



Brussels, 2.6.2026  
COM(2026) 263 final

2026/0135 (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**

**(EDIP Regulation)**

(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**

#### **1.1. 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.

#### **1.2. 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.

#### **1.3. 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) 2025/2643 establishing the European Defence Industry Programme and a framework of measures to ensure the timely availability and supply of defence products<sup>1</sup>.

Iceland and Liechtenstein shall be exempted from participation in, and the financial contribution to, this Instrument.

The envisaged act is an expression of the very close cooperation between Norway and the European Union in the current geopolitical situation.

In line with the EU budgetary policy, any participation in an EU activity can take place only once the corresponding financial contribution is paid. The payment can however take place once the draft Council Decision is adopted and the subsequent EU call for funds, established by the European Commission, is submitted to the EEA EFTA States.

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<sup>1</sup> Regulation (EU) 2025/2643 of the European Parliament and of the Council of 16 December 2025 establishing the European Defence Industry Programme and a framework of measures to ensure the timely availability and supply of defence products, OJ L, 2025/2643, 29.12.2025.

Therefore, in order to bridge the period between 1 January 2026 and the reception of the respective payment, the envisaged act should also be retroactively applicable from 1 January 2026. The retroactivity does not affect the rights and obligations of persons concerned and respects the principle of the legitimate expectations.

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 the activities resulting from Regulation (EU) 2025/2643 establishing the European Defence Industry Programme and a framework of measures to ensure the timely availability and supply of defence products, which goes beyond what can be considered mere technical adaptations in the sense of Council Regulation (EC) No 2894/94<sup>2</sup>. The Union position shall therefore be established by the Council.

The annexed draft Decision of the EEA Joint Committee further contains the following main adaptations for the EEA EFTA States.

Under the system set up by the Joint Committee Decision, following the incorporation of the EDIP Regulation into the EEA Agreement, the competence of the Commission to adopt decisions relating to undertakings established in and/or located in the EFTA States, concerning the imposition of fines, is vested in the EFTA Surveillance Authority in the EFTA pillar (adaptations (ii) and (iii)).

The Commission is competent to take such binding measures only as regards undertakings established outside the EFTA States, while the competence to exercise the same powers is conferred to the EFTA Surveillance Authority as regards legal persons established in and/or located in the EFTA States.

The Commission may prepare a draft decision for the EFTA Surveillance Authority when it is deemed necessary to impose fines as regards undertakings established in and/or located in the EFTA States.

Decisions of the EFTA Surveillance Authority may be appealed before the EFTA Court pursuant to Article 36 of the Surveillance and Court Agreement. The EFTA Court is solely competent to review the lawfulness of the EFTA Surveillance Authority's decisions (adaptation (v)).

The allocation of the amounts of fines collected in the EFTA States by the EFTA Surveillance Authority shall be determined by the EFTA States (adaptation iv). This follows from the two pillar structure of the EEA Agreement and longstanding practice in adaptations when it comes to the allocation of fines.

The EEA EFTA States should also contribute financially to the activities referred to above. Iceland and Liechtenstein shall be exempted from participation in, and the financial contribution to, this Instrument.

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<sup>2</sup> Council Regulation (EC) No 2894/94 of 28 November 1994 concerning arrangements for implementing the Agreement on the European Economic Area, OJ L 305, 30.11.1994, p. 6.

## **4. LEGAL BASIS**

### **1.4. Procedural legal basis**

#### *1.4.1. 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*’<sup>3</sup>.

#### *1.4.2. 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 (EC) No 2894/94.

### **1.5. Substantive legal basis**

#### *1.5.1. Principles*

The substantive legal basis for a decision under Article 218(9) TFEU in conjunction with Article 1(3) of Council Regulation (EC) 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.

#### *1.5.2. 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) 2025/2643 establishing the European Defence Industry Programme and a framework of measures to ensure the timely availability and supply of defence products, it is appropriate to base this Council decision on the same substantive legal base as the Union act forming the subject of that cooperation. Therefore, the substantive legal basis of the proposed decision is Article 114(1), 173(3), 212(2) and 322(1) of the TFEU.

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<sup>3</sup> 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.

## **1.6. Conclusion**

The legal basis of the proposed decision should be Article 114(1), 173(3), 212(2) and 322(1), TFEU, in conjunction with Article 218(9) TFEU and Article 1(3) of Council Regulation (EC) No 2894/94.

## **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 to the EEA Agreement, it is appropriate to publish it in the *Official Journal of the European Union* after its adoption.

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**(EDIP Regulation)**

(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 114(1), 173(3), 212(2) and 322(1), 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 Area<sup>4</sup>, and in particular Article 1(3) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Agreement on the European Economic Area<sup>5</sup> ('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 to the EEA Agreement, on cooperation in specific fields outside the four freedoms.
- (3) It is appropriate to extend the cooperation of the Contracting Parties to the EEA Agreement to include Regulation (EU) 2025/2643 of the European Parliament and of the Council<sup>6</sup>.
- (4) Protocol 31 to the EEA Agreement therefore be amended accordingly to allow for this extended cooperation to take place.
- (5) The position of the Union within the EEA Joint Committee should therefore be based on the attached draft Decision,

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<sup>4</sup> OJ L 305, 30.11.1994, p. 6.

<sup>5</sup> OJ L 1, 3.1.1994, p. 3.

<sup>6</sup> Regulation (EU) 2025/2643 of the European Parliament and of the Council of 16 December 2025 establishing the European Defence Industry Programme and a framework of measures to ensure the timely availability and supply of defence products, OJ L, 2025/2643, 29.12.2025.

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 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*