTA capitals must then answer a number of questions concerning whether the act is deemed EEA-relevant, whether it will require technical adaptations for incorporation in the EEA EFTA States, and whether there are any constitutional requirements (see below) for its incorporation into the EEA Agreement.

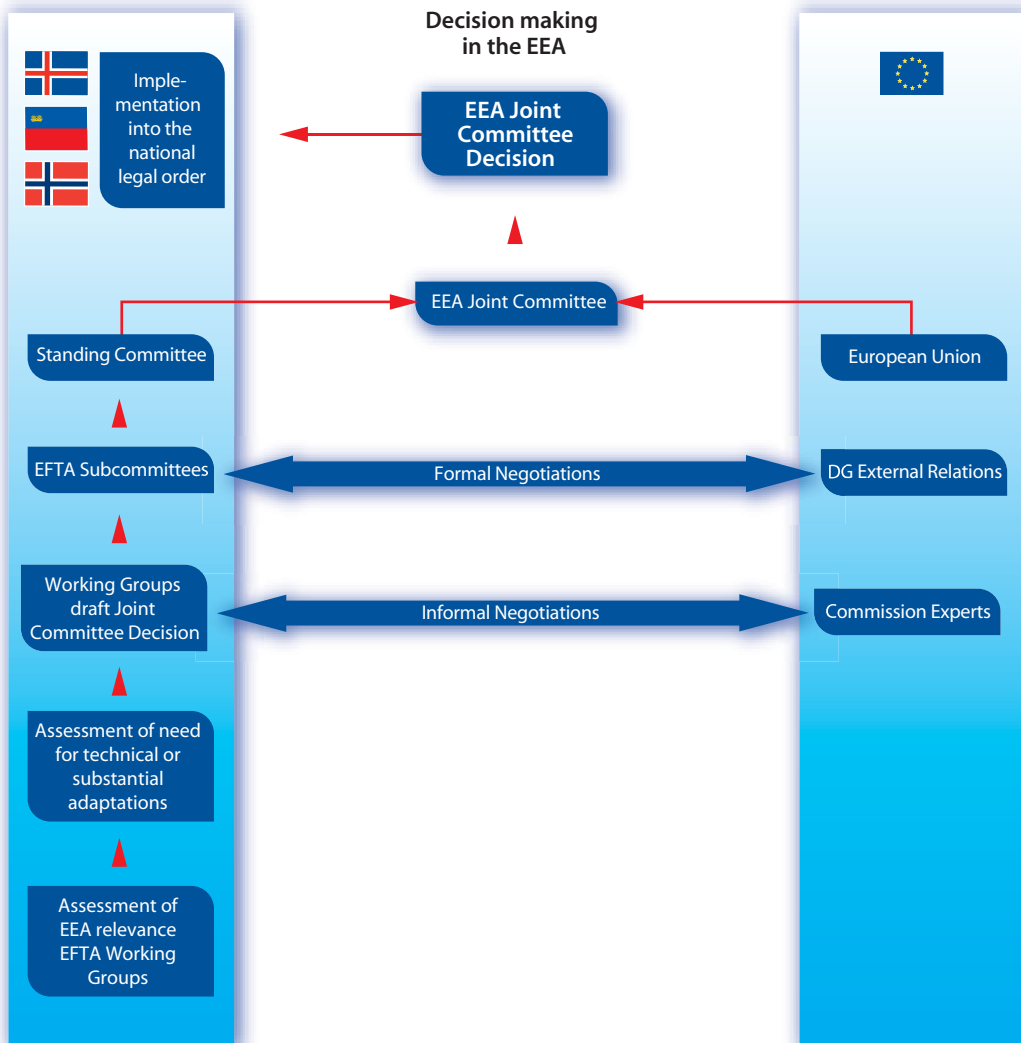
When the experts have returned the standard sheets, the EFTA Secretariat drafts a **Joint Committee Decision (JCD)**. The draft JCD is then sent to experts for approval and subsequently put on the agenda of the responsible Subcommittee for confirmation of its relevance. Upon Subcommittee approval the draft is handed over to the Commission. The EFTA Secretariat

then consults the Commission on the timing of adoption in the EEA Joint Committee.

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 an EEA Joint Committee decision can only be binding on the Contracting Parties in accordance with their respective constitutions after having been approved by parliament or by a referendum. The fulfillment of such **constitutional requirements** thus has an impact on the date of entry into force of the JCD. In order to clarify issues and to shorten the time

period needed for parliamentary approval, EEA EFTA States have introduced procedures to inform and consult their parliaments at an early stage. Participation in programmes is dependent on a Joint Committee Decision, and the EEA EFTA States therefore seek parliamentary approval before a JCD is adopted.

When the procedures for fulfillment of constitutional requirements are completed, the EEA EFTA States notify the EFTA Secretariat, which forwards the information to the Commission and the other EEA EFTA States.



# DECISION SHAPING IN THE EEA

## What is ‘decision shaping’?

The term ‘decision shaping’ does not appear anywhere in the EEA Agreement, nor is it found in any standard dictionary or encyclopaedia. An internet search yields almost exclusively articles related to the EEA. In short, it seems that decision shaping is a sui generis EEA term.

Broadly speaking, decision shaping can be seen as the process of contributing to and influencing policy proposals up until they are formally adopted. ‘Policy shaping’ is also sometimes used, and is perhaps more accurate in the EEA context, as the process is not limited to influencing individual decisions, but rather EU policy of relevance to the EEA more broadly. However, since ‘decision shaping’ is most frequently used and has become the established term, it will be used in this Bulletin.

A narrower scope of the term was used in the 2002 EFTA Bulletin on decision shaping in the EEA<sup>[1]</sup>: ‘*Decision-shaping is the phase of preparatory work undertaken by the European Commission to draw up new legislative proposals,*’ while noting that ‘*participation in committees is not the only channel for EEA EFTA influence.*’

More specifically, the term ‘decision shaping’ focuses on decision-shaping opportunities mandated by the EEA Agreement, particularly measures aimed at the development of legislative proposals within the scope of the EEA. The principal decision-shaping mechanisms consist of EEA EFTA **participation in committees** under the European Commission preparing legislation or managing programmes, and **written contributions** and **resolutions**.

In light of the changes in the way that the EU is governed over the last 15 years, a broader meaning of the term will be applied for the purpose of this Bulletin. This aims to take into account the importance of **informal processes** of dialogue, consultation and cooperation between the EU and the EFTA States. It will not be limited to legislative acts but also cover

broader EU policies or non-legislative (‘**soft law**’) policy instruments. It will further include **other EU and EFTA institutions**, for instance the participation of EEA EFTA social partners in the EU social dialogue, relations with the European Parliament and the EEA Joint Parliamentary Committee. In addition to the activities of governmental bodies in the EU and EFTA, it will also cover the increasingly important and formalised involvement of **non-governmental actors** in the decision-shaping process in the EEA and the EU.

## Decision shaping and the EEA Agreement

The EEA Agreement provides for EEA EFTA participation in three main types of committees – programme committees, expert groups, and comitology committees – as well as certain other committees.

### Programme committees

These are responsible for the development and management of the Community programmes, and consist of representatives of the participating states. They assist the Commission in tasks like specifying the content of the programme, drafting texts for public calls for proposals, or selecting projects for funding.

Article 81 sets out the modalities for the participation of the EEA EFTA States in Programme Committees. In addition, Article 79 of the Agreement provides for formal input or discussions on new programmes from the EEA EFTA States through the EEA Joint Committee structure. From 2007 to 2013, the EEA EFTA States are participating in 16 such programmes through the EEA Agreement.<sup>[2]</sup>

A Joint Declaration in the Final Act of the Agreement (No. 15) states that in reaching its decision, the Commission shall take due account of the views expressed by the EEA EFTA States in the same manner as of the views expressed by the EU Member States before voting. In cases where an issue is referred to the EU Council because the vote of the programme



<sup>[1]</sup> EFTA Bulletin 1-2002, The European Economic Area: Decision Shaping and Participation in Committees.

<sup>[2]</sup> EFTA Bulletin 2-2007, Guide to EU Programmes (2007-2013).

