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DRAFT REPORT & RESOLUTION
on
Decision-shaping in the EEA:
The Role of Parliamentarians

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*The deadline for tabling amendments to the draft
resolution has been set for*

Tuesday 16 November 2004 at 12.00

*Amendments shall be tabled in English only and sent
to the JPC secretariat:*

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Decision-shaping in the EEA and the role of parliamentarians

I Introduction

1. The term “decision-shaping” in the EEA refers to the phase of preparatory work undertaken in order to prepare and draw up new legislative proposals, i.e. all the steps taken before a proposal reaches the phase in which decisions are taken (this latter stage is commonly referred to as decision-making). In most political systems the decision-shaping phase is primarily the domain of the government. In the European Union, the Commission has an exclusive right of making proposals for new legislation. However, the EEA Agreement contains provisions for input from the EFTA side at various stages before new legislation is adopted.
2. Generally, input from the EFTA states can be divided into three broad categories: participation of EFTA experts in various EC committees; submission of EFTA comments; and adoption of resolutions responding to Commission initiatives.
3. The role of parliamentarians in the decision-shaping process is therefore, at least in theory, relatively limited. However, in recognition of the increasing importance of the decision-shaping phase as well as the tendency of an increasing number of actors being involved in the policy-making process, parliamentarians and other actors such as the social partners are progressively more involved in the early phases of legislative work.

II The 2002 Resolution on Decision-shaping in the EEA

4. In November 2002 the EEA Joint Parliamentary Committee adopted a resolution on decision-shaping in the EEA. This report builds on the findings of the 2002 report, but at the same time places special emphasis on the role of parliamentarians (and other “outsider” actors) in the decision-shaping process.
5. The 2002 Resolution stresses the importance of extensive EEA EFTA participation in a vast number of EU committees. This view builds on the 2002 Report which found that the EEA EFTA States have the greatest opportunity to influence the shaping of decisions at early stages in the formulation of EU legislation. This is so because once the Commission and its advisors have established the content and shape of their legislative proposal, the EEA EFTA States will have very limited ability to influence the outcome of the **decision-making process** for its adoption as a legal act.
6. Regarding EEA EFTA comments on new EU legislation it was noted that when authors of legislative proposals are considering new laws, advice from relevant EFTA

experts has most often been welcome. This is particularly so in areas in which one or more EEA EFTA States possess useful experience to share in areas of common interest. EEA EFTA comments are above all an important way for EEA EFTA States to provide input to emerging EU policy once the opportunity for input at the Committee stage has passed.

7. The resolution calls on the EEA EFTA States to secure adequate training of representatives in EU committees, and to coordinate national views within and between ministries and between the relevant ministries and the Committee representative. It is pointed out that the experience of EEA EFTA participants is by and large of a lower level than that of their Member State counterparts and that training programmes especially those addressing leaders of ministries and directorates needed to be developed.

8. EEA EFTA States are called on to use the opportunities to participate in the EEA decision-shaping process to their fullest and at the earliest possible stage in the process.

III The EEA Decision-shaping Procedure

9 Following the findings from the 2002 report (as outlined above) the main channels of EEA EFTA states influence in the EEA decision-shaping process are through experts present in various committees and EFTA comments which are mostly produced by the EFTA Standing Committee (on the initiative of one or more Member State). This process is therefore not necessarily conducive to the active involvement of parliamentarians.

10 The EEA Agreement pays special attention to the decision-shaping phase of the legislative process. The Agreement stipulates that when the European Commission transmits its proposal to the Council it shall also transmit copies to the EFTA States. In other words, how these proposals are handled domestically is left for each EFTA State to decide.

11 The Agreement elevates the EEA Joint Committee as the central body in which consultation takes place. During the phase preceding the decision of the Council of the European Communities EEA EFTA States and EU Member States consult each other again in the EEA Joint Committee at the significant moments at the request of one of them.

12 Article 100 of the Agreement ensures EFTA State experts “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”. Therefore, 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.

13 A similar procedure is applicable to cases where the Council of the European Communities is seized in accordance with the procedure pertinent to the type of

committee involved, in which case the Commission shall transmit to the Council of the European Communities the views of the experts of the EFTA States.

14 However, only the preamble of the Agreement makes mention of national parliaments, by stating the desire to strengthen the cooperation between the members of the European Parliament and of the Parliaments of the EFTA States, as well as between the social partners in the European Community and in the EFTA States.

