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Iceland's role in the European Economic Area (EEA): take it or leave it

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This paper gives a brief overview of Iceland's ability to influence EEA acts by examining the main decision-making bodies of the EEA Agreement. Iceland's ability to have a say is restricted due to its absence and confined role in key decision-making bodies of the EEA Agreement. We conclude that the structure of the EEA gives Iceland a limited chance to shape EEA decision-making.

Introduction

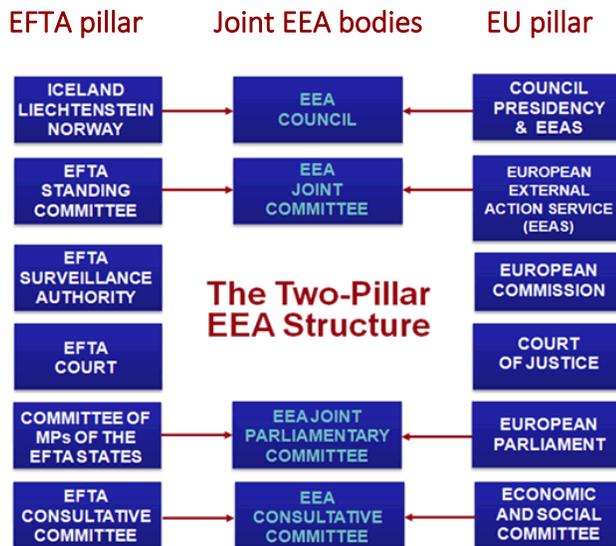
The Agreement on the European Economic Area (EEA) extends the Internal Market of the European Union (EU) to Iceland, Norway and Liechtenstein (EEA/EFTA States). In order to ensure homogeneity in the single market, new EU legislation is incorporated into the EEA – except for the policy areas of agriculture and fisheries. The Agreement also provides for considerable cooperation with the EU in several other policy fields and participation in various EU programmes, but does not include common policies on external trade, monetary union, justice and home affairs, direct and indirect

taxation, regional and structural policies, and security and foreign affairs. The Agreement also grants the EEA/EFTA states access to several EU agencies.

The European Free Trade Association (EFTA) assists its member states to manage the functioning of the EEA. Nevertheless, the structure of the EEA makes it difficult for Iceland to influence the EU/EEA decision making. The EEA decision-making framework is characterised by its two-pillars composed of EU bodies on the one hand and EEA/EFTA bodies on the other. Moreover, the Joint EEA bodies take substantive decisions relating to the EEA Agreement and its operation, as demonstrated in the diagram below.

The aim of this paper is to give a brief overview of Iceland's ability to influence the making of EEA acts within the main bodies of the two pillar structure of the EEA Agreement, the EFTA and the EU sides, and the Joint EEA bodies.

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Source: EFTA (2019), *The Basic Features of the EEA*

Agreement, <https://www.efta.int/eea/eea-agreement/eea-basic-features#8>

The EU pillar

The EEA acts originate in the EU institutions within the EU pillar. The limited role of the EEA/EFTA states within the EU decision-making institutions is often overlooked in the overall assessment of the EEA Agreement.

The European Commission plans, prepares and proposes new EU law which may fall within the EEA Agreement. The Commission informs the EEA/EFTA states about upcoming draft legislation that may be EEA relevant. The Commission is also supposed to consider the EEA/EFTA states' views. Iceland's civil servants and EFTA experts have access to the

Commission's relevant expert groups and comitology committees. Their responses to the Commission's initiatives can and do also take the form of submission of written comments. Hence, Iceland has the opportunity to shape EU legislation at these preparatory stages. Nevertheless, Iceland does not have the right to vote, nor does it have a seat in the College of Commissioners.¹ Iceland has the best chance to influence decision-making in the Commission and EU agencies. Therefore, Iceland should enhance its effort to have a say in this initiation stage of the legislation process.²

Proposals from the Commission are submitted to the EU's main decision-making bodies: the Council of Ministers and the European Parliament (EP).

The Council of Ministers (or Council of the European Union) consists of ministers from the EU member states. Their counterparts in the EEA/EFTA states do not have access to it. However, EEA/EFTA ministers are occasionally invited to informal EU ministerial meetings and conferences which are relevant to EEA/EFTA participation in the Internal Market.