## Article 81

Where cooperation takes the form of participation by EFTA States in an EC framework programme, specific programme, project or other action, the following principles shall apply:

- (a) The EFTA States shall have access to all parts of a programme.
- (b) The status of the EFTA States in the committees which assist the EC Commission in the management or development of a Community activity to which EFTA States may be contributing financially by virtue of their participation shall take full account of that contribution.
- (c) Decisions by the Community, other than those relating to the general budget of the Community, which affect directly or indirectly a framework programme, specific programme, project or other action, in which EFTA States participate by a decision under this Agreement, shall be subject to the provisions of Article 79(3). The terms and conditions of the continued participation in the activity in question may be reviewed by the EEA Joint Committee in accordance with Article 86.
- (d) At the project level, institutions, undertakings, organizations and nationals of EFTA States shall have the same rights and obligations in the Community programme or other action in question as those applicable to partner institutions, undertakings, organizations and nationals of EC Member States. The same shall apply *mutatis mutandis* to participants in exchanges between EC Member States and EFTA States, under the activity in question.
- (e) EFTA States, their institutions, undertakings, organizations and nationals shall have the same rights and obligations with regard to dissemination, evaluation and exploitation of results as those applicable to EC Member States, their institutions, undertakings, organizations and nationals.
- (f) The Contracting Parties undertake, in accordance with their respective rules and regulations, to facilitate the movement of participants in the programme and other action to the extent necessary.

committee conflicts with the opinion of the Commission, the Joint Declaration enables the EEA EFTA States to refer the matter to the EEA Joint Committee. So far, this option has never been used.

As the procedures needed to establish a legal basis for EEA EFTA participation in a programme can only be completed after a programme has been legally established by the EU institutions, representatives of the EEA EFTA States will often formally join the committee somewhat later than their colleagues from the EU Member States. This is not an ideal situation, as important discussions often take place in the committee at the start-up of a programme. However, in some cases, notably when an existing programme is replaced with a new similar programme, participants from the EEA EFTA States have been invited to the committee as ‘guests’ or ‘observers’ awaiting their formal entry in order to secure the continuous participation of the EEA EFTA States.

## Expert groups

Expert groups are established by the Commission to provide assistance in the drafting of new legislation. These groups consist of independent experts who provide their opinions and insights in what is sometimes referred to as the pre-pipeline stage of legislation. An expert is expected to provide input based on, for example, scientific, ethical, practical, judicial, or sectoral considerations. As the experts are in theory not official government representatives of the Member States, the contributions of experts do not necessarily reflect their country’s position. Often, however, experts will convey their country’s position, if only to pre-empt problems and avoid surprises when the Member States vote on proposals. As these committees are advisory and do not take decisions or vote, all who participate in them have the same formal status, whether from an EU Member State or an EEA EFTA State.

## Article 99

1. As soon as new legislation is being drawn up by the EC Commission in a field which is governed by this Agreement, the EC Commission shall informally seek advice from experts of the EFTA States in the same way as it seeks advice from experts of the EC Member States for the elaboration of its proposals.
2. When transmitting its proposal to the Council of the European Communities, the EC Commission shall transmit copies thereof to the EFTA States.  
  
At the request of one of the Contracting Parties, a preliminary exchange of views takes place in the EEA Joint Committee.
3. During the phase preceding the decision of the Council of the European Communities, in a continuous information and consultation process, the Contracting Parties consult each other again in the EEA Joint Committee at the significant moments at the request of one of them.
4. The Contracting Parties shall cooperate in good faith during the information and consultation phase with a view to facilitating, at the end of the process, the decision-taking in the EEA Joint Committee.

The number of expert groups assisting the Commission has grown considerably since the EEA Agreement was concluded. In 1990, there were approximately 600 such groups; today there are more than 1200. Article 99 provides the legal basis for the participation of experts from the EEA EFTA States in expert groups. Participation in expert groups provides several benefits for the EEA EFTA States. It gives access to important information from the Commission and makes it possible to clarify and communicate national positions at an early stage. It also provides a key channel to influence and contribute to emerging EU policies and legislation. When authors of legislative proposals are considering new laws, good advice from relevant EFTA experts is welcome, particularly in areas where one or more EEA EFTA States have useful experience to share.

## Comitology committees

Under Article 100, the EEA EFTA States can participate in comitology committees, albeit without the right to vote. As described in the chapter on EU decision making, these assist the Commission in drafting and adopting implementing measures where the Council has delegated authority to the Commission to establish subsidiary legislation to bring into effect a broader piece of legislation that it has introduced.

A Declaration of the European Communities attached to the Final Act of the Agreement (No. 29) attempts to clarify the nature of this participation. It states, among other things, that EFTA experts 'will be involved on an equal footing together with national experts from the EC

## Article 100

The EC Commission shall ensure experts of the EFTA States as wide a participation as possible according to the areas concerned, in the preparatory stage of draft measures to be submitted subsequently to the committees which assist the EC Commission in the exercise of its executive powers. In this regard, when drawing up draft measures the EC Commission shall refer to experts of the EFTA States on the same basis as it refers to experts of the EC Member States.

In the cases where the Council of the European Communities is seized in accordance with the procedure applicable to the type of committee involved, the EC Commission shall transmit to the Council of the European Communities the views of the experts of the EFTA States.

Member States in the work preparatory to the convening of the EC committees relevant to the acquis in question’.

EEA EFTA participation in comitology includes participation in working sessions which carry out the preparatory work of comitology committees. As EEA EFTA representatives do not participate in the vote, it is important that the potentially problematic issues for the EEA EFTA States are raised early on in the deliberative stage of the procedure.

## Other committees

The Commission consults committees that fall into neither of the categories mentioned above. These committees often fulfil the Commission’s requirement for advice on complex scientific, technical or legal issues, such as veterinary and pharmaceutical matters, money laundering, and social security for migrant workers.

Article 101 provides for the EEA EFTA States’ participation in other committees. As of early 2009, there were 26 such committees in which the EEA EFTA States had the right to participate.

## EEA EFTA comments and written contributions

EU Member States are often asked to provide comments on policy issues. Depending on relevance to the EEA Agreement, the EEA EFTA States provide written comments to a legislative proposal or programme. This is considered part of the consultation procedure set out in Article 99(1) and (3) of the EEA Agreement (see above). Comments may be sent individually by each EEA EFTA State or they may be coordinated at the EEA EFTA level.

A typical EEA EFTA comment is brief, on average about five pages long, and provides commentary and suggestions on Commission initiatives such as a green paper or a legislative proposal. More than 100 such EEA EFTA comments have been submitted in response to Commission initiatives during the first 15 years of the EEA. In recent years, the number of annual comments has been between five and ten, which is somewhat lower than in the late 1990s and early 2000s, when between 10 and 20 comments were submitted annually.

Once the opportunity for input at the committee stage has passed, EEA EFTA comments represent a particularly important way for the EEA EFTA States to provide input on emerging EU policy. These are usually elaborated by EFTA working groups with the help of the EFTA Secretariat, and then cleared by the appropriate subcommittee before being sent to the relevant services in the Commission, the European Parliament and the Council. EEA EFTA comments are endorsed by the Standing Committee and officially taken note of by the EEA Joint Committee.

EEA EFTA comments are a result of discussions between the EEA EFTA States on the issue in question, and it may take some time to finalise these joint comments. Deadlines may often be very short, which makes it a challenge to devise written contributions of substance in time.

Timing is therefore of the essence for the success of any comments from the EEA EFTA States. There are critical moments in the decision-shaping process where the submission of comments is most effective: EFTA States often participate individually in a public consultation organised by the Commission before the adoption of a legislative proposal. Comments could already be

### Article 101

1. In respect of committees which are covered neither by Article 81 nor by Article 100 experts from EFTA States shall be associated with the work when this is called for by the good functioning of this Agreement.

These committees are listed in Protocol 37. The modalities of such an association are set out in the relevant sectoral Protocols and Annexes dealing with the matter concerned.

2. If it appears to the Contracting Parties that such an association should be extended to other committees which present similar characteristics, the EEA Joint Committee may amend Protocol 37.

submitted at this early stage if a proposal is considered to be of particular importance to the EEA EFTA States. Otherwise, the EEA EFTA comment is transmitted as soon as possible after a proposal is adopted by the Commission, ideally before the draft report is discussed in the responsible committee in the European Parliament. Another opportunity is to submit comments before the Council has agreed on a common position. Good coordination with the EU Presidency is essential in these cases. If a second reading is necessary, further EEA EFTA comments may be needed in order to take into account possible revisions to the proposal during the discussion between Parliament and Council. Finally, EEA EFTA comments may be submitted to an amended proposal of the Commission.

