



EUROPEAN
COMMISSION

Brussels, 15.12.2022
COM(2022) 739 final

2022/0430 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be adopted, on behalf of the European Union, within the EEA Joint Committee concerning an amendment to Protocol 31 to the EEA Agreement, on cooperation in specific fields outside the four freedoms

(CEDEFOP)

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the decision establishing the position to be adopted on the Union's behalf in the EEA Joint Committee in connection with the envisaged adoption of the Joint Committee Decision concerning an amendment of Protocol 31 to the EEA Agreement, on cooperation in specific fields outside the four freedoms

2. CONTEXT OF THE PROPOSAL

2.1. The EEA Agreement

The Agreement on the European Economic Area (*'the EEA Agreement'*) guarantees equal rights and obligations within the Internal Market for citizens and economic operators in the EEA. It provides for the inclusion of EU legislation covering the four freedoms throughout the 30 EEA States comprising of EU Member States, Norway, Iceland and Liechtenstein. In addition, the EEA Agreement covers cooperation in other important areas such as research and development, education, social policy, the environment, consumer protection, tourism and culture, collectively known as "*flanking and horizontal*" policies. The EEA Agreement entered into force on 1 January 1994. The Union together with its Member States is a party to the EEA Agreement.

2.2. The EEA Joint Committee

The EEA Joint Committee is responsible for the management of the EEA Agreement. It is a forum for exchanging views linked to the functioning of the EEA Agreement. Its decisions are taken by consensus and are binding on the Parties. The responsibility for coordinating EEA matters on the EU side is with the Secretariat General of the European Commission.

2.3. The envisaged act of the EEA Joint Committee

The EEA Joint Committee is expected to adopt the EEA Joint Committee Decision (*'the envisaged act'*) regarding the amendment of Protocol 31 to the EEA Agreement, on cooperation in specific fields outside the four freedoms.

The purpose of the envisaged act is to extend the cooperation of the Contracting Parties to the EEA Agreement to include Regulation (EU) 2019/128¹ establishing a European Centre for the Development of Vocational Training (Cedefop) and repealing Council Regulation (EEC) No 337/75¹.

The envisaged act will become binding on the parties in accordance with Articles 103 and 104 of the EEA Agreement.

3. POSITION TO BE TAKEN ON THE UNION'S BEHALF

The Commission submits the annexed draft Decision of the EEA Joint Committee for adoption by the Council as the Union's position. The position, once adopted, should be presented in the EEA Joint Committee at the earliest possible opportunity.

The annexed draft Decision of the EEA Joint Committee introduces participation rights for the EEA EFTA States in Cedefop's activities, which goes beyond what can be considered mere technical adaptations in the sense of the Council Regulation No 2894/94. The Union position shall therefore be established by the Council.

¹ OJ L 30, 31.1.2019, p. 90.

The EEA EFTA States should also contribute financially to the activities referred to above.

4. LEGAL BASIS

4.1. Procedural legal basis

4.1.1. Principles

Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) provides for decisions establishing *‘the positions to be adopted on the Union’s behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement.’*

The concept of *‘acts having legal effects’* includes acts that have legal effects by virtue of the rules of international law governing the body in question. It also includes instruments that do not have a binding effect under international law, but that are *‘capable of decisively influencing the content of the legislation adopted by the EU legislature’*².

4.1.2. Application to the present case

The EEA Joint Committee is a body set up by an agreement, namely the EEA Agreement. The act, which the EEA Joint Committee is called upon to adopt, constitutes an act having legal effects. The envisaged act will be binding under international law in accordance with Articles 103 and 104 of the EEA Agreement.

The envisaged act does not supplement or amend the institutional framework of the Agreement. Therefore, the procedural legal basis for the proposed decision is Article 218(9) TFEU in conjunction with Article 1(3) of Council Regulation No 2894/94 concerning arrangements for implementing the Agreement on the European Economic Area.