15 Since the implementation of the EEA Agreement, the relationship between the EP and the Committee of Members of Parliament of the EFTA States (MPS) has been institutionalised in the EEA Joint Parliamentary Committee. While the Committee does not possess any strong formal powers, it may express its views in the form of reports or resolutions. It also examines the annual report of the EEA Joint Committee. Nonetheless, the character of the meetings provides an opportunity for its members to engage in informal deliberations, and it is a valuable source for information particularly for the EFTA side.

16 It could be claimed that the bulk of the deliberations at Committee's meetings is devoted to past developments within the EU and legislation that has already been passed. Therefore, there is the risk that the Committee has little real influence over the decision-shaping stage of the EEA legislation. However, as the meetings are arranged on a bi-annual basis only there is an inherent slowness in the JPC structure.

17. It remains an open question for the rapporteurs to which extent EEA EFTA governments and experts are and have been successful in shaping EEA legislation. The EEA JPC has throughout the years in its resolutions on the *Annual Report on the Functioning of the EEA Agreement* made this question, and asked about the impact of the EEA EFTA efforts to shape legislation. The EEA JPC adopted a resolution in 2003 where it expressed concern about the EEA EFTA States' ability to shape decisions in an enlarged EU. The rapporteurs underline that this challenge is equally great for parliamentarians in a larger EU/EEA.

IV National Parliaments and EEA Legislation

18. Comparing how the two largest EEA EFTA Parliaments, the Icelandic *Althingi* and the Norwegian *Stortinget*, deal with future EEA legislation, reveals some interesting differences.

19. The Icelandic Althingi does not feature a specialised committee for EEA matters. Instead, the Foreign Affairs Committee, one of the Althingi's 12 standing committees, is entrusted with all EEA-related issues. According to the rapporteurs' knowledge there has been no discussion recently on the establishment of such a special committee.

20. Concerning the transposition of directives into national law, the relevant Ministry examines whether there is a need for a Parliamentary procedure once a directive has been

adopted by the EU and EEA relevance has been established. If this is the case, the Althingi is informed before incorporation of the directive into the EEA Agreement, and again when the bill goes through the parliamentary procedure after adoption into the Agreement. Parliament is normally not involved if the directive is transposed through a governmental decree or regulation. Draft bills and government regulations are sent to business and civil society for comments when they can have significant consequences for them. When a bill is needed for transposing a directive, the relevant Parliamentary committee also consults business and other interest organisations.

21. In Norway, all EEA-relevant legislation should be discussed jointly by the Parliament and the Government, and Norwegian members of the EEA Joint Parliamentary Committee should be present.

22. The Norwegian Parliament set up its national EU/EEA committee in the mid-1990s as a response to the inception of the Single European Market and the EEA Agreement. It is this committee that deals with the EC/EU legal acts in the Norwegian parliament. The Committee or its chairman may decide that one or more of the other standing committees in the Storting shall take part in specific consultations and questions.

23. The Committee is *co-operative* in the sense that it links the work of the government with that of the parliament. It has a formal role in terms of controlling and influencing the government's policies. However, in practice it is endowed with little formal competence. The representatives may state their opinions, but there is no voting in the committee. Nor is the government obliged to follow the opinions stated in this body.

24. Concerning the transposition of directives into national law, pursuant to its rules of procedure, the Storting is consulted on all important aspects of the EEA Agreement, if need be as soon as the work of the institutions of the European Union is initiated. The Storting gets proposals for amending existing national legislation following decisions adopted by the EEA Joint Committee. The amendments then follow the ordinary legislative processing as for all other parliamentary bills. The rapporteurs would also like to recall that the Parliament has debated the function of the EEA Agreement based on a communication by the Government. Regarding business and civil society, they will already have been able to comment on the directive before it is adopted. Furthermore, interest organisations are consulted in the legislative processes implementing a directive if they are affected by it.

25. The Storting is continuously informed about EEA matters, through an overview sent to the EEA Committee twice a year. This overview includes proposed legal acts, approved legal acts that are being cleared in the EFTA working groups and EEA subcommittees, and legal acts cleared by the subcommittees. It should state the status in the decision-making process as well as implications for Norway. In addition, the EEA Committee receives a monthly list of legal acts that are ready for approval at the succeeding Joint Committee meeting.

