THE ANATOMY OF DYNAMIC ALIGNMENT

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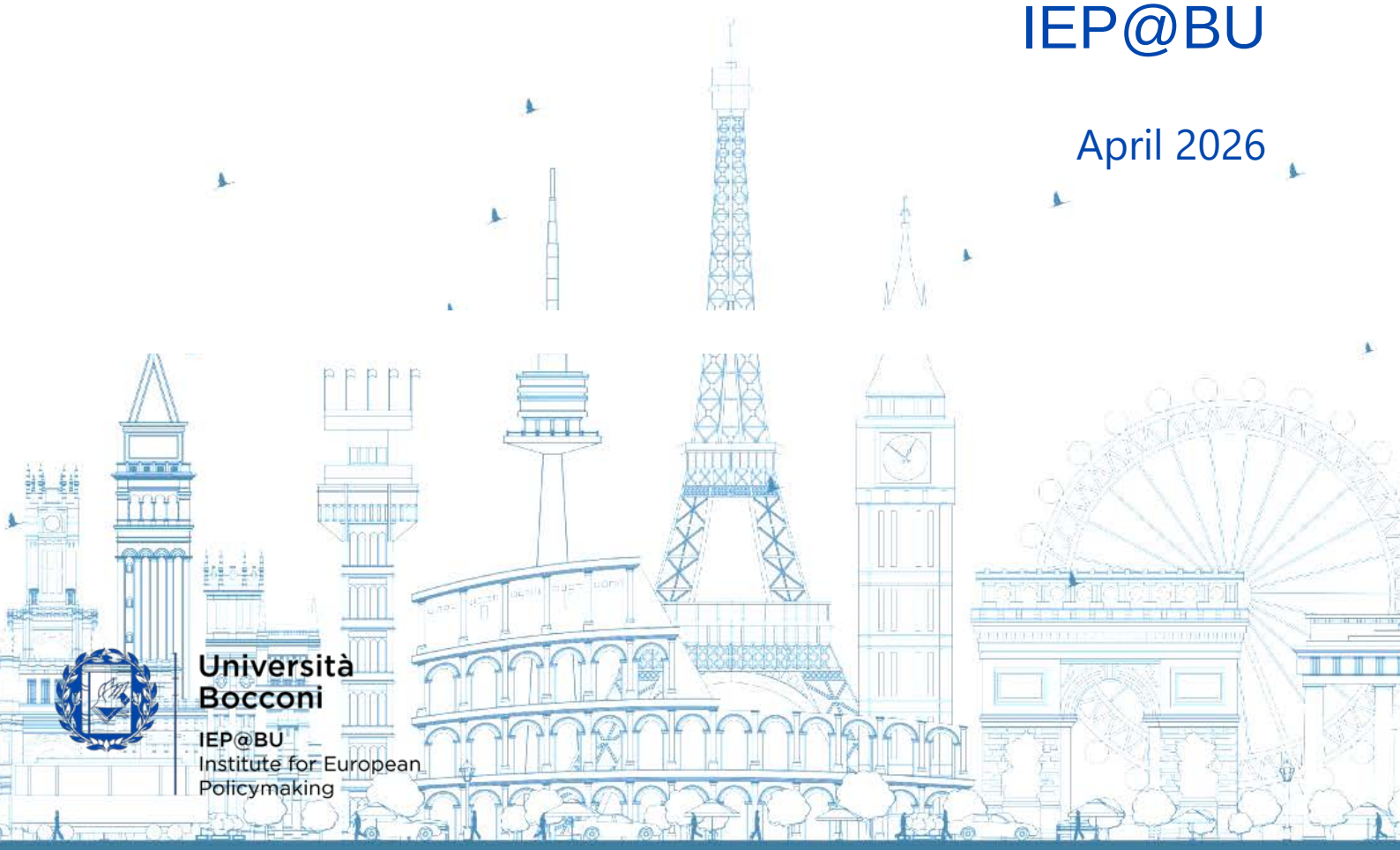

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Executive summary[1]

Dynamic alignment with relevant EU rules is a condition of UK access to three areas of the EU internal market, as envisaged in the "Common Understanding" that was agreed with the EU in May 2025. These are the electricity market, a sanitary and phytosanitary (SPS) area to facilitate the movement of agri-food products, and emissions trading, here referred to collectively as "the dynamic alignment areas". UK law will be required to continue to comply fully with the EU law applicable in those areas, as it develops.