The opportunity to submit comments at various stages of the policy-making process in the EU is illustrated by the EEA EFTA response to the Television Without Frontiers Directive. During the review process of this directive, which started in 2003 and ended with the adoption of the Audiovisual and Media Services Directive in December 2007, four joint Comments were submitted by the EEA EFTA States during the consultation phase, after publication of the proposal, and after the publication of an amending proposal by the Commission.

Equally important is the format of the comments: they need to be concise and to the point, suggest alternative provisions, and give good reasons for the proposed changes. The wording also needs to take into account the stage of the decision-shaping process and the institution they are addressed to. In the consultation phase, EEA EFTA tend to take a more general approach, indicating the way to go forward, whereas they are more specific with suggestions for concrete wording later, once the legislative proposal has been tabled.

EEA EFTA comments are generally well received on the EU side, in particular in areas where (one of the) EEA EFTA States has particular expertise and experience, and when attempts to look at the issue in a broader European context are made. To a certain extent, the lack of institutional power of the EEA EFTA States may even increase the credibility of the EEA EFTA comments. They have also proven to be particularly successful on issues over which the opinions of the EU institutions were divided. If it is well-founded, the opinion of the EEA EFTA States may bring one side the necessary support to win the argument within the EU institutions.



EEA EFTA officials outside the Berlaymont building in Brussels.



## Other channels of decision shaping

In addition to the formal decision-shaping mechanisms of the EEA Agreement, there are numerous, more **informal channels** and arenas allowing for an exchange of views and information between the EEA EFTA States and the EU side on emerging EU policy of relevance to the EEA.

The numerous meetings of the EFTA institutions established for the EEA provide one such arena. The main task of this structure of subcommittees and working groups is to ensure the smooth incorporation of new EEA acts into the EEA Agreement. But they are also used as arenas for exchange of information and policy positions between the EU and the EEA EFTA States, often in the context of briefings by EU officials on new and ongoing policy initiatives and processes.

Bilateral relations between **individual EEA EFTA States** and the EU are conducted through numerous channels, with the EU Member States and with the EU institutions. While these are undoubtedly very important, an analysis of how this affects the ability of the EEA EFTA States to contribute to decision shaping in the EEA goes beyond the scope of this Bulletin.

As noted above, national comments on EEA issues are one way for the EEA EFTA States to influence the EU policy-shaping process. The advantage of sending national comments compared with EEA EFTA comments is that the former may be elaborated and sent more quickly, and more effectively address an issue of particular concern to an EEA EFTA State. The comments are usually addressed directly to the relevant Commission services dealing with the subject matter.

Due to the enhanced role of the European Parliament in the legislative process in the EU, influencing the Parliament and nurturing informal contacts with Members of the European Parliament (MEPs) have become an increasingly important channel for the EEA EFTA States. This can be done by individual EEA EFTA States or jointly, for instance through meetings between the chair of the EFTA Standing Committee and MEPs, or the transmission of EEA EFTA comments to relevant committees and MEPs in the European Parliament.

Other important channels providing decision-shaping opportunities for the EEA EFTA countries through **social dialogue**, the **parliamentary dimension** of the EEA, and participation in EU **agencies**, are covered in the next chapters.

# CASE STUDY: REACH – INFLUENCED BY EFTA?

The new Chemicals Regulation – REACH<sup>[3]</sup> – has been one of the most important and controversial legislative acts in the EU in recent years. It was adopted on 18 December 2006 and entered into force on 1 June 2007.

The Commission launched the discussions on REACH by means of a white paper in February 2001. The procedure leading up to the adoption of the Regulation was long and turbulent. The EU institutions, the Member States, NGOs, industry associations, and third countries had strong and conflicting views on the contents of the Regulation. It was thus a difficult challenge for the EEA EFTA States to be heard.

The input from the EEA EFTA States can be divided into three main categories: written input, high level meetings,

and participation at expert level. The written input was either in the form of EEA EFTA comments, bilateral comments or letters. These were followed up by the Norwegian government through high-level meetings with Commissioners, MEPs and relevant ministers from the Member States holding the EU Presidency (see table below). Experts from the EEA EFTA States participated in the Commission Working Group on REACH, which aims at facilitating the practical implementation of REACH. EEA EFTA experts also participated in the REACH Implementation Projects under the Working Group, the aim of which was to ensure a practical and efficient implementation of REACH by developing guidance documents and IT tools. Finally, representatives from the Commission have made two presentations for the EFTA Expert Group on Chemicals.

One of the main points for the EEA EFTA States was to ensure that dangerous substances were substituted with less dangerous substances wherever possible. Requirements regarding substitution were included in the REACH Regulation Articles 55, 60 and 61. Another important matter for the EEA EFTA States was the introduction of the principle of ‘duty of care’, a general obligation for economic operators to ensure that their chemical products would cause as little harm as possible. Although in the end it was not included in the Regulation itself, clause number 16 refers to this principle as a basis for the Regulation.

As there were so many stakeholders involved, it is difficult to measure the effects of the EEA EFTA input into the discussions. One can nevertheless argue that the EEA EFTA States, together with other stakeholders having similar views, contributed to the final version of the Regulation.



The European Chemicals Agency (ECHA) received pre-registration for about 150.000 substances from 65.000 companies ahead of the 1 December 2008 deadline set by the REACH regulation. © European commission - DG enterprise and Industry - R4

<sup>[3]</sup> Regulation on Registration, Evaluation, Authorisation and Restriction of Chemicals, OJ L396, 30.12.2006, p.1.

## History of the REACH proposal

7 December	2001	EEA EFTA comments on the Chemicals Policy in the EU
27 February	2001	The Commission published its White Paper on the Strategy for a future Chemicals Policy.
31 May	2001	EEA EFTA comments on the Commission White Paper.
18 February	2002	EEA EFTA comments on the Commission White Paper after Council conclusions and Parliament resolution.
7 May - 10 July	2003	The Commission launched an Internet consultation on REACH. Detailed Norwegian comments to the Commission's internet consultation of the draft REACH proposal. Cover letter sent by the Norwegian Environment Minister.
29 October	2003	The Commission adopted the proposal on REACH. Reply from Environment Commissioner to Norwegian comments of 27 June 2003.
October	2004	Norwegian comments on the Commission proposal for REACH suggesting five possible improvements. A letter including the Norwegian comments sent to the MEP rapporteur in the European Parliament.
April	2005	EEA EFTA comments on the Commissions proposal for REACH based on the Norwegian comments of October 2004. State Secretary of the Norwegian Ministry of Environment had separate meetings in Brussels with the rapporteurs in the European Parliament. Letter on substitution and "duty of care" from State Secretary of the Norwegian Ministry of Environment to the rapporteurs in the European Parliament. The Norwegian Minister of Environment had telephone meetings with Enterprise Commissioner and the Minister for Sustainable Farming and Food from the British EU presidency.
17 November	2005	The Norwegian Minister of Environment sent comments regarding the REACH proposal and the related discussions in the Council and the Parliament. European Parliament opinion 1 <sup>st</sup> reading. The Norwegian Minister of Environment sends letters to the Commissioners for Enterprise and Environment. Minister of Environment met with Environment Commissioner, in relation to COP10 in Montreal.
13 December	2005	Political agreement on the common position in the Council. The Norwegian Minister of Environment meets with the Austrian presidency, the Austrian Minister of Environment in Dubai. The Norwegian Minister of Environment sent letter to the Austrian Minister of Environment after their meeting in Dubai.
27 June	2006	The Council adopted its common position 1 <sup>st</sup> reading. The Norwegian Prime Minister discussed REACH in a meeting with the Enterprise Commissioner and his cabinet. The Norwegian Minister of Environment sent comments on REACH (substitution and duty of care). The Norwegian Minister of Environment met one of the MEP rapporteurs in Strasbourg.
13 December	2006	European Parliament opinion 2 <sup>nd</sup> reading.
18 December	2006	Adoption of the Regulation.
30 December	2006	The Regulation (EC) N° 1907/2006 was published.
1 June	2007	Entry into force.
1 June	2008	Pre-registration begins.



# CASE STUDY: THE GOODS PACKAGE

The New Legal Framework for Marketing of Products (NLF), previously known as the Goods Package, was adopted in the EU in July 2008 and will gradually enter into force by 1 January 2010. It aims to improve the free circulation of safe products within the Single Market. The NLF will improve and modernise the conditions for placing products on the European market and the procedures to be applied by public authorities when unsafe products must be withdrawn from the market. The NLF targets both public authorities and all economic operators in the market chain, from the manufacturer through importers to distributors, all of whom have various obligations to fulfil.

