Overview of EU rules applicable to EEA/EFTA countries in financial services, competition and taxation

Briefing Note
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The opinions expressed in this document do not necessarily represent the official position of the European Parliament.
1. The EEA Agreement

The relations between the EU and EFTA are dealt with in the Agreement on the European Economic Area (EEA) which entered into force on 1 January 1994. The agreement applies between Iceland, Lichtenstein and Norway on one side and the 27 Member States of the European Union on the other, forming together the 30 EEA States.

The aim of the EEA agreement is to guarantee the free movement of goods, persons, services and capital - in practice is provides for the extension of the EU Single Market to Iceland, Liechtenstein and Norway. In addition, the Agreement covers co-operation in other important areas such as research and development, education, social policy, the environment, consumer protection, tourism and culture, collectively known as “flanking and horizontal” policies. The Agreement guarantees equal rights and obligations within the Internal Market for citizens and economic operators in the EEA.

The EEA Agreement does not cover the EU’s:

- Common Agriculture and Fisheries Policies (although the Agreement contains provisions on various aspects of trade in agricultural and fish products);
- Customs Union;
- Common Trade Policy;
- Common Foreign and Security Policy;
- Justice and Home Affairs (even though the EFTA countries are part of the Schengen area) and;
- Monetary Union (EMU).

The EEA-EFTA States have not transferred any legislative competences to the EEA institutions and all decisions on the EEA EFTA side are therefore taken by unanimity.

The EEA Agreement is based on the primary legislation (Treaty of Rome) of the European Union, and on the succeeding secondary legislation (acquis communautaire). Hence, a large part of the EEA Agreement is identical to the relevant parts governing the four freedoms as laid down in the Treaty of Rome of 1957.

Decision-making in the EEA

Whenever an EEA-relevant legal act is amended or a new one adopted by the EU, a corresponding amendment should be made to the relevant Annex of the EEA Agreement. This is essential in maintaining the principle of homogeneity of the EEA. Amendment of the EEA Agreement should ensure that the ensuing text is as close as possible to the adopted legislation on the EU side, with a view to permitting a simultaneous application in the Community and in the EFTA States.

The EEA EFTA States can request for consultation on matters of concern. The EEA EFTA States can negotiate adaptations to Community legislation when this is called for by special circumstances and agreed on by both sides.

Policy-shaping by EEA-EFTA Members

The EEA-EFTA States have the opportunity to influence the shaping of EEA-relevant legislation, i.e. proposals at the preparatory or pre-pipeline stage by the EU. This opportunity is enshrined in the EEA Agreement as a right for representatives of the EEA-EFTA States to participate in experts groups of the European Commission, and to submit EEA-EFTA comments on upcoming legislation. While the EEA-EFTA States use these opportunities to shape legislation actively, they have little influence on the final decision on the legislation on the EU side.
Switzerland is a member of EFTA, but is not a member of the EEA. It benefits from an active observer status in the EEA structures through its administration of the bilateral Swiss-EU agreements. However, Switzerland has not implemented the "acquis communautaire".

2. Issues relating to ECON competence areas

More specifically, in the area of financial services, competition and taxation the following rules apply:

**Financial Services**

- In general terms, the relations between EU-EFTA in financial services are dealt with in the EEA Agreement (see Annex), which extends all Single Market freedoms and provisions to all EEA Member States.
- EU financial markets legislation is not applicable to Switzerland as it is not part of the EEA. There is one small bilateral agreement with Switzerland in financial services, namely on non-life insurance (regarding the setting up of branches, but this is hardly used as most Swiss insurance companies have subsidiaries in the EU).
- However, while all the EEA countries are subject to the Internal Market legal framework, e.g. deposit guarantee and capital requirement directives, Iceland, Lichtenstein and Norway are not part of the final preparation of such directives, regulations etc. (they can however participate in the Commission working groups and sometimes send observers to the deliberations), nor are they part of the political decision process within the EU.
- The surveillance of the correct transposition of the EU legal framework, which is ultimately carried out by the European Commission for EU Member States, are in the case of Iceland, Lichtenstein and Norway carried out by the EFTA Surveillance Authority (ESA). The Surveillance authority ensures that all EEA rules are properly enacted and applied by all states. Whenever a new act is adopted by the EU, a corresponding amendment is made in the EEA agreement. This is essential in maintaining the principle of homogeneity of the EEA. This ensures that the ensuing text is as close as possible to the EU text and permits a simultaneous application in the EU and EEA States.
- The EEA-EFTA states also participate as observers in Level 2 and Level 3 committees as observers. Liechtenstein is not an observer as CESR is of the opinion that the Market Abuse Directive has not correctly been applied in Liechtenstein, however the EFTA Surveillance Authority maintains the contrary, and this is currently not resolved. Switzerland is not allowed in as observer in the Level 2 and 3 committees.

**Competition**

- The Agreement on the EEA contains rules on competition law that are broadly equivalent to the EC competition rules. The EC competition rules are therefore applied also in the three EEA-EFTA Member States; Iceland, Liechtenstein and Norway. Competition acts adopted by the EU are subsequently incorporated into the EEA Agreement in order to keep the Agreement up to date (see Annex).
- The EFTA Surveillance Authority (ESA) has the same competences towards the EEA-EFTA Member States as the Commission has towards the EU Member States. In cases where companies from both the EU and EFTA are involved, the Commission will normally be competent to handle the case.
• However, procedural rules for the courts are normally not considered EEA relevant. Therefore e.g. not all of the measures proposed in the White Paper on Private Actions for Damages are not considered EEA relevant.

Taxation

• The EEA Agreement prohibits discrimination with regard to taxation (Articles 14 and 15). However, the EC rules on harmonisation of taxes are outside the scope of the EEA Agreement. The VAT Directive and other acts on taxation have therefore not been incorporated into the EEA Agreement.
• Articles 14 and 15 EEA agreement refer to non-discrimination based on nationality. By way of example, there is a court case from the EFTA Court in which Iceland had put higher VAT on foreign books than on domestic books. Iceland lost the case as it was a discriminatory tax system.
• As Switzerland is not part of the EEA agreement, these Articles do not apply to Switzerland. However, Switzerland largely follows the rules of the 6th VAT Directive with the EU and their cooperation in the field of VAT fraud is governed by bilateral agreements with the EU.

Annexes to this Note: Updated EEA agreements for financial services, competition and state aid.