The paper draws lessons from the existing models of dynamic alignment under the EEA Agreement and the agreements governing relations between the EU and Switzerland, in particular the recently signed EU/Swiss package, which includes a food safety protocol and an electricity agreement.

The UK seems likely to follow the Swiss model of including a separate set of provisions on dynamic alignment in each of the agreements governing EU/UK cooperation in the three dynamic alignment areas ("governing agreements").

"Decision-shaping" is the process that enables a non-EU Member State like the UK to avoid being a "rule-taker" pure and simple, by providing an opportunity to influence the development of EU legislation that will apply to it. The paper considers, in the light of EEA and Swiss experience, how well the process works and how the UK could get the most out of it.

The incorporation of EU acts into the law of the third country concerned necessitates an assessment of the relevance of draft legislation to the dynamic alignment areas covered by its agreement(s) with the EU, a process which, the EEA experience shows, leaves room for genuine disagreements. The established incorporation technique, which will presumably be adopted with respect to the UK, is for the relevant EU acts to be listed in an annex to each governing agreement, with a power to amend the annex when an existing act is amended or repealed or new legislation is adopted. A question to be decided is whether the listing of an EU act in the annex to a governing agreement should have the automatic effect of integrating the act into UK law; or whether incorporation should require UK legislation. The choice made will have an impact on the scope for Parliamentary scrutiny of the process.

The 2025 Common Understanding envisages an arbitration-based dispute settlement mechanism, which must ensure the ultimate authority of the CJEU on all questions of EU law. The paper examines arrangements under the EU/Swiss package as a possible model for the UK, concluding that a similar mechanism would preserve the international law character of the relationship between the UK and the EU.

Finally, the paper looks ahead to the possibility of more direct involvement of the UK (as well as of the EEA and Switzerland) in the decision-making processes of the EU.

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[1]The authors are members of the European and International Analysts Group (EIAG) and Fellows of the Institute for European Policymaking @ Bocconi University, under whose joint auspices this paper is published.

Introduction

The “renewed agenda” for EU/UK cooperation set by the Common Understanding of 19 May 2025 (“the May 2025 Common Understanding”) includes three items of which “dynamic alignment”` with relevant EU rules is identified as an essential component: participation by the UK in the EU’s internal electricity market; the establishment of a Common EU/UK Sanitary and Phytosanitary (SPS) Area; and the establishment of a link between the EU and UK Emission Trading Systems (collectively referred to in this paper as “dynamic alignment areas”). A similar requirement is liable to be imposed in other areas of rule-governed EU activity to which the UK may seek access in the future, e.g. the internal market for the defence industry.

Dynamic alignment is the obligation imposed on a third country, which is accorded the right to participate in an area of EU activity, to ensure that its domestic law is and will remain fully compliant with EU law in that area. The obligation implies that “initial alignment”, meaning that the domestic law of the third country concerned has been brought into compliance with relevant EU law, must have been achieved by the date when the agreed participation commences. “Dynamic alignment” requires that any subsequent changes to or developments of relevant EU law be reflected in corresponding changes to the third country’s domestic law.

This paper is designed to stimulate and inform debate on issues that need to be addressed in establishing a system of dynamic alignment such as that envisaged as a corollary of the evolving EU/UK relationship. It seeks to draw appropriate lessons from the main existing models of dynamic alignment, which are found in the arrangements governing the relationship between the EU and the three EFTA States belonging to the European Economic Area (EEA), namely Iceland, Liechtenstein and Norway, and between the EU and Switzerland.[2] The analysis will address the following topics:

- A uniform or sectoral approach to dynamic alignment?
- Decision-shaping.
- Incorporating EU acts.
- Dispute settlement and the Court of Justice of the EU (CJEU).

A uniform or sectoral approach to dynamic alignment?