Iceland may informally try to receive information about deliberations on Commission's proposals within the Council of Ministers and make an attempt to lobby some of the member states. Iceland will only do so when

¹ EFTA (2019), *The Basic Features of the EEA Agreement*, <https://www.efta.int/eea/eea-agreement/eea-basic-features#8>; Thorhallsson, Baldur (2019), "European integration: genuine or false shelter?", in: B. Thorhallsson

(ed.), *Small States and Shelter Theory: Iceland's External Affairs*, London and New York: Routledge

² Utanríkisráðuneytið (September 2019) Skýrsla samstarfshóps um EES-samstarfið. Reykjavík: Utanríkisráðuneytið.

key interests are at stake and is most likely to be assisted by the Nordic EU member states. Iceland rarely makes an attempt to have a say and influence the Council's decisions.

The European Parliament (EP) is only accessible to Iceland by lobbying. Iceland has to lobby the EP as any other outsider if it wants to influence its decision making. The EP's power has grown substantially since the signing of the EEA Agreement in the early 1990s. Iceland rarely makes an attempt to influence the EP's decision-making.

The European Council, gathering the heads of state and government of the EU member states, is also a closed club. Neither Iceland nor the other EEA/EFTA states have access to it. Hence, they are not at the decision-making table when important decisions are taken which eventually will transform the EEA in fundamental ways, such as regarding EU enlargement.

The EFTA pillar

The EFTA pillar of the EEA Agreement ensures that the EEA/EFTA states speak with one voice within the Joint EEA bodies. It also monitors the implementation of EEA acts and ensures an equal playing field for relevant actors within the EEA.

The Standing Committee of the EFTA States has the important role of finding a common position amongst the EEA/EFTA states before meetings in the EEA Joint Committee (see discussions below). It is made up of the EEA/EFTA ambassadors. Single members can come under

considerable pressure from the fellow EEA/EFTA states to agree to EU legislation. Five subcommittees, under which there are a variety of working groups, are part of the Committee's structure.

The EFTA Surveillance Authority has the responsibility to ensure the compliance with the EEA Agreement in the EEA/EFTA states. The Authority works closely with its sister organisation, the European Commission.

The EFTA Court deals with infringement actions brought by the EFTA Surveillance Authority against the EFTA/EES states with regard to the implementation, application or interpretation of EEA acts. For instance, the EFTA Court gives advisory opinions to courts in the EEA/EFTA states in relations to the interpretation of EEA acts. The EFTA Court is more or less guided by its sister organisation on the EU side, the Court of Justice of the European Union.

The Joint EEA Bodies

The main objective of the Joint EEA Bodies is to take decisions about incorporation of EU legislation into the EEA.

The EEA Council takes important decisions which will shape the EEA Agreement and resolve disputes. It consists of foreign ministers from the EEA/EFTA states and representatives of the Council of the European Union and the European Commission. The EEA Council meets twice a year but its role is limited, mostly because of the EU's lack of interests in its work.

The EEA Joint Committee is the main decision-making body of the EEA. It is responsible for incorporating EU legislation into the EEA Agreement. It consists of ambassadors from the EEA/EFTA states and representatives of the European Commission (The European External Action Service).³ The EEA/EFTA states most often follow the Commission's advice on what EU legislation should be incorporated into the Agreement. Occasionally, discussions take place about whether or not EU legislation should be incorporated into the EEA. Formal decisions are taken by consensus in monthly meetings of the Joint Committee, but disputes are most often solved in subcommittees or between member states.⁴

The EEA/EFTA states speak with one voice within the Committee. Accordingly, Iceland, Norway and Liechtenstein have to find a common ground and present a joint policy on new EU legislation within the EEA Joint Committee. This restricts their ability to reject pieces of legislation, as they may find themselves under heavy pressure not only from the EU but also from their fellow EEA/EFTA states to agree to the incorporation of EU legislation into the EEA.

The EEA Joint Parliamentary Committee is an advisory body. It is composed of members of

the national parliaments of the EFTA states in the EFTA Parliamentary Committee and members of the European Parliament. It is only a "talking club" and has no powers.