The NLF builds on the experiences of the so-called 'New Approach' that has proven to be a successful regulatory method for over 20 years. Under the New Approach, legislation sets out essential health, safety, and environmental requirements, while more detailed technical specifications are laid down by standards developed by the three European standardisation organisations (CEN, CENELEC and ETSI). As the development of standards involves private stakeholders, this regulatory method is also an excellent example of co-regulation between the public and private sectors.

Manufacturers are responsible for putting safe products on the market, and affixing the CE marking on the products. When safety or health is at risk, the method relies on third party conformity assessment. National authorities are responsible for the market surveillance that verifies that the products on the market fulfil the legislative requirements.

The NLF aims to improve market surveillance, including border controls, strengthen national and European accreditation, enhance the quality of conformity assessment bodies (so-called notified bodies) and ensure a better protection of the CE marking. It also establishes a 'toolbox' of measures to improve and streamline existing and future product legislation.

## The EU process leading to the NLF

In the early 2000s, the European Commission, with DG Enterprise in the lead, began to reflect on the need for improving the different tools used in the New Approach. The European Commission consulted the EU Member States and the EFTA States through the Senior Official Group on Standardisation and Conformity Assessment (SOGS), in which the three EEA EFTA States are granted observer status by the EEA Agreement. The European Commission welcomes active participation from the side of EFTA in the meetings, and considers written comments put forward by EFTA.

Over several years the EEA EFTA States and the EFTA Secretariat actively followed the Commission's preparation for improved legislation in the area of free movement of safe products. It is important to note that normally, at the early stage of such a process, the Commission does not necessarily seek stakeholders' views on concrete draft proposals, but rather views as to what parts of the regulatory framework need revision. By participating at this early stage it is possible, through knowledge and experience, to contribute to the setting of direction for an upcoming legislative proposal.

The European Commission adopted its proposal in February 2007. It consisted of two Regulations and one Decision, which were subsequently amended and adopted by the EP in February 2008 and the Council in July 2008. The scope of the revision was extended to cover a very broad range of products regulated by the EU (and not only those covered by the New Approach as originally proposed), and also merged with the aim to improve the application of the principle of mutual recognition applying to non-harmonised products.

## The EFTA contribution

During a long process like this, contributing to the decision shaping of the Commission will always be a mixture of participation in discussions and, when

appropriate, feeding written comments into the process. In the case of the NLF, written comments from the EEA EFTA States to the Commission, reaching the EU Member States via SOGS, were transmitted in October 2003, June 2004 and April 2006. These measures were complemented with bilateral discussions between individual EEA EFTA States and their counterparts in the EU and EFTA.

Although the Commission held extensive consultations with SOGS over several years, these consultations ended when in the autumn of 2006 the Commission began its final legal drafting and carried out its internal consultations. As a result of these inter-service consultations the final Commission proposals in February 2007 differed on some important issues from the ideas that DG Enterprise had consulted SOGS on.

The EFTA countries assessed the Commission proposals in the EFTA TBT<sup>141</sup> Committee, comparing them with the EEA EFTA comments previously submitted. Norway conducted a broad written hearing on the proposals at national level. It was clear that, although satisfied with the majority of the Commission's proposals, last minute changes by the Commission did not always correspond to what had

been previously supported by EFTA. The national procedures and the EFTA assessment, followed up by discussions in the EEA EFTA TBT Committee, resulted in a new set of written EFTA comments, forwarded in July 2007 to the EP and the Council Secretariat, which forwarded them to the EU Member States. In addition, a copy of the comments was also handed over to DG Enterprise, as the Commission participates both in meetings in the Council and the EP. Finally, the written EEA EFTA comments were complemented by personal contacts with officials in the three EU institutions.

What did EFTA achieve through all these activities? EFTA contributed to setting the right direction of the revision at the outset, and the final NLF was deemed as a satisfactory end result for EFTA, as it is seen as an important and balanced contribution to the free movement of safe products in Europe. Some of the amendments to the Commission proposal, which were advocated by the EEA EFTA States in the July 2007 written comments, were actually adopted in 2008. Furthermore, most parts of the Commission proposals that we explicitly defended in 2007 were kept.



Commissioner Günther Verheugen introducing the New Legal Framework on the Marketing of Goods (NLF) to the European Parliament in Strasbourg before the debate on 19 February 2008. The EP adopted the NLF on 21 February 2008, followed by the Council of the European Union on 9 July 2008. Photo: Tore N. Thomassen.

<sup>141</sup> Technical Barriers to Trade.

## The EFTA study on certification and marks in Europe

In 2007, US toy manufacturer Mattel withdrew millions of CE-marked toys from the market because they were unsafe. Product deficiencies had not been discovered by the manufacturer's internal quality control before the products were placed on the market, nor had public market surveillance detected these deficiencies. When Mattel finally became aware of the problem, it assumed responsibility and recalled the products from the market. This event resulted in an intense debate in the EP about the CE marking in particular, and about the need for more certification and marks in general.

The role of certification and marks in the internal market had already been discussed for many years in Europe. In 2001-2002, EFTA saw the need for broadening and systemising the knowledge on product certification and marking in Europe. At the same time the European Commission was preparing its Internal Market Strategy (IMS) 2003-2006. EFTA, together with the Nordic EU Member States, proposed to DG Internal Market that a study on marks in Europe should be included as an action in the new IMS. The European Commission agreed to this idea, but for various reasons it did not follow up this action point in its IMS. In 2006, EFTA decided to carry out this study on its own. When EFTA established a steering committee for the study, DG Enterprise, together with other important European stakeholders, agreed to participate.

As it happened, the preliminary results of the EFTA study emerged at the same time as the Mattel discussion began, and our results were forwarded to the EP as input to their debate. The study showed that certification and marking is a very complex issue which demands proper analysis before conclusions are made. The debate in the EP ended with a request to the European Commission to carry out an in-depth study on the possibility of a new European consumer safety mark. The EFTA study may have contributed to this conclusion by showing the complexity of the issue. In the spring of 2008, the European Commission then began its work.

As a follow-up to the EFTA study, in June 2008 EFTA organised a workshop entitled "Certification and marks for Europe". However, no direct support for a new European consumer safety mark emerged from this workshop. On 10 December 2008 the Commission finalised its study, published as a Commission Staff Working Document entitled "Feasibility of a consumer safety marks and its possible relation to CE marking". This paper contains several references to findings in the EFTA study and also acknowledges that "[T]he EFTA Study on Certification and Marks published earlier this year provides a basis for certain conclusions". The main conclusion from the Commission study is that "The Commission services consider that the legal and technical analysis shows that introducing a consumer safety mark is not appropriate as it might create more problems than it could solve". Another result of the study is that the Commission will launch an information campaign on the CE marking. These conclusions are in line with EFTA's support of the CE marking and the system behind it.

This study is therefore an example of how EFTA, by being in the front of development (as opposed to reacting to what someone else has proposed), may play an active role in policy development in Europe.



# THE OPEN METHOD OF COORDINATION

The Open Method of Coordination (OMC) refers to a relatively recent approach to policy-making in the EU. The OMC is used in areas in which policy competencies are with the Member States, but where greater cooperation among them are regarded as important in order to fulfil the objectives of the Treaties. Under the OMC, policy goals are to be reached through the spread of best practice and institutional learning that will help achieving greater convergence towards reaching EU objectives. In contrast to the traditional 'Community method', there is limited scope for sanctions if obligations are not met by Member States.

The OMC was first introduced in the EU in 1997, in the provisions on employment policy in the Amsterdam Treaty. However, the OMC is most closely associated with the Lisbon Strategy. Launched in 2000, this aimed to make the EU the most competitive and dynamic knowledge based economy in the world. The EU based its development of the OMC on the experiences from similar models used by, among others, the OECD. The call for an alternative to the 'Community method' reflected the advance of economic integration and interdependence through the integration process. This made greater coordination among Member States necessary, but they were and are unwilling to relinquish further economic policy competences to the EU level. Since the launch of the Lisbon Strategy in 2000, the OMC has been applied in a growing number of policy areas, including employment, social protection and inclusion, research, education, youth and training.

The Lisbon process was revised in the wake of a very critical report from a high level group chaired by the former Dutch prime minister Wim Kok. The Commission presented a mid-term review of the Lisbon Strategy to the EU summit in Spring 2005 with proposals for changes in the working methods. Re-named as the Strategy for Growth and Jobs, the changes entailed a strengthening of the Open Method of Coordination by appointing national Lisbon coordinators in the Member States and the development of National Reform Programmes (NRP's), which would be reviewed and revised annually.