4.2. Substantive legal basis

4.2.1. Principles

The substantive legal basis for a decision under Article 218(9) TFEU in conjunction with Article 1(3) of Council Regulation No 2894/94 depends primarily on the substantive legal basis of the EU legal act to be incorporated into the EEA Agreement.

If the envisaged act pursues two aims or has two components and if one of those aims or components is identifiable as the main one, whereas the other is merely incidental, the decision under Article 218(9) TFEU must be founded on a single substantive legal basis, namely that required by the main or predominant aim or component.

4.2.2. Application to the present case

Since the Joint Committee Decision extends the cooperation of the Contracting Parties to the EEA Agreement to include Regulation (EU) 2019/128 into the EEA Agreement, it is appropriate to base this Council decision on the same substantive legal base as the act that is incorporated. Therefore, the substantive legal basis of the proposed decision are Article 166(4) and Article 165(4) of the TFEU.

4.3. Conclusion

The legal basis of the proposed decision should be Article 166(4) and Article 165(4) TFEU, in conjunction with Article 218(9) TFEU and Article 1(3) of Council Regulation No 2894/94 concerning arrangements for implementing the EEA Agreement.

² Judgment of the Court of Justice of 7 October 2014, Germany v Council, C-399/12, ECLI:EU:C:2014:2258, paragraphs 61 to 64.

5. PUBLICATION OF THE ENVISAGED ACT

As the act of the EEA Joint Committee will amend Protocol 31 to the EEA Agreement, on cooperation in specific fields outside the four freedoms, it is appropriate to publish it in the *Official Journal of the European Union* after its adoption.

Proposal for a

COUNCIL DECISION

on the position to be adopted, on behalf of the European Union, within the EEA Joint Committee concerning an amendment to Protocol 31 to the EEA Agreement, on cooperation in specific fields outside the four freedoms

(CEDEFOP)

(Text with EEA relevance)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 166(4) and Article 165(4) in conjunction with Article 218(9) thereof,

Having regard to Council Regulation (EC) No 2894/94 of 28 November 1994 concerning arrangements for implementing the Agreement on the European Economic Area³, and in particular Article 1(3) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Agreement on the European Economic Area⁴ ('the EEA Agreement') entered into force on 1 January 1994.
- (2) Pursuant to Article 98 of the EEA Agreement, the EEA Joint Committee may decide to amend, inter alia, Protocol 31 on cooperation in specific fields outside the four freedoms ('Protocol 31') to the EEA Agreement.
- (3) It is appropriate to extend the cooperation of the Contracting Parties to the EEA Agreement to include Regulation (EU) 2019/128 of the European Parliament and of the Council⁵.
- (4) Protocol 31 to the EEA Agreement should therefore be amended in order to allow for this extended cooperation to take place from 1 January 2023.
- (5) The position of the Union within the EEA Joint Committee should therefore be based on the attached draft Decision,

³ OJ L 305, 30.11.1994, p. 6.

⁴ OJ L 1, 3.1.1994, p. 3.

⁵ Regulation (EU) 2019/128 of the European Parliament and of the Council of 16 January 2019 establishing a European Centre for the Development of Vocational Training (Cedefop) and repealing Council Regulation (EEC) No 337/75 (OJ L 30, 31.1.2019, p. 90).

HAS ADOPTED THIS DECISION:

Article 1

The position to be adopted, on behalf of the Union, within the EEA Joint Committee on the proposed amendment to Protocol 31 to the EEA Agreement, on cooperation in specific fields outside the four freedoms, shall be based on the draft decision of the EEA Joint Committee attached to this Decision.

Article 2

This Decision shall enter into force on the date of its adoption.