Should there be a single agreement laying down a uniform set of provisions applicable to all three of the dynamic alignment areas currently envisaged for the UK (“the uniform approach”)? Or should a

[2] An important source of information regarding the practical application of the dynamic alignment system under the EEA Agreement is the Report entitled “Norway and the EEA: Development and Experience”, which was prepared by an independent committee established in 2022 and published in 2024. See Norwegian Official Reports 2024 No.7 (“Norway 2024 Report”). The authors are indebted to Professor Halvard Haukeland Fredriksen of the University of Bergen for drawing their attention to the Report and for generously sharing with them his profound knowledge of the EEA system. They have also benefited from the insights of individuals with direct experience of the functioning of dynamic alignment under the EEA Agreement and in the relationship between the EU and Switzerland. Warm thanks are also due to Professor Paola Mariani of IEP @ Bocconi for valuable research and insights on the Swiss experience of dynamic alignment.

separate set of provisions on dynamic alignment be included in each of the agreements governing EU/UK cooperation in those areas ("the sectoral approach")?

The EEA Agreement exemplifies the uniform approach. This chimes with its general objective of "creating a homogeneous European Economic Area".[3] The Agreement lays down the essential elements of a coherent system of dynamic alignment applicable throughout all the economic sectors that it covers (effectively, the whole of the EU's internal market).

In contrast to the EEA, the legal arrangements governing relations between the EU and Switzerland exemplify the sectoral approach. This is true both of the substance of the cooperation, based on a patchwork of bilateral agreements, and of the provision made for dynamic alignment, which however has hitherto been formally prescribed only with respect to Swiss participation in the Schengen border-free zone and in the asylum system of the Dublin Convention. In addition, Switzerland has chosen to align with EU legislation on an ad hoc basis in other fields, where this was seen as necessary to preserve its internal market access. An EU/Swiss cooperation package agreed last year and recently signed, though yet to be ratified, includes important new agreements, notably on food safety and on participation by Switzerland in the EU's internal electricity market, while updating some existing agreements ("the new EU/Swiss Package"). Dynamic alignment is provided for more systematically, but still on a sectoral basis, with similar alignment mechanisms under each of the agreements giving Switzerland access to some part of the EU internal market.

For the UK, the advantage of adopting the uniform approach would be that a set of established rules and procedures on dynamic alignment could automatically be extended to any new areas of cooperation (e.g. possible UK participation in the EU defence capability market), as the strategy of incremental rapprochement with the EU develops. However, the sectoral approach carries less political risk of being seen as a "betrayal of Brexit" and seems the more likely to be adopted, following the example of the new EU/Swiss Package.

Decision-shaping

A familiar objection to dynamic alignment is that the third country concerned becomes a "rule-taker", obliged to apply rules it had no part in enacting. "Decision-shaping" is the term used to describe the process that enables third countries subject to an obligation of dynamic alignment to exercise, in the course of the adoption of an EU measure that will eventually bind them, a degree of influence over its content. Provisions on decision-shaping (though not the term itself) are found in the EEA Agreement for the benefit if the EEA EFTA States.[4] There are similar provisions for Switzerland under agreements contained in the new EU/Swiss Package.[5]

[3] Article 1 EEA.
[4] See Articles 99 and 100 EEA. See also Norway 2024 Report, section 6.
[5] See, e.g., Article 12 of the Protocol to the Agreement between the Swiss Confederation and the European Community on Trade in Agricultural Products Establishing a Common Food Safety Area ("the EU/Swiss Food Safety Protocol") and the corresponding provisions of Article 26 of the Agreement between the European Union and the Swiss Confederation on Electricity ("the EU/Swiss Electricity Agreement").

The main elements of a decision-shaping system are:

- At the preparatory stage in the drafting of a proposal for a legal act of the EU in the field(s) covered by the agreement in question, the Commission informally consults experts from the third country concerned in the same way that it does those from the EU Member States. Effectively, the third country experts are placed on an equal footing with those from EU Member States. In practice, the UK experts are most likely to be civil servants from the relevant Government departments.
- Once the Commission has formally submitted its proposal to the European Parliament and the Council, at the request of either the third country or the EU, a preliminary exchange of views takes place within the Joint Committee established under the agreement in question. Further exchanges may occur, if requested by either Party, within the Joint Committee at important moments in the phase preceding the adoption of the act, "in a continuous process of information and consultation".[6]
- Experts from the third country concerned participate in the preparation of acts implementing EU legislation in the field covered by the agreement, with a view to their adoption under so-called "comitology" procedures. We understand that, in practice, EEA experts have been allowed to attend meetings of comitology committees, to receive documents and to contribute to discussions, as they wish; and, if a vote is taken, they are not normally asked to leave the room, but their presence is simply ignored.