V New Provisions for the EP and National Parliaments in the New Constitution

26. The Treaty of Rome (1957) envisaged a consultative role only for the European Parliament. However, subsequent Treaties have extended the European Parliament's influence from a purely advisory role to permit a degree of participation in the Union's legislative process.

27. EU leaders reached an agreement on the new Constitutional Treaty in June 2004. The Constitution will only enter into force once it has been ratified by all Member States (this could happen in 2007 at the earliest). The constitution brings about a strengthening of the role of the European Parliament. It stipulates that the Parliament will, jointly with the Council of Ministers, enact legislation and exercise the budgetary function. This means that the Parliament will play an increased role as regards most Community legislation. This pertains to legislative acts (laws and framework laws) where the co-decision procedure¹ applies and non-legislative acts (regulations and decisions). Indeed, all Commission proposals are submitted to the European Parliament and the Council simultaneously, and subsequently the Parliament communicates its position to the Council. It has been estimated that the policy areas where European Parliament acts as co-legislator will almost double. This implies that the opportunities for lobbying expand correspondingly.

28. The constitution also includes provisions that, for the first time allow for a role for Member States' national parliaments. National parliaments are endowed with the power to scrutinise proposed EU laws, and are entitled to object if they feel a proposal oversteps the boundary of the Union's conferred competences.² In cases where one third of the parliaments object to a proposal, the Commission has to re-examine its proposal. After a law has entered into force, Member States can file a complaint in the name of national parliaments with the European Court of Justice. Moreover, national parliaments can appeal against a decision of the European Council replacing unanimity in a specific policy area by qualified majority.

29. In practical terms, national parliaments in the EU Member States have increased their grasp on the EU legislative process in a way that has seen no parallel in the EEA EFTA States. There are particularly four ways in which EU parliamentarians have expanded their influence:

- Firstly, there is an increasing interaction between MEPs and the members of their respective national parliaments.

- Secondly, many national parliaments have established offices in Brussels, allowing them to keep a close eye on the latest legislative initiatives. Some offices are located on the premises of the European Parliament.

¹ Now to be known as the 'ordinary legislative procedure'.

² Specifically this refers to proposals that infringe upon the principles of subsidiarity or proportionality.

- Thirdly, national parliamentary committees from the EU Member States have a forum through which they can exchange information through COSAC. The forum encourages co-operation between committees of the national parliaments dealing with European affairs, and also includes representatives from the European Parliament.³ In 1999, the EFTA Parliamentary Committee asked for observer status in COSAC, however access was rejected.

- Finally, the European Parliament Directorate for Relations with National Parliaments facilitating contact between the European Parliament and national parliaments, maintaining formal and informal networks.

VI Considerations for the EEA EFTA States' Parliaments

30. The debate on the alleged democratic deficit in the European Union has spurred several initiatives aimed at increasing the legitimacy of the European institutions, amongst them being a strengthening of the formal powers of European and National Parliaments in EU policy-making. While the national EFTA parliaments remain the ultimate decision-makers in the EEA EFTA States, there are some discrepancies between the EU and the EEA EFTA States with regard to the impact of democratically elected bodies (i.e. parliaments) in the early stages of policy-making.

31. Overall it appears that the influence of parliamentarians is somewhat hindered both due to a lack of structural access to the decision-shaping process for parliamentarians, and a lack of activity. This seems to be present at several levels.

32. As described above, at the national level the EEA EFTA countries have decided to devote relatively modest resources to parliamentary involvement. In Iceland there is no EEA Committee and in Norway the committee organises relatively few meetings. Similarly, parliamentarians from EEA EFTA states do not enjoy the level of contact with other parliaments characteristic of other EEA members as described in the above section.

33. It is a concern that there appears to be an increasing gap between the involvement of parliamentarians from EEA EFTA States and other EEA parliamentarians. In the EU, there is an increase both in horizontal interaction (among Member State parliamentarians) and vertical interaction (between the European Parliament, national parliaments and even regional assemblies). As the EU parliamentarians increase their impact on the legislative process there is no corresponding EFTA development to capitalise on such a trend.

34. The rapporteurs would however draw attention to the regional parliamentary cooperation involving two of the three EEA EFTA States; Norway and Iceland. Parliamentarians from these countries take active part in the Nordic Council and in the Baltic- and Barents Sea Conferences, along with EU Parliamentarians.

