

## ANNEX B: SECTORAL IMPACTS OF UK DEPARTURE FROM THE EU – ACCOMPANYING NOTE ON EEA AND EFTA FROM FCO LEGAL DIRECTORATE

### The EEA and EFTA – Summary Note

#### ***The EEA and EFTA***

The UK was a founding party to the European Free Trade Association (EFTA) [Convention](#) in 1960, together with Austria, Denmark, Norway, Portugal, Sweden and Switzerland. The UK (and Denmark) left EFTA in 1973 on accession to the EEC. Following more EU and EFTA accessions, EFTA currently consists of Iceland, Liechtenstein, Norway and Switzerland. After 1973, the remaining members deepened and broadened trade cooperation, initially through bilateral Free Trade Agreements (FTAs) with the EEC, and ultimately concluding the European Economic Area [Agreement](#) (EEA) in 1994 between the EEC and its Member States and the EFTA states. Switzerland subsequently decided not to join the EEA.

#### ***Leaving the EEA***

The UK is currently a party to the EEA agreement. The EEA Agreement makes provision (art. 127) for **departure, on 12 months' notice**. However, the **geographic scope** of the agreement is limited (Art. 126) to “the territories to which the Treaty establishing the European Economic Community is applied and under the conditions laid down in that Treaty” plus Iceland, Liechtenstein and Norway.

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#### ***(Re-) Joining the EEA***

In order **to join the EEA Agreement a State must be in either the EU or EFTA**. Article 128 of the EEA Agreement provides that any European State becoming a member of the EU *shall*, and the Swiss Confederation or any European State becoming a member of EFTA *may*, apply to become a party to the EEA Agreement. Applications are made to the EEA Council, leading to an agreement which is subject to **ratification by all Contracting Parties** (art. 128(2) EEA). Provisional application pending ratification is possible.

#### ***Joining EFTA***

Accession to the EFTA Convention is by **decision of the EFTA Council** (art. 56(1) EFTA Convention), and takes effect from the date provided in the EFTA Council decision (there is **no ratification** requirement). “Any State” may accede. There are no set pre-conditions in the Convention but, in addition to submitting to the provisions in the Convention, **any new state must apply to become a party to all of EFTA's existing FTAs** (art 56(3)). There are currently 27 such FTAs.

**Withdrawal** from EFTA is possible on 12 months' notice. The Member States must agree on appropriate arrangements and equitable cost sharing relating to the withdrawal.

#### ***EFTA Institutions and decision-making***

The **EFTA Council** is the main governing body of EFTA. It is responsible both for relations between Member States and relations between EFTA and third countries. It comprises one representative of

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each Member State, and usually meets monthly at Heads of Mission level and twice yearly at ministerial level. It is assisted by the **EFTA Secretariat** based in Geneva, and a large number of **committees and expert groups**.

**Fundamental amendments** to the EFTA Convention are subject to a **decision** of the EFTA Council which is submitted to the Member States for **acceptance** in accordance with their internal legal requirements. They enter into force after **ratification** by all the Member States. **Amendments of the detailed annexes are made by decision of the Council** alone.

### ***EEA Institutions and decision-making***

The institutional arrangements of the EEA are based on a **twin pillar approach**, designed to protect the autonomy of EU decision-making on the one hand and the sovereignty of the participating EFTA States on the other. Decisions taken in one pillar cannot bind the Contracting Parties of the other pillar. Each pillar has its own institutions for decision-making, surveillance and judicial review. However, some **common institutions** have been established, the main ones being the **EEA Council** and **EEA Joint Committee**.

(1) The **EEA Council** has no legislative competence; its role is of a purely political nature. It consists of:

- Members of the Council of the European Union
- Members of the European Commission
- one member of the Government of each of the EFTA States.

Decisions are taken by agreement between the EU on one side and the EFTA states on the other.

(2) The **EEA Joint Committee** (high ranking officials – heads of mission or Commission Directors) is responsible for the main day-to-day management of the Agreement and is the Agreement's main decision-making body. Its role is to:

- Decide which EU legislation should be taken into the EEA Agreement
- Preserve the homogenous interpretation of the agreement
- Facilitate cross-pillar dispute resolution

The decisions in the Committee are taken by agreement between the EU and EFTA sides (the EFTA States still operate by unanimity.)

The EEA Joint Committee can **agree on adaptations to EU acts to be incorporated into the EEA Agreement or to provide for exemptions** from certain provisions of these EU acts. So, if there is cross-pillar agreement, the Joint Committee can make substantial changes as compared to the original EU act when taking over that act in the EEA Agreement and, for example, decide that the act shall not, or only partially, be applicable in a given EFTA State.