The May 2025 Common Understanding expressly envisages a UK contribution to decision-shaping in all three dynamic alignment areas.[7] The relevant provisions of the future agreements relating to each area seem likely to reflect those of the new EU/Swiss package, as the most recent template of decision-shaping.

How effective could decision-shaping be in providing a realistic opportunity for the UK to influence aspects of future EU legislation in the dynamic alignment areas of particular concern to its national interests? Or, to put the question more positively, what can be done by the UK to maximise its chances of exerting such influence?

Those we have consulted with experience of both EEA and EU/Swiss decision-shaping were very clear that the best prospect of influencing the shape of EU legislative acts is through the contribution that well qualified and respected national experts are able to make at the preparatory stage, before the Commission's proposal crystallises, especially in fields where the third country experts are seen as likely to possess specialised knowledge (e.g. maritime transport or aquaculture, in the case of Norway).

To ensure the availability of appropriately qualified experts, when needed, it is important to anticipate legislative developments in the EU, by following the evolution of relevant Commission policies, expressed in Green or White Papers or in Statements, a task the EFTA Secretariat performs for the EEA EFTA countries.

Also, it has been suggested, a useful tactic is to seek agreement with representatives of EU Member

[6] The same phrase is found in both Article 99 (3) EEA and the corresponding provisions of the new EU/Swiss package, e.g. Article 12 (1), third subparagraph of the EU/Swiss Food Safety Protocol.
[7] May 2025 Common Understanding, paragraphs 21, 3w0 and 34.

States with a similar perspective on the proposal in preparation. This was standard practice for the UK as a Member State, consulting or being consulted in preparation for important meetings.

Following the submission of the Commission's proposal to the European Parliament and the Council, interactions between the EU and any concerned third countries remain possible, either formally within the relevant Joint Committee or informally with Commission Services, up to the point of the adoption of the legislation (hence the reference, above, to "a continuous process of information and consultation"). However, the engagement of the EU's political process, with the focus now on the search for a compromise text capable of commanding a qualified majority within the Council and the agreement of the European Parliament, it will be harder for third country views to get a hearing. At this stage, a technique developed by the EEA EFTA countries may prove useful, namely that of circulating to the Commission and EU Member States a written statement setting out a reasoned position on any aspect of the proposal giving cause for concern. [8]

Two instances of Swiss experts having influenced the shape of a specific EU act were cited to us: one on the carrying of firearms on public transport, explained by the obligations of military reservists; and the other on the cantonal organisation of police forces. We have been unable thus far to identify similarly concrete examples in the case of the EEA EFTA States. However, that is not surprising. The particular contribution to the shaping of an EU measure by the national experts of given Member States, so as to be recognisable at the end of the legislative process, is hardly more likely.

As always the proof of the pudding is to be found in the eating: the effort the authorities of the EEA EFTA States and Switzerland have considered it worthwhile to invest heavily in the decision-shaping process over time; and the fact that, with a few exceptions (as to which, see below) they have evidently been broadly content with the EU legislation they are called upon to apply.

It is important to remember that, uniquely among third countries, the UK has a sizeable territory closely linked to the EU by law and in daily practice: Northern Ireland. The success of decision-shaping and the familiarity it breeds would help consolidate and perhaps improve the special arrangements already in place there. The same may be said for Gibraltar.

Incorporating EU acts

The process of incorporating EU acts pursuant to a dynamic alignment obligation into the legal order of the third country concerned raises a number of issues, which existing practice, more particularly under the EEA Agreement, helps to illuminate.

The assessment of relevance

The first step in the process consists of the assessment of the relevance of EU acts to the area(s) of cooperation governed by the agreement in question. Such an assessment is necessary at the time when the governing agreement is being negotiated, regarding the whole body of existing EU legal acts that apply within the area(s) of the envisaged cooperation, to identify the acts with which the domestic law of the third country is required to be initially aligned. Subsequently, it will be needed

[8] These are known as "EEA EFTA Comments".

for the purposes of dynamic alignment, to take account of any changes to or developments of that body of acts, as they occur.

