ing **substantive adaptations** must be approved by the EU Council. The EU Commission only has the competence to approve **technical adaptations**. The EU has traditionally taken a narrow approach as to which adaptations that are considered of a purely technical nature which in turn leads to most decisions containing adaptations being submitted to the EU Council for approval.\(^5\) The unfortunate delays in the incorporation of new acquis may therefore also be traced to procedures on the EU side.

\(^5\) This may include the involvement of the EU Parliament.

\(^6\) Although the Contracting Parties may agree to request an opinion by the ECJ under Art. 111(3) EEA. See further the comments by Fredriksen on that provision.


It may also be noted, that the requirement to take decisions by agreement entails that it is the EEA Joint Committee who is the final arbiter on whether an EU act should be incorporated into the EEA Agreement or not. The EEA Agreement does not provide for the jurisdiction of any court to adopt binding rulings on whether an act should be incorporated into the EEA Agreement.\(^6\) Although delays in incorporation of new acquis have been subject to political discussions with the EU side since 2011, and on numerous occasions raised as a matter of concern by the EEA Council, no formal steps under the auspices of the EEA Agreement have been taken in this respect.\(^7\)

Article 94 [The EEA Joint Committee: presidency, meetings, sub-committees and working groups]

1. The office of the President of the EEA Joint Committee shall be held alternately, for a period of six months, by the representative of the Community, i.e. the EC Commission, and the representative of one of the EFTA States.

2. In order to fulfil its functions, the EEA Joint Committee shall meet, in principle, at least once a month. It shall also meet on the initiative of its President or at the request of one of the Contracting Parties in accordance with its rules of procedure.

3. The EEA Joint Committee may decide to establish any subcommittee or working group to assist it in carrying out its tasks. The EEA Joint Committee shall in its rules of procedure lay down the composition and mode of operation of such subcommittees and working groups. Their tasks shall be determined by the EEA Joint Committee in each individual case.

4. The EEA Joint Committee shall issue an annual report on the functioning and development of this Agreement.

**I. Presidency and meetings**

It follows from Art. 94(1) that the presidency of the EEA Joint Committee **alternates for a period of six months** between the representative of the EU and the representative of one of the EFTA States. As regards the EFTA States, the presidency is held by the representative holding the presidency in the Standing
Committee of the EFTA States. Art. 94(2) provides that the Joint Committee should meet in principle at least once a month and can also meet at the initiative of the President or at the request of one of the Contracting Parties. In practice, however, the EEA Joint Committee meets **six to eight times a year**. Article 4 of the Rules of procedure further provides for the possibility of adopting decisions by written procedure in matters of urgency and by agreement between the parties. In practice, the EEA Joint Committee has in recent years opted for a written procedure around twice a year.

Although the presidency of the EEA Joint Committee rotates between the EU side and the EFTA side as described above, the bulk of the work related to the preparation of EEA Joint Committee decisions is carried out by **the EFTA Secretariat**. It is thus the Secretariat, in cooperation with experts in the EFTA States, that drafts all decisions for the EEA Joint Committee.

The meetings of the EEA Joint Committee are held in English and all documents pertaining to the meetings are also in the English language. Decisions amending the Annexes and Protocols of the EEA Agreement are however drafted in English, Icelandic and Norwegian.\(^1\)

**II. Subcommittees and working groups**

Art. 94(3) provides that the EEA Joint Committee may set up **subcommittees** and working groups to assist it in carrying out its tasks. Art. 15 of the Rules of Procedure establishes **five permanent subcommittees** in the fields of free movement of goods (I), free movement of capital and services (II), free movement of persons (III), flanking and horizontal policies (IV) and legal and institutional questions (V).\(^2\) These subcommittees correspond to the subcommittees established on the EFTA side to assist the Standing Committee of the EFTA States.\(^3\) The Standing Committee is established by a separate agreement between the EFTA States beyond their obligations under the EEA Agreement.\(^4\) The establishment of the Standing Committee was considered necessary due to the obligation of the EFTA States to speak with one voice in the EEA Joint Committee.\(^5\)

The EFTA subcommittees are in turn assisted by **numerous working groups** composed of experts from the EFTA States in the relevant fields.\(^6\) In practice the bulk of the work of scrutinizing EU acquis considered for incorporation into the

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1 The EU side is responsible for translating the EEA Joint Committee Decisions in the official languages of the EU, including German, the official language of Liechtenstein.
2 As subcommittees in turn mirror the sub-structure of the High Level Negotiating Group, see von Liechtenstein, at p. 477.
3 Agreement on a Standing Committee of the EFTA States, see further comments on the Agreement by Fredriksen and Jónsdóttir.
4 Fenger, Rydelski and van Stiphout, *EEA and EEA*, p. 100.
5 Norberg et al., *EEA Law*, p. 685.
6 An overview of the Subcommittee and Working Group structure is provided at [http://www.efta.int/eea/eea-institutions/standing-committee](http://www.efta.int/eea/eea-institutions/standing-committee).
EEA Agreement is carried out by the working groups on the EFTA side. Since 2012, the subcommittees I to IV meet jointly in preparation for the incorporation of new acquis. Subcommittee V on legal and institutional questions meets less regularly and usually will opt for informal meetings. The subcommittees and working groups are assisted by the EFTA Secretariat, which is tasked with extensive legal assistance to the EFTA States, including providing analysis of the more complex horizontal legal issues, as well as drafting all decisions.