Although the OMC is being applied in different ways across different policy areas, there are some common features. It starts with the EU Council first agreeing on a set of common objectives within a specific policy area. The next step is for the Commission to develop standards and determine specific benchmarks and indicators to measure best practice. Each Member State then develops a national action plan including timetables for the achievement of agreed-upon targets. In the final stage of the typical OMC cycle, results are monitored and evaluated, allowing comparisons between Member States on progress. On the basis of the information, the EU Council can introduce new and improved guidelines to further enhance the learning process.

Employment policy provides an illustrative example of how the OMC is used in the EU. Throughout Europe, countries are forced to deal with the same challenges with regard to employment and the labor market. Skilled labour force and the labour market is a matter of common interest to EU Member States, although labour market policies remain a competence of the Member States. Employment policy was the first policy area in which the OMC was used in the EU. The European Employment Strategy (EES) was adopted in 1997 with the aim of co-ordinating the employment policies of the Member States. The three-year reporting cycle of the EES is based on:

- (1) Common European guidelines and recommendations which are proposed by the Commission and set out common priorities for Member States employment policies;
- (2) Annual national action plans for employment on how these guidelines are going to be used and implemented;
- (3) A Joint Employment Report, which is published annually;
- (4) Country-specific recommendations on a proposal by the Commission, which the Council may decide to issue; and

- (5) The Commission's annual review of the progress made at both national and Community level, based on regular monitoring and on evaluation of the implementation of the Member States' national programmes.

The OMC is not covered by the EEA Agreement as such. This represents a challenge for the EEA EFTA States, as a large part of the Lisbon Strategy is carried out through an inter-governmental process in the EU in which the EEA EFTA States do not participate. More specifically,

the OMC is increasingly linked to the National Reform Programmes (NRPs), one of the key elements of the Lisbon Strategy for Growth and Jobs. Furthermore, the legal bases on which the OMC has been launched have at times prevented the participation of the EEA EFTA States. Despite these obstacles, the EEA EFTA States have successfully sought to be included, and have already participated in OMC cycles in a number of policy areas covered by the EEA Agreement, for instance in areas such as research, employment, health, telecommunications enterprises and the environment.

## The OMC and employment



*Kari-Anne Magler Wiggen, national expert, European Commission, DG Employment, Social Affairs and Equal Opportunities*

Kari-Anne's work relates to the OMC in the employment field. Every year her department organizes up to six peer reviews in which a maximum of 12 countries can participate each time. In practice the European Employment Strategy (EES) is based on dialogue between the Member States and the European Commission on the basis of guidelines, recommendations and the annual joint employment report. The Commission's role is to oversee the work done in the Member State to stimulate mutual learning. This can never be taken for granted according to Wiggen, since countries can have different views and opinions on topics, and there is never 'one right model' in Europe.

The EEA EFTA States participate in the mutual learning part of the European Employment Strategy through the employment strand of the PROGRESS programme. Each peer review meeting is hosted by a Member State which presents a selected 'good practice' to contribute to a mutual learning process. Iceland hosted a peer review in 2007 on employment and the elderly, a field in which Iceland has had success and could therefore contribute with its experience. Most recently Norway hosted a peer review in September 2008 on vocational rehabilitation and income security for persons with work incapacities within the framework of integrated flexicurity approaches.

The Member States seem to appreciate this working method. The small number of country-participants at the peer reviews makes each member special and more willing to actively participate and share experiences. The EEA EFTA States are generally looked to for their successful policies in the labour and social fields.

DG Employment, Social Affairs and Equal Opportunities launches calls for tenders/grants every year under the PROGRESS Programme. Generally speaking Kari-Anne would encourage the EEA EFTA States to be more active and submit more applications.



## Iceland and the OMC in Education



*Sólrun Jensdóttir, Ministry of Education, Science and Culture, Iceland*

The Open Method of Coordination was first raised in the EFTA Working Group on Education, Training and Youth in the autumn 2001, when a Commission official informed that the OMC would be taken up also in the field of education. The Working Group was informed that the Commission planned to form eight working groups in accordance with the policy agreed by the EU Ministers of Education following the Lisbon summit in 2000. The aim was to improve quality and efficiency of education systems, to open life long learning for everyone and to open the education systems for increased cooperation with non-European partners.

It was immediately clear to the members of the EFTA Working Group that one would have to become involved in this process in order to be able to participate fully in EU cooperation in the field of education, but that there was nothing in the EEA Agreement that secured this participation. The members of the EFTA Working Group decided to approach our contacts in the Commission to express our interest and try to convince them that EEA EFTA participation would be mutually beneficial, especially considering that the EEA EFTA States already participated fully in the EU's education programmes on the basis of the EEA Agreement. After some discussions the Commission representatives informed us that the EEA EFTA States could not take part at this stage, as this work was outside the EEA agreement. The EEA EFTA side on the other hand maintained that the OMC would clearly influence the next generation of programmes in which the EEA EFTA States would participate.

The eight working groups and a standing group on indicators and benchmarks were created following the EU's Barcelona summit in spring 2002. These were to establish an overview of the status of education in Europe, elaborate the EU's broad objectives, and propose actions for improvement by the end of 2004. During this period, the EEA EFTA States continued to insist that they should be part of this work, and were informed by the Commission in Autumn 2002 that the OMC working groups on education would be open to the participation of the EEA EFTA States.

This decision led to a discussion in Iceland on the scope of its involvement, and it was subsequently decided that all the subjects to be discussed were relevant to our policy shaping. Icelandic representatives, primarily officials from the Ministry of Education, Science and Culture, took part in all nine groups. Almost all the Icelandic representatives have found the work to be useful and have participated actively. They meet regularly between meetings in Brussels to compare the work in the various working groups and discuss how the information received could be used and disseminated to policy makers and stakeholders.

Participation in the OMC on education also allowed Iceland to benefit from EU funding under the 'Education and Training 2010' programme. The Ministry of Education Science and Culture received a grant to hold a conference and publish a brochure to connect to the work in Iceland. The conference entitled 'An environment to encourage study' was held in January 2003. The work in the OMC working groups and the common goals were introduced and many prominent stakeholders from the education field in Iceland contributed to the conference. Together with the widely distributed brochure, this succeeded in raising considerably the awareness of 'Education and Training 2010' in Iceland.

At the EU summit in 2005 which reviewed the Lisbon Strategy, it was agreed that EU Member States would develop lifelong learning strategies by 2006. Although the EEA EFTA States are not included in this process, the positive experiences from following the OMC in education prompted Iceland to do as the Member States were obliged to do, i.e. to deliver a national report on progress towards the Lisbon objectives in education and training. This gave a valuable input into the revision of Iceland's education policy with the preparation of a bill revising existing law on higher education institutions. The bill was prepared in cooperation with stakeholders and introduced in the parliament where it was debated and adopted and took effect from 1 July 2006.

These examples illustrate how Iceland has used the opportunities offered by its participation in the OMC on education to develop and improve policy making in this field in Iceland. Continued cooperation with the EU is expected to continue to be of a great value during the implementation of the reforms of Iceland's education system.

# AGENCIES

The EU has established a number of autonomous, decentralised bodies generally known as agencies in order to respond to the growing need of expertise in various policy areas. They support the EU institutions by delivering legal, technical and scientific input, and by taking on administrative tasks.

The number of agencies has increased significantly since the EEA was concluded in the early 1990s. There are today 35 EU Agencies<sup>[5]</sup>, which can be categorised into regulatory and executive agencies. Within the regulatory agencies a distinction can be made between Community agencies in the framework of the EU's 'first pillar', Common Foreign and Security Policy agencies within the framework of the 'second pillar' and Police and judicial cooperation in criminal matters agencies within the 'third pillar'. Only executive agencies and regulatory agencies in the 'first pillar' are directly relevant to the EEA.

EEA EFTA participation in agencies has generally proven to be important for several reasons. Its participation in regulatory agencies is considered especially important from a decision-shaping perspective. The work and expertise of the regulatory agencies may form the basis of the preparatory work that the Commission undertakes when updating and developing Community legislation. Furthermore, a regulatory agency may be entrusted with decision-making power within the limits mentioned below.

## Regulatory agencies

Regulatory agencies play a greater role than executive agencies in terms of decision shaping. Although not necessarily given a formal role in decision shaping, regulatory agencies could be seen as a new policy-making instrument. In highly specialised and technical fields, the Commission, along with other EU institutions and the EU Member States, might rely on the expertise of regulatory agencies as a basis for their decision making.