The third country concerned will evidently have an interest in limiting as far as possible the number and range of EU acts judged relevant at the outset of the cooperation, to control the extent of future dynamic alignment obligations. In particular, the argument for including acts of a horizontal nature (such as legislation on employment law or equal treatment), that this is necessary to ensure a level playing field in the area of cooperation, should be treated with circumspection, since it may be difficult to restrict any implementing domestic legislation to that area. Clear definition of the scope of the cooperation, and hence of potentially relevant EU acts, will help to avoid future disagreements leading to delays in alignment. This is another reason favouring a sectoral approach to dynamic alignment on the Swiss model.

Assessments of relevance, whether for initial or dynamic alignment purposes may leave room for legitimate disagreement, as the EEA experience shows. For example, while Norway was willing to accept the EEA relevance of Directive 2000/78 on equal treatment in employment and occupation, we understand that Iceland and Liechtenstein were not, and the disagreement between the EEA EFTA States was accepted by the EU as a reason for not incorporating the Directive into the EEA Agreement (though Norway chose to implement it independently).[9] A possible lesson for the UK is that it should be willing to stand its ground, if a well-reasoned case can be made for the exclusion of a particular text as non-relevant.

At the same time, the Norway 2024 Report notes that assessments are becoming more difficult, owing in particular to an increasing tendency of the EU to adopt cross-sectoral acts and legislative packages of which some parts are clearly EEA-relevant but others not. [10]

Incorporation into the governing agreement

The standard technique for incorporating relevant EU acts into the governing agreement is by listing them in an annex or annexes to the agreement. The EEA Agreement has no less than 22 Annexes containing the EU acts relating to each of the different economic sectors it covers. The Agreements in the new EU/Swiss Package that require dynamic alignment are each similarly equipped with an annex of relevant EU acts.

Presumably, the same technique of listing relevant EU acts in annexes to the governing agreement, and of amending those annexes as subsequently required, will be followed with regard to the three dynamic alignment areas identified in the May 2025 Common Understanding. Indeed, the lists of legal acts in annexes to the EU/Swiss Food Safety Protocol and the EU/Swiss Electricity Agreement may provide helpful models for the EU/UK Electricity Market and SPS Agreements.

The establishment of the original annex (or annexes), designed to ensure the initial alignment of a third country's domestic legislation with relevant EU acts, will be part of the process of negotiating the governing agreement. The compilation of the annex(es) may entail negotiating adaptations to acts that the EU wishes to list as relevant, to accommodate technical or administrative requirements of the third country or to address more substantive issues perceived to affect its vital interests.

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[9] *Ibid*, paragraph 6.4.2.
[10] Norway 2024 Report, paragraph 5.5.1.

New EU legislation that amends or supplements any listed act or that further develops EU law relevant to the area of cooperation is incorporated into the governing agreement by amending the appropriate annex. Such amendment takes place by agreement between the EU and the third country concerned within the Joint Committee (or other similar organ) of the agreement. Under the decision-shaping mechanism of the governing agreement, as described above, the third country will have had an opportunity to influence the development of the legislative text that has now been adopted by the EU. The incorporation procedure provides a last opportunity for the third country to secure adaptations to the act as adopted.

A detailed account of the procedures for incorporating EU acts into the EEA Agreement has been produced by the EFTA Secretariat.[11] In brief, the incorporation process entails the preparation of a draft Joint Committee decision by the EFTA Secretariat, the consideration of the draft decision by the appropriate EU bodies and its eventual adoption by the EEA Joint Committee. If the EEA EFTA States require no adaptations to the EU act in question, or adaptations that are purely technical (such as inserting the names of national entities), the Secretariat General of the Commission is authorised to adopt the draft decision in the Joint Committee, acting on the EU's behalf. If, however, substantive adaptations are required, the EU's position must be determined by the EU Council. There may have to be several rounds of amendments and counter-amendments before the consensus is reached that enables the EEA Joint Committee to adopt the draft decision. *Mutatis mutandis*, the Handbook may provide useful pointers for the future organisation for incorporating EU acts into the agreements governing EU/UK cooperation in the dynamic alignment areas.

A lesson that can be drawn from the EEA experience is that, while purely technical adaptations may be readily accepted by the EU, there is very limited scope for exemptions and adaptations based on the specifically national concerns of a third country. [12]

A further lesson is that the requirement of unanimity for the adoption of the Joint Committee decision on the incorporation of a new EU act may provide an opportunity for delay, allowing a political breathing space, where the implementation of the decision is liable to encounter strong opposition in the third country.[13] In the past, the Commission has shown a measure of tolerance for such delays. However, we have been told that the Commission is unhappy with this aspect of the functioning of the EEA Agreement and it would be unwise to expect the same indulgence in the future.