**Prior to the adoption of EU laws**, the European Commission is required to seek **informal advice** from experts from EFTA states as it does with EU Member State experts. During the EU legislative process, the EEA Agreement requires **transmission of information** from the Commission to the EFTA States and continuous **consultation**, including in the joint committee if requested. Obviously the EFTA states have **no vote** on the adoption of the EU measure.

## ***Enforcement of rules***

### ***(1) Enforcement of EEA obligations within the EFTA States***

The three EFTA States in the EEA agreed a separate [Surveillance and Court Agreement](#) ("SCA") establishing the EFTA Surveillance Authority and the EFTA Court. The **EFTA Surveillance Authority** is governed by a College of three independent officials appointed by common accord of the governments of the EFTA Member States, and (like the European Commission) monitors those states' compliance with EEA law, by reasoned opinions and reference to the EFTA Court. It also monitors the EU's compliance on behalf of the three, and makes competition decisions.

The **EFTA Court** (composed of three judges – not necessarily from the 3 SCA states) like the CJEU is based in Luxembourg. Its powers, functions and jurisprudence are similar to the CJEU, with certain differences:

- It has **no jurisdiction to impose fines or sanctions on states**
- National courts have **no obligation to make preliminary references**
- **EEA rules that have not been implemented do not have direct effect** (but can give rise to liability for damages)
- There are no Advocates General
- The working language is English.

The **principle of homogeneity** requires the EFTA Court to interpret EEA law in conformity with equivalent EU law, and follow CJEU judgements, unless it is clear that the differences in the scope and purpose of the EEA Agreement as compared to the EU treaties should lead to a different interpretation. For this reason, fundamental rights are part of EEA law even though not mentioned in the EEA Agreement.

### ***(2) Enforcement under EFTA – internal disputes***

Internal EFTA disputes are referred to **consultations** and discussion in the EFTA Council. If consultation does not resolve the dispute, it can move to **binding arbitration**.

### ***(3) Cross-pillar enforcement (EU vs EFTA)***

Disputes between the EFTA and EU sides under the EEA are referred to the EEA Joint Committee for political settlement. They can lead to unilateral '**safeguard measures**' – suspension of parts of the Agreement. Disputes arising from the scope or duration of safeguard measures may ultimately be taken to **binding arbitration**. Parties may (voluntarily) submit to the **CJEU** for preliminary rulings disputes on the interpretation of EEA provisions that are identical to EU law.

## ***Substance of the EFTA Convention***

As the relationship between the EU and the EEA States is now governed by the EEA Agreement, the substantive provisions of the EFTA Convention now predominantly govern the relationship between Iceland, Norway and Switzerland respectively on the one hand, and Switzerland on the other. In order to ensure that the four EFTA States do not have less close arrangements between themselves than any of them do with the EU provision is made for the EFTA Convention to be aligned to the lowest common denominator between the content of the Swiss-EU bilateral agreements and the EEA Agreement. In broad outline, the EFTA Convention covers:

- Free Movement of Goods
  - Prohibition of customs duties

- Prohibition of discriminatory internal taxation
- Prohibition on quantitative restrictions on imports/exports (subject to public policy)
- Preferential Rules of Origin
- Specific rules for basic and processed agricultural products – not included in free movement of goods, state aid, competition or procurement rules
- Notification of technical regulations
- State aid rules
- Competition rules (cartels, abuse of dominant position, public monopolies)
- Adequate protection of intellectual property rights
- Free movement of persons (NB not Citizenship), including coordination of social security systems and mutual recognition of professional qualifications
- Freedom of:
  - Establishment
  - Movement of Capital
  - Trade in Services
- No anti-dumping measures between Member States
- Land and air transport
- Liberalisation of public procurement
- Non-binding exchange of views on economic and monetary policy

### ***Substance of the EEA Agreement***

For an explanation of how to work out whether an area of EU law is included in the EEA see the separate note by COELA. In broad outline, the EEA covers the following areas:

- The four freedoms, i.e. free movement of goods, services, persons and capital
- competition and state aid rules
- consumer protection
- company law
- environment
- social policy
- statistics
- cooperation in –
  - research and technological development
  - education, training and youth
  - employment
  - tourism
  - culture
  - civil protection
  - enterprise, entrepreneurship and small and medium-sized enterprises.

The EEA Agreement does **not** cover the following EU policies:

- common agriculture and fisheries policies
- customs union
- common commercial policy
- common foreign and security policy
- justice and home affairs
- direct and indirect taxation

- economic and monetary union.

**FCO Legal Directorate 14.7.16**