In contrast to executive agencies, there is currently no general legal framework for regulatory agencies. However, the existing regulatory agencies all share

certain formal characteristics. The main difference to the executive agencies is the autonomy of the regulatory agencies, both in their relations with the Commission and in budgetary terms.

A draft Interinstitutional Agreement proposed by the Commission in early 2005 was meant to provide a general legal framework for future regulatory agencies, but was subsequently stalled in the Council.<sup>[6]</sup> The draft defined regulatory agencies as autonomous legal entities set up by the legislative authority in order to help regulate a particular sector at European level and help implement a Community policy.

'Regulating' in this connection does not necessarily involve the power to enact binding legal norms. Where a regulatory agency is invested with decision-making powers, the current Community legal order imposes the constraint that this must remain limited to the adoption of individual decisions in a clearly specified area of Community legislation. But regulating activities may also involve incentive measures such as issuing recommendations, giving scientific or technical advice, providing inspection reports, setting up and maintaining networks, pooling good practice and knowledge, and evaluating the application and implementation of rules.

There is a considerable difference in the decision-making powers attributed to the various agencies. Four agencies have the capability to take decisions that are legally binding on third parties: OHIM for the registration of Community trade marks; CPVO for plant variety rights; EASA in aviation matters; and ECHA for chemical substances. Another four agencies have de facto decision-making powers: EMEA, EFSA, EMSA and ERA. These assist the Commission in highly technical or scientific matters by providing it with advice and recommendations or by performing inspections. The Commission leans heavily on the agency's expertise when it is required to make a decision. In practice, the Commission is almost always inclined to follow the agency's conclusions.<sup>[7]</sup>

The EEA EFTA States currently participate in ten regulatory agencies through the EEA Agreement.



<sup>[5]</sup> [http://europa.eu/agencies/index\\_en.htm](http://europa.eu/agencies/index_en.htm).

<sup>[6]</sup> COM(2005) 59. A new Communication on the way forward for European agencies was published in March 2008, with the aim of re-launching the debate on mainly regulatory agencies. The Commission suggests the establishment of an Inter-institutional Working Group to develop a common understanding concerning regulatory agencies, followed up by an instrument giving form to the conclusions of the Working Group.

<sup>[7]</sup> See CEPS (Centre for European Policy Studies) Working Paper No. 19/October 2008.

## Regulatory agencies in which the EEA EFTA States participate <sup>[8]</sup>

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

EEA EFTA participation entails not only a financial contribution to the agencies, but normally provides for representation of the EEA EFTA States on the management board, although without the right to vote. Beyond this, participation could also involve EEA EFTA participation in certain committees or other bodies of the agencies, the eligibility of EEA EFTA nationals to the Board of Appeal of an agency, the employability of EEA EFTA nationals as temporary staff in the agencies, and in certain cases a duty of the agencies to assist the Standing Committee of the EFTA States, the EFTA Surveillance Authority and/or the EEA EFTA States in the same way as they assist the EU institutions and the EU Member States.

## Executive agencies: managing Community programmes







Executive agencies are set up by the European Commission to carry out, under its control and responsibility, certain tasks relating exclusively to the

management of Community programmes. An executive agency may be entrusted with any tasks required to implement a Community programme, except for those involving discretionary powers in translating political choices into action. The close relationship between executive agencies and the Commission is also reflected in the fact that the seat of executive agencies must be located in the same place as the Commission and its departments.

A general legal framework for executive agencies has been established by Council Regulation (EC) No. 58/2003 of 19 December 2002, based on which the Commission has so far adopted six Decisions setting up executive agencies in various fields. The EEA EFTA States participate in five of the six agencies.<sup>[9]</sup>

The financial means for an executive agency are directly drawn from the financial allocation to the EU programme(s) which they manage. As such, the EEA EFTA States contribute financially to those executive agencies which are related to programmes in which the EEA EFTA countries participate.

## Executive agencies

	EACI	Executive Agency for Competitiveness and Innovation
	EACEA	Education, Audiovisual and Culture Executive Agency
	EAHC	Executive Agency for the Health and Consumers
	ERC	European Research Council Executive Agency
	REA	Research Executive Agency
	TEN-T EA	Trans-European Transport Network Executive Agency

<sup>[8]</sup> The EEA Joint Committee Decision on EEA EFTA participation in EFSA has not yet entered into force.

<sup>[9]</sup> The EEA EFTA States do not participate in the TEN-T EA.

## Executive agencies and the Marco Polo programme



*Anne Bårseth, Head of Sector Project Management Marco Polo,  
Executive Agency for Competitiveness and Innovation (EACI)*

Anne has been involved with the Marco Polo programme, which aims to improve the environmental performance of the freight transport system in Europe, since its inception. She had already been involved with the EEA and EU transport policy in various capacities before working for the Commission in DG TREN on the programme. When it was transferred to EACI in 2008, she obtained a position there, allowing her to continue working with Marco Polo.

Her main functions are to contribute to the management and coordination of the Marco Polo programmes, providing support and coaching to the project officers in the Marco Polo team. She is also involved in the preparation, promotion, and follow-up of the Marco Polo annual calls and contributing actively to the evaluation, the negotiation and the monitoring of project proposals.

The EACI manages three different funding schemes – Intelligent Energy, Eco-innovation, and Marco Polo – as well as the Enterprise Europe Network. The EEA EFTA States are active participants in the Intelligent Energy programme and contribute to several of the projects funded by this programme. The Eco-innovation scheme has just had its first call for proposals in which enterprises from the EEA EFTA States were welcome to apply. The Enterprise Europe Network has local contact points within both Norway and Iceland that offer support and advice to businesses to help them make the most of the opportunities in the European Union. There have not been many applications from companies in the EEA EFTA States under the Marco Polo programme. Currently, as there is only one project where the co-ordinator comes from an EEA EFTA country, the scope clearly exists for enhancing EEA EFTA participation in this programme.

According to Anne, the low number of applications from companies in the EEA EFTA countries could be partly due to a lack of knowledge of EU application processes. Efforts by the EACI to raise awareness of the programme in the EEA EFTA States have so far not resulted in an increase in applications from the EEA EFTA countries.

The EEA EFTA States are represented in the Marco Polo Management Committee, which meets twice a year to discuss subjects such as new calls for proposals, potential proposals and the Marco Polo programme itself. The EEA EFTA States have speaking rights in this committee, but not the right to vote. However the EEA EFTA States often share the same interest as the EU Member States in the Committee, and they can then use this actively to channel their opinions and get their voice heard. Part of the evaluation of projects submitted in a yearly call for proposals is performed by external experts, and it is here that independent experts from the EEA EFTA States could also be appointed by EACI for the annual evaluation of submitted projects if they are duly registered.

Anne concludes that the EEA EFTA States should take the opportunities available to them – whether making use of their national experts, being active in the committees or participating in public consultations. The EEA EFTA States should also liaise with other EU Member States, both for the purpose of making their voice heard, but this could also be useful for the purpose of developing projects that can apply for funding by EU programmes.<sup>[10]</sup>

<sup>[10]</sup> <http://ec.europa.eu/transport/marcopolo/>

# THE ROLE OF THE EFTA ADVISORY BODIES

EFTA's two advisory bodies, the Consultative Committee and the Parliamentary Committee, trace their origins back to the early 1960s when they were established by the EFTA Ministers. Since then they have provided input and suggestions on international trade and EFTA affairs, and since 1994, on the EEA. With the entry into force of the EEA Agreement, relations between the Committees and their counterparts on the EU side, the Economic and Social Committee and the European Parliament, were institutionalised. Their role and influence as consultative bodies for the EEA EFTA States have steadily gained in significance in recent years.

## The parliamentary dimension

The Parliamentary Committee is the consultative forum for members of parliament of the EEA EFTA States. Through its cooperation with parliamentarians in the European Union, the Committee also serves as a link between political life in the EU and in EFTA.

The parliamentary dimension of the EEA has steadily gained in importance since the early 1990s. This is principally due to the extension of the co-decision procedure – whereby legislative proposals must be approved by the European Parliament as well as the EU Council – to new policy areas through the three treaty revisions undertaken since then.

In recognition of the importance of the role played by the European Parliament in the EU decision-shaping phase as well as the tendency towards an increasing number of actors being involved in EU policy making, the EFTA parliamentarians also aim to be more involved in the early phases of the legislative process.