The EEA Consultative Committee is another advisory body. It is composed of members from the EFTA Consultative Committee and the European Economic and Social Committee. Its main function is to provide input on the economic and social aspects of the EEA.⁵

The National level

According to the EEA Agreement, the Icelandic national parliament, the Althingi, can reject EEA legislation. However, its powers are restricted by Iceland's obligations to the Agreement that should ensure the harmonious development of its legislation in line with that of the EU. Parliamentarians are rarely aware of upcoming legislation and most often encounter it after approval by the EU's decision-making bodies, the EU pillar of the Agreement. Occasional debates occur about implementation and exemptions from strict application, but the Althingi has never rejected the incorporation an EU act into the EEA. The Althingi is basically absent from the EEA decision-making process and merely rubber stamps the Joint

³ EFTA (2019): The Basic Features of the EEA Agreement, <https://www.efta.int/eea/eea-agreement/eea-basic-features#8>; Thorhallsson, Baldur (2014), "Iceland's Democratic Challenges and Human Rights' Implications", in: H.F. Carey (ed.), *European Institutions, Democratization, and Human Rights Protection in the European Periphery*, Lexington Books, pp. 226-232

⁴ Utanríkisráðuneytið (September 2019), Skýrsla starfshóps um EES-samstarfið, p. 49,

<https://www.stjornarradid.is/lisalib/getfile.aspx?itemid=013b2f1a-e447-11e9-944d-005056bc4d74>

⁵ EFTA (2019), The Basic Features of the EEA Agreement, <https://www.efta.int/eea/eea-agreement/eea-basic-features#8>; Thorhallsson, Baldur (2014), "Iceland's Democratic Challenges and Human Rights' Implications", in: H.F. Carey (ed.), *European Institutions, Democratization, and Human Rights Protection in the European Periphery*, Lexington Books, 2014, pp. 226-232.

Committee's incorporation of EU legislation. Usually, ministries implement EEA acts without the active involvement of ministers or parliamentarians.⁶

Conclusion

There is a broad consensus among politicians, labour market organisations and other actors in Iceland about the EEA Agreement. The Agreement is widely seen as highly beneficial to Iceland.⁷ Nevertheless, new populist parties increasingly criticise the incorporation of certain EU acts to the EEA, such as the EU's Third Energy Package, and these criticisms appeal to a part of the electorate.

The structure of the EEA Agreement gives Iceland a limited chance to influence EEA acts. Iceland can take part in shaping proposals within the Commission and the EU agencies but its ability to alter EU legislation within the EEA pillar is otherwise restricted. The EU directs its legislation to the Joint EEA Bodies and Iceland's role in them, as well as its role in the EFTA pillar, is also restricted by the institutional setup of the Agreement. Iceland can refuse to adopt EU legislation that is applicable to the EEA.

However, a refusal would directly challenge Iceland's membership of the Agreement. This setup does not give much room for manoeuvre and could be described as 'take it or leave it (the EEA)'. Iceland is *de facto* obliged to implement EU decisions.

Moreover, the EEA's decision-making framework largely excludes Iceland's elected representatives, parliamentarians and ministers from its ordinary decision-making processes. Also, elected representatives are granted a limited role in the day-to-day handling of EEA acts in Iceland. Accordingly, Icelandic civil servants handle EEA acts in the European Commission, the EEA/EFTA decision-making bodies and ministries in Iceland without decisive involvement of elected representatives.⁸

Icelanders may largely approve of the EU/EEA legislation since it is regarded in general as beneficial to Icelandic interests. However, the Icelandic political establishment has recently had to step up its efforts to justify the implementation of the EEA/EU acts in order for new populist parties not to take over the debate and challenge membership in the EEA.

⁶ Thorhallsson, Baldur (2015), "Iceland – A reluctant European?", in: E.O. Eriksen and J.E. Fossum (eds.), *The European Union's non-members: Independence under hegemony?*, New York: Routledge, pp. 118-136

⁷ Utanríkisráðuneytið (September 2019), Skýrsla starfshóps um EES-samstarfið,

<https://www.stjornarradid.is/lisalib/getfile.aspx?itemid=013b2f1a-e447-11e9-944d-005056bc4d74>

⁸ Thorhallsson, Baldur (2019), "European integration: genuine or false shelter?", in: B. Thorhallsson (ed.), *Small States and Shelter Theory: Iceland's External Affairs*, London and New York: Routledge

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