Incorporation into the third country's legal order

What effect does the incorporation of relevant EU acts into the governing agreement pursuant to a dynamic alignment obligation have upon the internal legal order of the third country concerned? One possibility is that the decision to list an EU act causes its automatic integration into the law of that country, by way of a direct effect mechanism established by the agreement. A second possibility is that the incorporation of every such act requires the systematic adoption of national legislation by the third country.

Article 7 EEA says that acts contained in the Annexes to the Agreement or in decisions of the EEA Joint Committee "shall be binding upon the Contracting Parties and **be or be made** part of their

[11] See EFTA Bulletin, October 2016.
[12] Norway 2004 Report, paragraph 6.4.3.
[13] *Ibid*, paragraph 6.4.4.

internal legal order…".[14] The emboldened phrase seems to indicate that the Parties are being given a choice between the two possibilities. At all events, Norway has clearly opted for the second; EEA acts are incorporated into Norwegian law by primary or secondary legislation. In contrast, the language used in agreements contained in the new EU/Swiss Package is strongly suggestive of the direct effect approach. Thus Article 13 of the EU/Swiss Food Safety Protocol provides that legal acts incorporated into the Protocol "shall be, by their integration into this Protocol, part of the legal order of Switzerland…".

There seems little doubt that the UK will opt for incorporation by legislation: the system of incorporation through direct effect would surely be anathematised as the start of a slippery slope towards rejoining the EU. It will be important for the drafting of the governing agreements in the dynamic alignment areas to spell out this choice clearly.

A further advantage of opting for incorporation by legislation is that it would strengthen Parliamentary scrutiny, if the EU acts listed in the annexes to governing agreements could only become binding law in the UK by way of statutes or of statutory instruments adopted under negative or positive resolution procedures.

Special arrangements are available under the EEA Agreement and under the new EU/Swiss Package to provide some leeway for the third country concerned, in implementing Joint Committee decisions on the incorporation of relevant EU acts, where it can point to constitutional requirements that have to be fulfilled.[15] The UK will presumably ask for a similar mechanism, e.g. to cater for any complexities arising out of the devolution settlements.

Dispute settlement and the role of the CJEU

The May 2025 Common Understanding envisages a dispute settlement mechanism under the agreements governing the three dynamic alignment areas, in the form of an independent arbitration panel that must ensure the ultimate authority of the CJEU on all questions of EU law.[16] How would such a mechanism operate and what would be the relationship between the CJEU and the courts of the UK in the dynamic alignment areas?

On this matter, the experience of the EEA EFTA States offers no direct guidance, since the enforcement of their obligations of alignment with EU law pursuant to the EEA Agreement is the task of independent supranational organs specially created for the purpose, the EFTA Surveillance Authority and the EFTA Court. A model for the dispute settlement mechanism applicable to the UK is rather to be sought in the new EU/Swiss Package, under which enforcement on the Swiss side is left in the hands of the competent national administrative and judicial authorities within the framework of international obligations imposed on Switzerland by the governing agreements.

Once again, the EU/Swiss Food Safety Protocol provides an instructive example. Article 20 lays down a procedure "in the event of difficulty of interpretation or application of this Protocol or of a legal

[14] Emphasis added.
[15] See Article 103 EEA and Article14 of the EU/Swiss Food Safety Protocol.
[16] May 2025 Common Understanding, paragraphs 21, 29 and 43.

act of the Union to which reference is made in this Protocol".[17] The phrase "difficulty of interpretation or application" is worth remarking on. It is broad enough to cover not only the case of alleged infringements by one of the Parties of its obligations under the Protocol (if, e.g., the Commission considers that the Swiss authorities have wrongly implemented an EU act listed in Annex I (2) to the Protocol, or that Swiss courts are failing to interpret the provisions of such an act in accordance with case law of the CJEU, as Article 17 (2) requires them to do) but also where genuine differences of opinion occur at the earlier stage of assessing the relevance of a new piece of EU legislation to the area of cooperation governed by the Protocol. The lack of an arbitral mechanism for resolving differences at this stage may help to account for the serious backlog in the implementation of EU acts by the EEA Joint Committee.[18]

