



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 19.4.2005
SEC(2005) 508 final

Draft

DECISION OF THE EEA JOINT COMMITTEE
amending Annex XIII (Transport) to the EEA Agreement

- Draft common position of the Community -
(presented by the Commission)

EXPLANATORY MEMORANDUM

1. In order to ensure the requisite legal security and homogeneity, the EEA Joint Committee is to integrate all the relevant Community legislation into the EEA Agreement as soon as possible after its adoption.
2. The EEA Joint Committee should therefore adopt the attached draft decision to amend Annex XIII to the EEA Agreement by adding recently adopted acquis in the field of Transport. The decision concerns:

32004 R 0881: Regulation (EC) No 881/2004 of the European Parliament and of the Council of 29 April 2004 establishing a European Railway Agency (OJ L 164, 30.4.2004, p. 1, as corrected by OJ L 220, 21.6.2004).
3. The draft decision of the EEA Joint Committee provides the framework for the participation of the EEA EFTA States in the European Railway Agency, including in particular provisions on the financial contribution of the EEA EFTA States, on their application of the Protocol of Privileges and Immunities of the European Communities and applicable rules pursuant to the Protocol as well as the modalities for their participation in the committee established by the regulation, i.e. full participation with the same rights and obligations as the EU Member States, except for the right to vote.
4. Article 1(3)(a) of Council Regulation (EC) No 2894/94 concerning the arrangements for implementing the EEA Agreement envisages that the Council establish the Community position for decisions extending Community legislation with substantial changes.
5. The draft decision of the EEA Joint Committee is submitted for the approval of the Council, after which the Commission will put forward the position of the Community in the EEA Joint Committee at the earliest possible occasion.

Draft

DECISION OF THE EEA JOINT COMMITTEE
amending Annex XIII (Transport) to the EEA Agreement

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area, as amended by the Protocol adjusting the Agreement on the European Economic Area, hereinafter referred to as ‘the Agreement’, and in particular Article 98 thereof,

Whereas:

- (1) Annex XIII to the Agreement was amended by Decision of the EEA Joint Committee No .../... of ...¹.
- (2) Regulation (EC) No 881/2004 of the European Parliament and of the Council of 29 April 2004 establishing a European Railway Agency², as corrected by OJ L 220, 21.6.2004, p. 3, has as its objective to enhance the level of interoperability of railway systems and to develop a common approach to safety on the European railway system.
- (3) The activities of the Agency may affect the level of railway interoperability and safety in the European Economic Area.
- (4) Regulation (EC) No 881/2004, as corrected by OJ L 220, 21.6.2004, p. 3, is therefore to be incorporated into the Agreement in order to allow for the full participation of the EFTA States in the European Railway Agency,

HAS DECIDED AS FOLLOWS:

Article 1

Annex XIII to the Agreement shall be amended as specified in the Annex to this Decision.

Article 2

The texts of Regulation (EC) No 881/2004, as corrected by OJ L 220, 21.6.2004, p. 3, in the Icelandic and Norwegian languages, to be published in the EEA Supplement to the *Official Journal of the European Union*, shall be authentic.

¹ OJ L [...]

² OJ L 164, 30.4.2004, p. 1.

Article 3

This Decision shall enter into force on [...], provided that all the notifications under Article 103(1) of the Agreement have been made to the EEA Joint Committee*.

Article 4

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.]

ANNEX

to Decision of the EEA Joint Committee No [...]

The following shall be inserted after point 42e (Directive 2004/49/EC of the European Parliament and of the Council) in Annex XIII to the Agreement:

‘42f. **32004 R 0881**: Regulation (EC) No 881/2004 of the European Parliament and of the Council of 29 April 2004 establishing a European Railway Agency (OJ L 164, 30.4.2004, p. 1), as corrected by OJ L 220, 21.6.2004, p. 3.

The text of the Regulation shall, for the purposes of the present Agreement, be read with the following adaptations:

- (a) Unless otherwise stipulated below, and notwithstanding the provisions of Protocol 1 to the Agreement, the term ‘Member State(s)’ and other terms referring to their public entities contained in the Regulation shall be understood to include, in addition to its meaning in the Regulation, the EFTA States and their public entities. Paragraph 11 of Protocol 1 shall apply.
- (b) As regards the EFTA States, the Agency shall, as and when appropriate, assist the EFTA Surveillance Authority or the Standing Committee, as the case may be, in the performance of their respective tasks.
- (c) The working parties established by the Agency shall include adequate representation from the EFTA States.
- (d) The following paragraph shall be added to Article 23:

‘EFTA States shall apply to the Agency and to its staff the Protocol of Privileges and Immunities of the European Communities and applicable rules adopted pursuant to the Protocol.’
- (e) The following paragraph shall be added to Article 24:

‘5. By way of derogation from Article 12(2)(a) of the Conditions of employment of other servants of the European Communities, nationals of the EFTA States enjoying their full rights as citizens may be engaged under contract by the Executive Director of the Agency.’
- (f) In Article 25(2)(b) the words ‘the European Parliament, the Council and the Commission’ shall read ‘the European Parliament, the Council, the Commission and the EFTA Surveillance Authority’.
- (g) The following paragraph shall be added to Article 26:

‘5. The EFTA States shall participate fully in the Administrative Board and shall within it have the same rights and obligations as EU Member States, except for the right to vote.

(h) The following paragraph shall be added to Article 33:

‘4. When the inspection has been carried out in an EFTA State, the Agency shall also send the report to the EFTA Surveillance Authority.’

(i) The following shall be added to paragraph 1 of Article 37:

‘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 this Regulation, apply to any documents of the Agency regarding the EFTA States as well.’

(j) The following paragraph shall be added to Article 38:

‘10. The EFTA States shall participate in the financial contribution from the Community referred to in the first indent of paragraph 2. For this purpose, the procedures laid down in Article 82(1)(a) and Protocol 32 to the Agreement shall apply *mutatis mutandis*.’

Preliminary Remark

At the moment of the adoption of the Decision of the EEA Joint Committee the following Joint Statement should be adopted as well:

Joint Statement for entry into the agreed minutes of the EEA Joint Committee Decision incorporating Regulation (EC) No 881/2004 into the Agreement.

'Following the adoption of the present EEA Joint Committee Decision and pending its entry into force, the Agency Administrative Board may decide to invite EFTA States' representatives to attend its meetings as observers'.