³ COSAC was formally recognised in a protocol to the Amsterdam Treaty, according to which COSAC is allowed to address any "contributions" to the EU institutions, which it deems necessary. Bulgaria, Croatia, Romania and Turkey have got observer status.

35. The main challenge for the Parliaments of the EEA EFTA states regarding EEA decision-shaping is to get relevant information in the early stages of new legislative proposals from the Commission. This could be envisaged to be implemented in several ways:

- Offices of the EEA EFTA States parliaments could be established in Brussels, in the vicinity of the European Parliament. This could allow for a targeted flow of information regarding new legislative proposals to the national parliament at an early stage. Another option is to designate specially EEA information officers in the national parliament, whose job would be to monitor and inform about new and upcoming EEA legislation. However, a more instrumental and structured use of existing bodies and channels would be a better remedy.

- In light of the enlargement of the EU and EU's new Neighbourhood Policy, the EFTA Parliamentary Committee could approach COSAC a second time to explore the possibility of obtaining observer status.

- The national parliaments of the EU Member States have a greater say in the early stages of EU decision-making. The rapporteurs draw attention to the resolution adopted by the EEA JPC in 2003, in which the EEA JPC considered that the same early-warning system should be extended to the EEA EFTA Parliaments.

- The EEA EFTA Parliaments could consider the institutional relationship with their Governments and Ministries. Given that relevant information about new EU legislative proposals with EEA relevance is sent to national authorities, the main challenge is perhaps to convey the relevant information to Parliament in a systematic and timely manner.

- In this day and internet age, the problem is usually not the lack of information, but rather how to sort and handle its abundance. On important tool is the internet. In this respect, the rapporteurs find the EP website *Your Parliament* useful, in which all users may sign up for information by e-mail about specific topics.

(<http://www2.europarl.eu.int/votre-europarl/logon.jsp?lang=EN>)

DRAFT RESOLUTION

On Decision-shaping and the Role of Parliamentarians in the EEA

The Joint Parliamentary Committee of the European Economic Area:

- A. noting that the EEA Agreement contains provisions for input from the EEA EFTA States at various stages before new EU legislation is adopted,
- B. having regard to Article 99 on EEA EFTA participation in expert committees, Article 100 on EEA EFTA participation in comitology committees, Article 101 and Protocol 37 on EEA EFTA participation in other committees to ensure the good functioning of the Agreement, Article 81 on EEA EFTA participation in programme committees, and Article 79 on EEA EFTA input on new Community programmes,
- C. noting that the EEA EFTA States may provide written input on new EEA relevant policies,
 1. welcomes the extensive participation from the EEA EFTA States in a number of EU committees and welcomes EEA EFTA comments on new EU policies as it ensures potentially valuable contribution to the shaping of EU and EEA legislation;
 2. recalls its resolutions adopted at the 16th and 21st EEA JPC where it urged the EEA EFTA States to take actions with a view to enhancing participation in the EEA decision-shaping process at the earliest possible stage of the legislative process;
 3. recalls its resolution adopted at the 20th EEA JPC where it expressed concern about the EEA EFTA States' ability to shape decisions and to make its voice heard in an enlarged EEA;
 4. acknowledges the limited legal and formal access of the EEA EFTA Parliamentarians in the early stages of EEA decision-shaping;
 5. notes the increasing attention afforded to the principle of subsidiarity in the EEA;
 6. notes that the provisions of the EU Constitution would confer a greater role to the European Parliament and national parliaments in EU decision-making;
 7. notes the debate on the alleged democratic deficit in the European Union and the steps taken to address it having resulted in discrepancies in the level of

- involvement of parliamentarians in decision-making processes between the EEA EFTA States and the EU Member States;
8. calls on the EEA EFTA States and their respective parliaments to increase the participation of parliaments in deliberations regarding proposed EEA legislation;
 9. calls on the EEA EFTA States' parliaments to increase their interaction with the parliaments of other EEA Member States;
 10. calls on the EEA EFTA Parliamentarians to renew their efforts regarding an association to COSAC, with a view to obtaining e.g. observer status;
 11. calls on the EEA EFTA Parliamentarians to make every effort to strengthen their role in the EEA decision-shaping process by a better use of existing channels, structures and bodies e.g. diplomatic channels, the EEA JPC and the EFTA Secretariat.