The EEA Joint Parliamentary Committee (JPC)<sup>[1]</sup>, established through the EEA Agreement, provides the principal decision-shaping forum available to EFTA parliamentarians. The EEA JPC constitutes the only formal link between the EEA EFTA States and the European Parliament. In addition, EFTA parliamentarians may use and develop national

mechanisms to influence the position of their respective governments on EEA matters.

## The EEA Joint Parliamentary Committee

As a consultative body, the EEA JPC monitors developments in the EEA and expresses its views to the EFTA States on any matter of relevance to the EEA. This includes addressing issues related to the functioning of the EEA and exploring developments in the EU that may affect the EEA in the long run.

During the past 15 years, the bulk of deliberations in the EEA JPC meetings has been devoted to past developments and legislation that has already been adopted in the EU. However, in recent years the Committee has become increasingly forward-looking, keeping an eye on new initiatives that could become EEA-relevant. Recent examples of topics that EFTA parliamentarians have raised, debated and passed resolutions on, include:

- Health services in the EEA;
- The Open Method of Coordination and the EEA;
- Energy and climate change and the implications for the EEA;
- The EU future maritime policy and the EEA; and
- Europe's High North and environmental issues.



Meeting of the EEA Joint Parliamentary Committee in the European Parliament in Brussels on 4 November 2008.

<sup>[1]</sup> The JPC comprises 24 voting members – 12 from the EEA EFTA parliaments and 12 MEPs – from the entire political spectrum in Europe.

The Committee has also addressed these issues with Commissioners and Commission representatives with the aim of raising the profile of issues in which the EEA EFTA States have a high interest.

In 2007 and 2008 the EEA JPC focused its attention on the future perspectives for the European Economic Area, reflecting on the structural changes in the EU since the EEA entered into force, by preparing a report on the subject. This undertaking highlighted possible ways for the EEA EFTA national parliaments to enhance their role in the development of the EEA by strengthening their relations with the European Parliament.

## EEA EFTA national parliaments

The Amsterdam Treaty reinforced the role of national parliaments by obliging the European Commission to transmit legislative proposals directly to national parliaments and introduced a six-week delay before such proposals could be adopted by the Council. Since then, EU national parliaments have taken further steps by increasing their interaction with the European Parliament by establishing offices there, by exchanging information and cooperating in COSAC<sup>[12]</sup> and by maintaining formal and informal networks in the European Parliament.

The institutional arrangement of the EEA does not mirror the increasing involvement of national parliaments of the EU in the EU policy-making process. EFTA parliamentarians have discussed possible ways to strengthen their role in EEA decision shaping, including the introduction of early warning mechanisms; setting up their own offices in the

European Parliament and the establishment of links between political party groups in the EEA EFTA national parliaments and their sister parties in the European Parliament. These discussions will continue, and likely be intensified if and when the Lisbon Treaty enters into effect.

## The social partners in EFTA, the EEA and the EU

### Social and economic dialogue in EFTA and the EEA

The EFTA Consultative Committee comprises representatives of trade unions and employers' organisations in the EFTA countries and serves as a link between social partners in EFTA and in the EU. It expresses its views on matters of relevance for the functioning and development of the EEA and meets with EFTA Ministers twice a year and with the EFTA Ambassadors to the EU once a year. In these meetings, the Committee requests information about the latest developments in the EEA and conveys its recommendations to the EFTA authorities with regard to the EEA Agreement.

The Consultative Committee advises the EFTA authorities on social and economic issues in the EEA and seeks to bring issues of concern to the social partners higher on the EEA agenda. The Committee gives its views and advice on how new EU proposals for legislation or policies could affect industry, businesses and workers in the EEA EFTA States. Recent examples of such advice includes resolutions



## EEA JPC Resolution on health services in the EEA

At its 30<sup>th</sup> anniversary meeting, the Committee adopted a resolution on health services in the EEA, months before the European Commission introduced its white paper on the same subject. Members of the EFTA national parliaments and the European Parliament held a heated debate on many of the controversial issues but managed to reach consensus on a resolution text on the importance of cross-border health services for citizens in the EEA.

*'I am particularly pleased that we, the EFTA MPs, and our European Parliament colleagues saw eye to eye on important issues such as the fact that cross-border health services should not undermine national values and principles and that a sufficient supply of health services is maintained in scarcely populated areas. It is not often that the EEA JPC has had a substantive contribution to a policy area which was still a work in progress, at such an early stage. I believe that this goes hand in hand with the ambitions of the Committee members who view the Joint Parliamentary Committee as an important tool for consensus building in the EEA',* says the Norwegian MP, Mr Svein Roald Hansen, who was the report's co-rapporteur along with the Austrian MEP, Mr Paul Rübiger.

<sup>[12]</sup> The Conference of Community and European Affairs Committees of Parliaments of the European Union.

on developments in the single market and the Lisbon Strategy, the EEA and Norwegian Financial Mechanisms, energy and environmental legislation, social and labour market policy and labour migration, and the impact of new treaty changes on the EEA.

Through its close cooperation with the European Economic and Social Committee (EESC), the EFTA social partners also participate in debates on the EU side on new policy initiatives of relevance to the EEA and to social partners in the EEA EFTA States.

The **EEA Consultative Committee** is unique in that it brings social partners in 30 member states together in a very structured relationship with a clear legal basis in the EEA Agreement. Few other relationships between large trading blocs allow for such structured social partner cooperation. Meeting once a year, the EEA Consultative Committee submits resolutions to the EEA Council and holds exchanges of views with the European Commission and other bodies. Through this dialogue the EFTA social partners can present issues of specific interest and concern to the relevant EU representatives and try to influence the outcome of new proposals or developments.

Currently, EFTA Consultative Committee members also participate through the **osmosis procedure**<sup>[13]</sup> in permanent EESC observatories on the Lisbon Strategy, the single market, and sustainable development, and they also follow the work of the EU's joint consultative committees with Croatia and Turkey. This allows the EFTA social partners to network with colleagues in the EU, to gather information, and to present EFTA, the EEA and the EFTA Consultative Committee to new partners. Through this cooperation the EFTA social partners are sometimes invited to contribute to written opinions which then feed into the policy process in the EU.

## Social partners as policy makers: Social Dialogue and European level negotiations

The EU Social Dialogue is an important platform where the social partners participate in political discussions at EU level and can influence legal decisions in the field of social and employment policy. The dialogue takes the form of regular meetings between the Commission and the social partners at European level. The EEA EFTA social partners participate actively in the Social Dialogue through their European umbrella organisations **BUSINESSEUROPE**, **CEEP**, and **ETUC**.

A key feature of the Social Dialogue is the treaty-based right of the social partners to conclude legally binding European agreements concerning employment conditions and labour law, and then implement them either by the voluntary route, through collective agreements in accordance with national practice ('autonomous agreements'), or by legislative course, through a Council decision whereby the agreement becomes part of EU law.

Neither the Commission nor the Council may change the content of agreements negotiated by the social partners. Thus, the content of the EU legislation in question is determined by the social partners – including the EEA EFTA social partners – rather than the EU decision-making bodies.

The Social Dialogue also produces process-oriented texts (frameworks of action, guidelines and codes of conduct, and policy orientations), joint opinions, procedural texts, and follow-up reports. Although not having legal rights to participate, the EEA EFTA social partners that are members of the European umbrella organisations may in practice participate in these negotiations to the same extent as their EU colleagues. The European organisations that take part in the Social Dialogue are autonomous and have their own association rules. It therefore depends on each organisation whether EEA EFTA representatives can be admitted as members.



The High North has risen on the political agenda in Europe in recent years. This is reflected in the work of the Consultative Committee, here pictured on an excursion on the Norwegian archipelago Svalbard in the Arctic Ocean, in connection with their meeting on 14-16 May 2008.

<sup>[13]</sup> In the framework of the European Economic Area, representatives of the EFTA Consultative Committee (EFTA CC) may participate in the work of the European Economic and Social Committee (EESC) and vice versa. This cooperation is referred to as the "osmosis" procedure in the EFTA CC Rules of Procedure (Art. 17) and has been established to enhance relations between social partners in the EEA.

# STAKEHOLDERS AND OTHER ACTORS

A description of the formal decision-making process does not fully capture how and by whom decisions in the EU are shaped. The outcome is usually also influenced by actors other than the EU institutions that can formally adopt decisions. These include regional offices, business, industry, private interest groups and NGOs, and can be found throughout the entire EEA.