The dispute settlement mechanism of Article 20 has classic international law features:

- The procedure can only be triggered by the Parties to the Protocol, namely the EU (in practice, the Commission) or Switzerland. There is no legal process through which an individual or business, adversely affected, e.g., by an interpretation of a listed EU act by Swiss courts or authorities that they consider erroneous, may obtain a ruling on the issue by the CJEU, even indirectly.[19]
- A compulsory first step in the procedure is the holding of consultations within the Joint Committee on Food Safety. If no solution to the difficulty is found within three months of its submission to the Joint Committee, either Party may request that an arbitral tribunal settle the dispute.
- Article 20 (3) establishes a reference procedure evidently designed to protect the CJEU's ultimate authority on questions of EU law. Where a dispute raises a question concerning the interpretation or application of a provision of an EU act referred to in the Protocol, or of a provision of the Protocol itself the application of which involves concepts of Union law, and the interpretation of that provision is relevant to the settlement of the dispute and necessary to enable the arbitral tribunal to reach a decision, the tribunal must refer the question to the CJEU.[20] The ruling by the CJEU on the question referred to it will bind the arbitral tribunal, which must apply the ruling in deciding the dispute.[21]

[17] The EU acts in question are, presumably, those listed in Annex I (2) to the Protocol. See also Article 32 of the EU/Swiss Electricity Agreement.
[18] We understand that there is currently a backlog of some 600 EU acts awaiting a decision by the EEA Joint Committee. However, the great bulk of such acts are implementing measures of the Commission. Delay in the incorporation of an important piece of legislation may lead to the blockage of dozens of such measures.
[19] As could be obtained within the EU legal order, by way of the preliminary reference procedure of Article 267 of the Treaty on the Functioning of the European Union. This would allow an aggrieved individual to start proceedings in the national courts of the Member State concerned and ask for a reference to be made to the CJEU for a preliminary ruling on the interpretation of the EU provision(s) in question. Any such ruling by the CJEU has binding legal effect *erga omnes.*
[20] Reading Article 20 (3), EU/Swiss Food Safety Protocol with Article 17 (2) of the Protocol, to which it cross-refers. Article 17 (2) requires the EU acts referred to in the Protocol and provisions of the Protocol, to the extent that their application involves concepts of EU law, to be interpreted and applied in accordance with the case law of the CJEU. It is not clear which provisions of the Protocol may be said to "involve concepts of Union law" in their application. Clear examples of such provisions can be found in Part III of the EU/Swiss Electricity Agreement, which concerns State aid.
[21] Article 20 (4).

- The decision of the tribunal will impose on the Parties an international obligation to take all the measures necessary to comply with it in good faith.[22] Failure so to comply by the Party found by the tribunal to be in default will give the other Party the right to adopt "proportionate compensatory measures".[23]

An arbitration-based dispute settlement mechanism of that kind would meet the requirements of the May 2025 Common Understanding, including as regards the role of the CJEU, while preserving the international law character of the EU/UK relationship as envisaged by the Trade and Cooperation Agreement of 2020.

Looking ahead

While there is much to be learned from the experience of dynamic alignment of the EEA EFTA countries and Switzerland, it is legitimate to wonder if a status equivalent to theirs, as rule-shapers and not merely rule-takers in their relations with the EU, will be found acceptable by the UK beyond the immediate term. The paper, it is hoped, may help to provoke a debate ranging beyond the practicalities of implementing a dynamic alignment system, to explore ways in which the UK (and presumably those other countries) might achieve a deeper involvement in the decision-making processes of the EU, while remaining outside the Union. This would require a greater degree of flexibility, particularly on the Commission's side, than is presently apparent. However, there are precedents giving modest grounds for optimism that the necessary effort of imagination may eventually be made: past UK experience of opt-outs and opt-ins; the EU's long and continuing tolerance of "cherry-picking" by Switzerland; the variable geometry of the Schengen system; ideas for the association of candidate countries like Ukraine in the EU institutions; and the overwhelming necessity of closer European cooperation in the present perilous geopolitical conjuncture. The UK must be ready with ideas to help this process forward.

[22] Article 20 (5) *ibid*.
[23] Article 21 *ibid.*

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