Legitimacy of the EEA

Iceland Liechtenstein Norway grants
Norway grants

In the political debate on European integration, the effects on national autonomy and the general question of the legitimacy of a transfer of powers from the national level to the European level play a central role. Not only the EU, but also the EEA is accused of having a democratic deficit. But what exactly is this deficit?

New procedures introduced after the entry into force of the EEA Agreement allow a more efficient incorporation of EU law into the EEA Agreement, but also restrict the autonomy of the EEA/EFTA states.

Type	Introduction date and legal basis	Role of the Joint EEA Committee	Notes
Standard procedure	EEA Agreement	Unanimous decision on takeover	EEA-specific substantive and technical adaptations to EU law
fast-track procedure	2014 by decision of the EFTA Standing Committee	Unanimous decision on takeover	only technical adjustments possible
simplified procedure	2001 by Decision of the EEA Joint Committee	taking note of the legal acts adopted	No adjustments possible (Protocol1)
Simplified procedure data protection	2018 by decision of the EEA Joint Committee	Confirmation of the adopted legal acts [unanimity not required]	No adjustments possible (protocol1)

There are various procedures in the EEA for incorporating EU law into the EEA Agreement. In addition to the four procedures listed in the table, there are also various procedures relating to decisions by EU agencies vis-à-vis the EEA EFTA states. On the one hand, the different procedures are the result of the high complexity of the EEA Agreement with its two-pillar structure and the reservations of the EEA/EFTA states regarding the transfer of political competence to the EEA institutions that underlie this structure. On the other hand, they are also a consequence of the high integration dynamics of the EEA and an expression of the need for an efficient adoption of legislation.

Objectives of the new procedures introduced after entry into force:
- Accelerating the adoption in policy areas characterized by high interdependence and low salience
- Ensuring homogeneity and legal certainty and thus achieving the objectives of the EEA
- Relieve of the two-pillar system where there are no problems between the two pillars. between the two pillars.

The institutional integration of the EEA/EFTA states into the EU decision-making process takes place in various ways.

- The organisational inclusion of the EEA EFTA States in EU policy making does not violate the autonomy of EU decision-making as they do not have decision-making power.
- The EEA EFTA States' access to EU policy making shall ensure the efficiency of EEA decision-making and thus the functioning of the EEA Agreement.
- Expertise-based policy shaping by the EEA EFTA States contributes to the mutual understanding and the overall reputation of the EEA EFTA States as constructive and credible partners.
- The EU policy shaping by the EEA EFTA States cannot ensure key principles of democratic governance such as the accountability of those who take decisions to the ones affected by the decisions.
- The fact that the EEA EFTA States do not have the right to vote in EU policy making can be explained by the fact that there is specific EEA decision-making.
- There is an inherent conflict between the legitimacy that derives from the EEA's output in terms of a homogenous and dynamic economic area and the legitimacy shaped by the input of the EEA EFTA states.

Main types of decision shaping:
- Secondment of national experts to the European Commission (Art. 79 EEA)
- Submission of written EEA/EFTA comments Involvement in EU bodies
- Participation in EU programs and their committees (Art. 81 EEA)
- Participation in EU expert groups (Art. 99 EEA/ Art. 101 EEA)
- Participation in comitology committees (Art. 100 EEA)
- Participation in committees of EU agencies (EEA-specific adaptations)
- Consultation within the framework of the EEA Joint Committee and the EEA Council (Art. 99 EEA)
- Participation in preparatory meetings for the European Council (informal)
- Lobbying and bilateral contacts (informal)

It is very difficult to assess whether national autonomy is better protected as an EU member or as an EEA member and is ultimately a question of interpretation and weighting of the individual differences.

Main criticism of the EEA's democratic deficit

With a view to the EU legislative process:
- No voting rights in EU bodies
- Limited access to the EU legislative process

➢ BUT: Various institutional channels for participation (so-called decision-shaping)

With regard to the takeover process:
- Only theoretical possibility of veto when adopting EU law into the EEA Agreement, as suspension of affected annexes
- Mutual dependence of EEA/EFTA states due to "one-vote principle"

➢ BUT: Possibility to delay adoption and negotiate specific exceptions

Further points of criticism as a result of EEA developments

- High integration dynamics lead to an institutional and functional "spill over"
- Little transparency about the actual state of integration
- Dominance of the executive (administration) and weak involvement of parliaments

➢ Trade-off between input and output legitimisation

- Institutional self-restraint (i.e. institutions voluntarily relinquish competences to which they are entitled for reasons of efficiency)
- Bogus solutions (i.e. institutions only have apparent decision-making powers)

➢ Diffusion of responsibility - successes of the EEA are primarily successes of the EU, but are not presented as such

The special view of the microstate of Liechtenstein

- Compatibility of direct democracy and the EEA
- High number of exceptions such as special solution for free movement of persons or numerous specific or sectoral adaptations
- Exceptions protect national interests and enable efficient administration of the EEA
- Possibilities for exceptions as EU member probably much smaller
- Little gain in influence in the event of EU membership as Liechtenstein could only be represented in a small number of committees due to its limited personnel resources
- Liechtenstein could hardly block EU decision-making processes