The often long and bumpy process in the EU from an idea or an initiative to a decision includes numerous channels, both formal and informal, that allow stakeholders to contribute to the policy-making process in the Union. However, apart from the Social Dialogue partners described above, this is not reflected in the EEA Agreement.

Stakeholder consultations have become increasingly common. Since 1999, with the entry into force of the Amsterdam Treaty, consultations with stakeholders have become compulsory. The treaty requires the Commission to consult the stakeholders widely and also to publish important documents before any major new legislation is put forward.

The Commission guidelines on consultations applied since 2003 do not describe in detail how the consultations should be run, and in practice much is left to the discretion of the Commission. A number of consultation tools are used, including conferences, hearings, and workshops; the publication of consultation documents ranging from green papers to more definitive policy statements such as white papers; and, increasingly, informal consultations with selected stakeholders through so-called platforms for discussions, such as the EU Platform on Diet, Physical Activity and Health, and the Culture Civil Society platforms. These are not anticipated by the EEA Agreement and they are also not necessarily fully open to the participation of all the EU Member States, nor for the EEA EFTA States.

The informal consultations are so far mostly used in areas dominated by 'soft law', or to explore possible legislative initiatives at an early stage. The results of the consultations are not binding for the Commission in any way, but in reality the Commission normally

tries to find a compromise that the stakeholders can accept. These kinds of stakeholder consultations give the Commission the opportunity to gather support among civil society, industry and the Member States at the earliest stage of the decision-shaping process. They can also be seen as an attempt to open up the internal processes and to make the institutions more transparent. Politically, support from civil society can ease the criticism of the democratic deficit in the EU system. With the support from civil society and business it might also be easier for the Commission to promote new strategies, directives and regulations internally and towards the Parliament.

The actual influence of stakeholders in shaping EU policy varies according to many factors. The resources available to them are obviously a key element, which also influences their ambitions. Whereas some stakeholders focus mainly on bringing information back to their respective home countries or their headquarters, others work actively to influence the decision-making process in the EU institutions and often have access to EU decision makers and shapers through channels other than those made possible by the EEA Agreement. Many of the stakeholders can also rely on European umbrella organisations. Getting pan-European organisations to speak on one's behalf improves the likelihood of being heard. It is also a fact that with large numbers of lobbyists in Brussels, the Commission and the Parliament are more selective when they seek advice. Representing an organisation that covers all of Europe is easier than just a single country or region.

The Commission is also assisted by the advisory bodies, the European Economic and Social Committee mentioned above, and the Committee of the Regions (CoR), which is made up of representatives of local and regional authorities. The CoR could be of value to the regions of the EEA EFTA countries in decision shaping. Similarly, many EEA EFTA regions have effective allies in miscellaneous umbrella organisations and through direct cooperation with other European regions. The advisory bodies enjoy a privileged position among stakeholders, as they are





part of the decision-making machinery of the EU, albeit in a consultative role. One consequence of the extension and formalisation of the consultation process that has taken place since the EEA Agreement was concluded is a ‘watering down’ of this position, although the advisory bodies will enhance their competencies if the Lisbon Treaty is ratified.

The growing number of external actors that are involved in EU decision shaping in an increasingly structured and formalised manner also represents a challenge for the EEA EFTA States, and provides new opportunities for non-governmental actors in the EEA EFTA countries. When the EEA EFTA States have agreed on an EEA EFTA comment, the challenge is to promote the opinion in a way that makes it as influential as possible. Having a close

relationship with different stakeholders like regional offices, NGOs and the private sector can therefore be helpful when advocating an EEA EFTA comment. It often turns out that the interests of the EEA EFTA States are aligned, partly or in whole, with the view of an NGO, business or the regional office that also has a voice in the matter in question. A good relationship with these stakeholders promotes the exchange of information and facilitates the diffusion of EEA EFTA positions; it could also help promote EEA EFTA opinions to the arenas where the EEA EFTA States do not have access.



EFTA Secretary-General Kåre Bryn welcomes the participants of an EEA decision-shaping seminar organised at the EFTA Secretariat on 9 December 2008. The seminar brought together stakeholders from both public and private sector, and included “best practice” examples introduced by experts from EEA EFTA States.

# ADVICE FOR DECISION SHAPERS

Two seminars on decision shaping in the EEA have been organised at the EFTA Secretariat in recent years, targeting practitioners in the EEA EFTA States. The first such seminar took place on 11 November 2005. In line with the EFTA Bulletin on decision shaping from 2002, this seminar focused on participation in the various committees provided for in the EEA Agreement.

The second seminar on decision shaping in the EEA, which took place on 9 December 2008, concentrated on how the process has been affected by the emergence of new forms of governance in the EU since the EEA was concluded in the early 1990s.

The debates at the seminars concluded with a number of tips and recommendations on how the participation can be improved on the EEA EFTA side:

- ▶ Be **early**. Good timing is essential, and policy positions should be developed and transmitted at the beginning of the policy process. The Commission has limited resources and depends upon external agents for relevant information in the very early stages. Secondly, the further into the drafting process that the Commission is, the more political considerations it needs to take into account.
- ▶ Hold **coordination** meetings before you travel, and assimilate all relevant views before you travel. Even if the Commission is late in distributing discussion materials, your contacts at the Commission can normally inform you well in advance of the essential issues and questions at hand. Experts from EEA EFTA States may suffer from poor coordination of policy issues within their governments, departments or even subordinate agencies. Turf battles between offices can make it difficult for an expert to inform a committee about the national point of view, if called upon to do so.
- ▶ Be well **prepared**. Read background materials before the flight to Brussels. Consider your own expert opinion on the matter, and find out what the national position is.
- ▶ Acquaint yourself with the **political aspects** of the issue.
- ▶ **Give experts sufficient time** to build up their reputation in a committee. Some countries send the same experts for years to EU advisory committees. Avoid the temptation to give everyone in the office a turn to go to Brussels. Avoid using EU Committees as kindergartens for novices who need to learn about the EEA and Brussels.
- ▶ Establish **national contact groups** with the main authorities and stakeholder organisations concerned.
- ▶ Establish good **contacts** throughout the **Commission** hierarchy, and in other delegations. While this may at first glance appear daunting, there are usually only a few officials working on one dossier at any given time, and will in most cases be more than willing to talk with relevant EFTA officials and experts.
- ▶ **Participate in studies and surveys** by the Commission, and send in written comments if required.
- ▶ Find **countries that share your expert or national position**. Rather than shopping during lunch breaks, mingle with fellow committee participants, and discuss tactics for promoting commonly held positions.
- ▶ Be **flexible**. New actors are becoming increasingly involved in the policy-shaping process through both formal and informal channels. In order to be effective, it is necessary to be flexible and creative in using and developing contacts in all EU institutions and with relevant stakeholders.
- ▶ Comments that lead to **constructive** solutions are always popular. Be confident of your right to provide useful input. EFTA experts may suppress valuable input unnecessarily, in deference to their colleagues from fully-fledged EU Member States.
- ▶ **Quality rather than quantity** is the key. Choose meetings carefully, send experts with sufficient gravitas to have an influence, and make presentations brief and to the point.
- ▶ Do not just talk about 'what we do at home'. Be **consensus-oriented** and provide constructive solutions.
- ▶ **Speak with authority**, and try not to read out prepared contributions. Connect your remarks to the ongoing discussions and make references to delegations that share your views.





The European Free Trade Association (EFTA) is an international organisation comprising four states: Iceland, Liechtenstein, Norway and Switzerland, which have eliminated barriers amongst themselves for industrial products but do not apply a common external tariff. Apart from Switzerland, the EFTA States base their relations with the European Union on the European Economic Area Agreement allowing for their participation in the single market. Switzerland's relations with the EU are based on bilateral agreements. The EFTA States have developed an extensive network of free trade agreements with non-EU countries and regional groupings in Europe and beyond. EFTA has headquarters in Geneva and offices in Brussels and Luxembourg.

The EFTA Bulletin is intended to serve as a platform for discussion and debate on topics of relevance to European integration as well as the multilateral trading system. In this endeavour, the EFTA Bulletin draws on the experience and expertise of academics, professionals and policy-makers alike.

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#### Previous Issues:

Guide to EU Programmes (2007-2013), 2-2007 November

Structural Indicators - Growth and Jobs: The Lisbon Strategy and the EFTA States, 1-2007 June

EFTA Free Trade Relations, 2-2006 July-August

Growth and Jobs: The Lisbon Strategy and the European Economic Area, 1-2006 March

EFTA and EU Enlargement, 1-2004 September

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