Following several years of discussion with the EU side on the delays in incorporation of new acquis into the EEA Agreement, the so-called backlog, the procedures for incorporation on the EFTA Side where revised in 2014. Standing Committee Decision No 1/2014/SC lays down the new procedures for the incorporation of EU acquis into the EEA Agreement and sets out the tasks and responsibilities of the EFTA Secretariat, the working groups and the subcommittees.

The new procedures entail that the EFTA Secretariat will by automated means pick up all legislative proposals with possible EEA relevance as well as adopted legal acts on the EU side for processing. The inclusion of legislative proposals thus aims at speeding up the process on the EFTA side by starting the scrutiny of acts at the first possible date. However, for obvious reasons formal processing can only start once the legal act has been adopted by the EU. The procedures also include the introduction of a new fast track procedure, suitable for more technical regulations where no adaptation text is usually required.

### III. Annual report

The EEA Joint Committee is to issue an annual report on the functioning and development of the Agreement which is subject to an examination by the EEA Joint Parliamentary Committee but also addressed to the EEA Council. The annual reports are published on the website of EFTA, cf. Art. 21(3) of the Rules of Procedure.

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7 Although Subcommittee V is formally established by the Rules of Procedure, it traditionally only meets informally.

8 The backlog refers to the number of outstanding legal acts awaiting incorporation into the EEA Agreement. In recent years this number has consistently been around 400 to 500 legal acts.

9 On the notion of EEA relevance, see the comments by Dystland, Finstad and Sørebo on Art. 102 EEA.

10 See further on the incorporation procedures the comments by Dystland, Finstad and Sørebo on Art. 102 EEA.

Section 3: Parliamentary cooperation

Article 95 [The EEA Joint Parliamentary Committee]

1. An EEA Joint Parliamentary Committee is hereby established. It shall be composed of equal numbers of, on the one hand, members of the European Parliament and, on the other, members of Parliaments of the EFTA States. The total number of members of the Committee is laid down in the Statute in Protocol 36.

2. The EEA Joint Parliamentary Committee shall alternately hold sessions in the Community and in an EFTA State in accordance with the provisions laid down in Protocol 36.

3. The EEA Joint Parliamentary Committee shall contribute, through dialogue and debate, to a better understanding between the Community and the EFTA States in the fields covered by this Agreement.

4. The EEA Joint Parliamentary Committee may express its views in the form of reports or resolutions, as appropriate. It shall, in particular, examine the annual report of the EEA Joint Committee, issued in accordance with Article 94(4), on the functioning and development of this Agreement.

5. The President of the EEA Council may appear before the EEA Joint Parliamentary Committee in order to be heard by it.

6. The EEA Joint Parliamentary Committee shall adopt its rules of procedure.

I. Establishment of the EEA Joint Parliamentary Committee and composition

In order to facilitate information sharing and exchanges of views, Art. 95 provides for the establishment of an EEA Joint Parliamentary Committee. It might be said that the negotiators of the EEA Agreement wished to add an element of parliamentary democracy to the Agreement and thus reflect in some manner the establishment of the EU Parliament in the EU Pillar. However, the EEA Joint Parliamentary Committee does not have a formal role, it is merely an advisory body.

The EEA Joint Parliamentary Committee is composed of equal numbers of members of the European Parliament on the one hand and members of Parliaments of the EFTA States on the other. Protocol 36 to the EEA Agreement contains the statute of the EEA Joint Parliamentary Committee. According to Art. 2 of the Protocol, the total number of members of the committee shall be twenty-four. On the EFTA side, Iceland and Norway have five members each, whereas Lichtenstein has two.

Art. 3 of the Protocol provides that the committee shall elect a President and a Vice-President from among its members, the office of the President to be held alternately for a period of one year by a member appointed by the European Parliament and by a member appointed by a Parliament of an EFTA State. The EEA Joint Parliamentary Committee has adopted rules of procedure in accordance with Art. 4 of Protocol 36.1

As a result of the establishment of the EEA Joint Parliamentary Committee, the EFTA States established their own Committee of Members of Parliament.