Done at Brussels,

*For the Council
The President*



EUROPEAN
COMMISSION

Brussels, 15.12.2022
COM(2022) 739 final

ANNEX

ANNEX

to the

Proposal for a

COUNCIL DECISION

**on the position to be adopted, on behalf of the European Union, within the EEA Joint
Committee concerning an amendment to Protocol 31 to the EEA Agreement, on
cooperation in specific fields outside the four freedoms**

(CEDEFOP)

ANNEX

DECISION OF THE EEA JOINT COMMITTEE

No [...]

of [...]

amending Protocol 31 to the EEA Agreement, on cooperation in specific fields outside the four freedoms

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area (“the EEA Agreement”), and in particular Articles 86 and 98 thereof,

Whereas:

- (1) According to paragraph 6 of Article 4 of Protocol 31, the Contracting Parties shall encourage appropriate cooperation between the competent organizations, institutions and other bodies in their respective territories where this would contribute to the strengthening and broadening of cooperation. This shall apply in particular to matters covered by the activities of the European Centre for Development of Vocational Training (Cedefop).
- (2) It is appropriate to extend the cooperation of the Contracting Parties to the EEA Agreement to include Regulation (EU) 2019/128 of the European Parliament and of the Council of 16 January 2019 establishing a European Centre for the Development of Vocational Training (Cedefop) and repealing Council Regulation (EEC) No 337/75¹.
- (3) Protocol 31 to the EEA Agreement should therefore be amended in order to allow for this extended cooperation to take place from 1 January 2023,

HAS ADOPTED THIS DECISION:

Article 1

The text of paragraph 6 of Article 4 of Protocol 31 to the EEA Agreement shall be replaced by the following:

- ‘(a) The EFTA States shall, with effect from 1 January 2023, participate in the activities which may result from the following Union act:
 - **32019 R 0128**: Regulation (EU) 2019/128 of the European Parliament and of the Council of 16 January 2019 establishing a European Centre for the Development of Vocational Training (Cedefop) and repealing Council Regulation (EEC) No 337/75 (OJ L 30, 31.1.2019, p. 90).
- (b) The EFTA States shall contribute financially to the activities referred to under (a) in accordance with Article 82(1)(a) of and Protocol 32 to the Agreement.

¹ OJ L 30, 31.1.2019, p. 90.

- (c) The EFTA States shall participate fully, without the right to vote, in the Management Board of Cedefop.
- (d) By way of derogation from Articles 12(2)(a) and 82(3)(a) of the Conditions of Employment of Other Servants of the European Union, nationals of the EFTA States enjoying their full rights as citizens may be engaged under contract by the Executive Director of Cedefop.
- (e) By way of derogation from Articles 12(2)(e), 82(3)(e) and 85(3) of the Conditions of Employment of Other Servants of the European Union, the languages referred to in Article 129(1) of the Agreement shall be considered by Cedefop, in respect of its staff, as languages of the Union referred to in Article 55(1) of the Treaty on European Union
- (f) Cedefop shall have legal personality. It shall enjoy in all the States of the Contracting Parties the most extensive legal capacity accorded to legal persons under their laws.
- (g) The EFTA States shall grant privileges and immunities to Cedefop and its staff equivalent to those contained in the Protocol on Privileges and Immunities of the European Union.
- (h) Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents shall, for the application of Regulation (EU) 2021/696, apply to any documents of Cedefop regarding the EFTA States as well.’

Article 2

This Decision shall enter into force on the day following the last notification under Article 103(1) of the EEA Agreement *.

It shall apply from 1 January 2023.

Article 3

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Union*.

Done at Brussels, [...].

For the EEA Joint Committee

The President

[...]

The Secretaries

To the EEA Joint Committee

[...]

* [No constitutional requirements indicated.] [Constitutional requirements indicated.]

Joint Declaration by the Contracting Parties
**to Decision No .../... incorporating Regulation (EU) 2019/128 of the European
Parliament and of the Council into the Agreement**

The parties acknowledge that the incorporation of this act is without prejudice to the direct application of Protocol 7 on the privileges and immunities of the European Union to the nationals of EFTA states in the territory of each Member State of the European Union, pursuant to Article 11 of that Protocol.