

15th
anniversary
EEA Agreement

European Economic Area 1994-2009



EFTA commemorative publication

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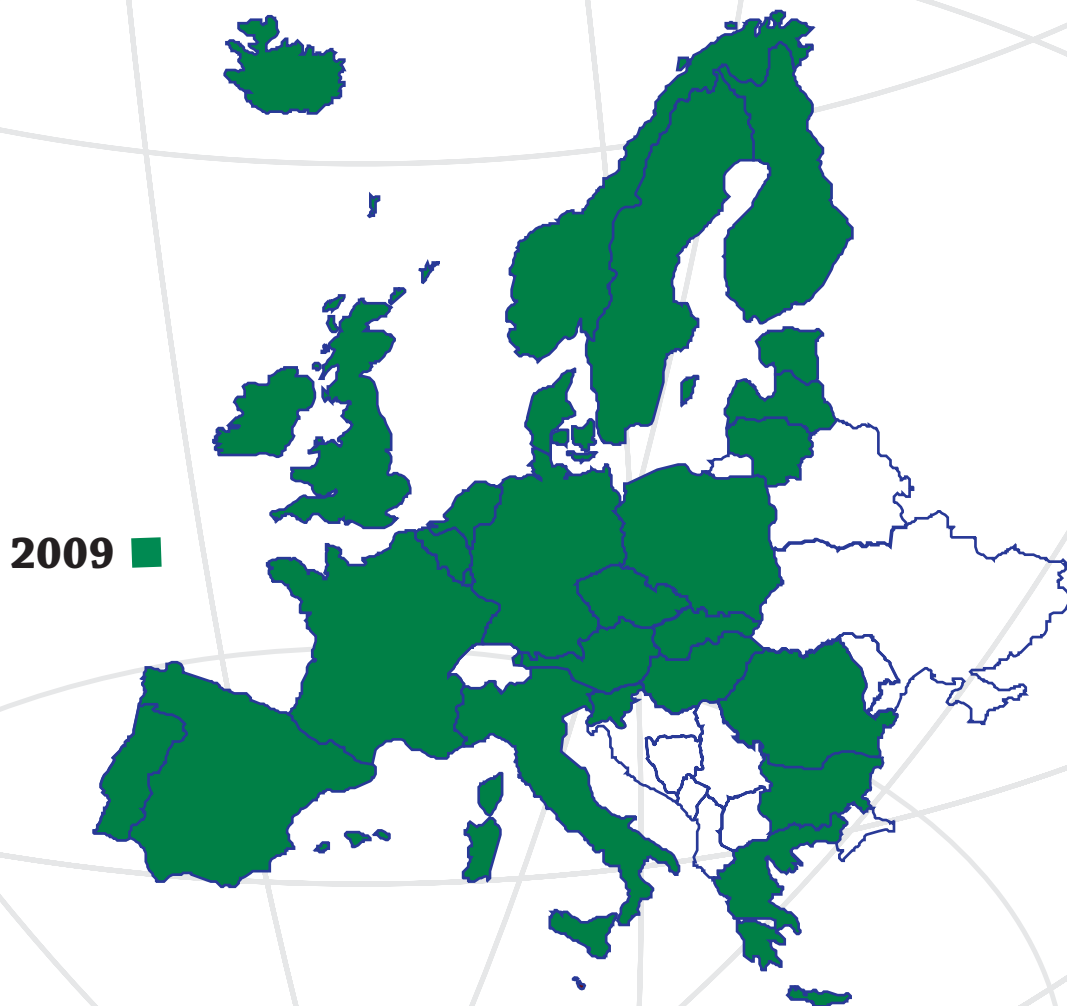
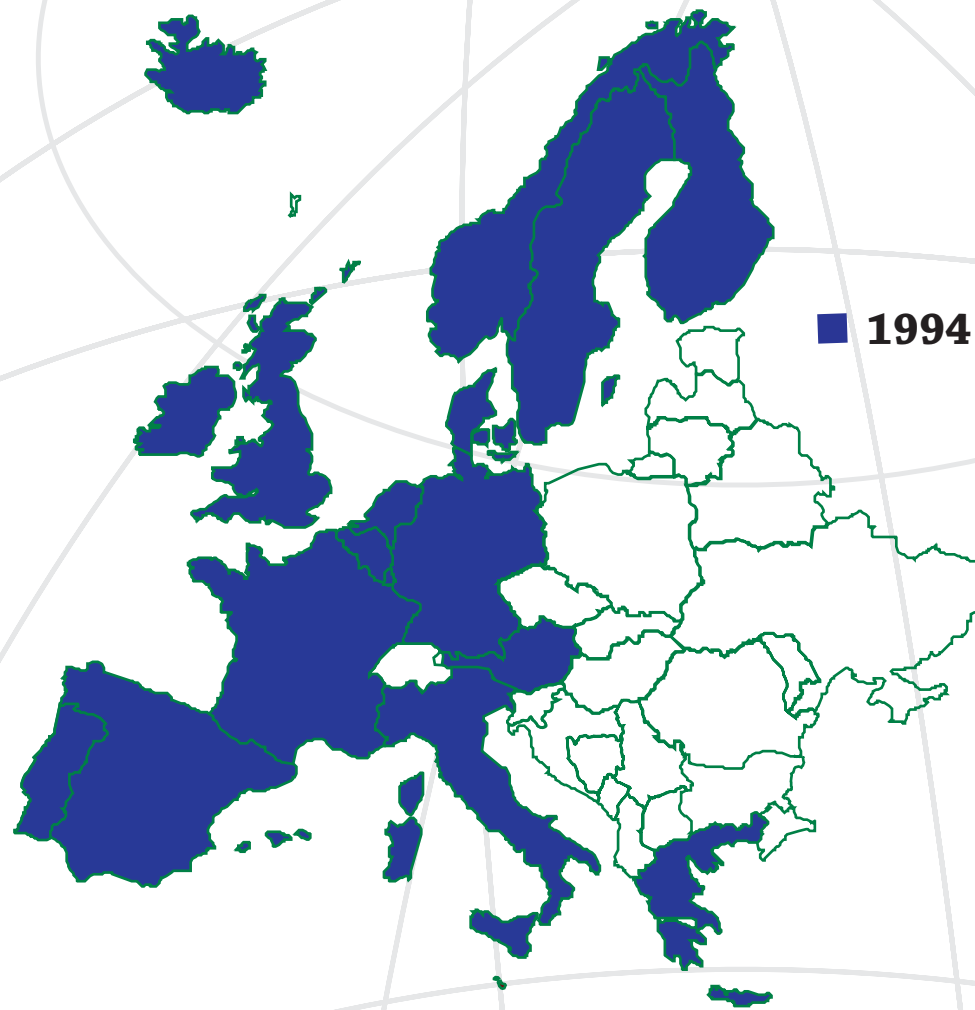
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Kåre Bryn

This year we celebrate the 15th anniversary of the Agreement on the European Economic Area. Signed on 2 May 1992, the Agreement, which extends the Internal Market of the EU to the EFTA States Iceland, Liechtenstein and Norway, has been in force since 1 January 1994. Today, the EEA comprises 30 European countries with almost 500 million people.

Within the EEA the basic principles of the Internal Market apply, namely the free movement of goods, services, capital and persons. In practice this means that throughout the EEA, economic operators and citizens from the EEA EFTA States enjoy the same rights and have the same obligations in the areas covered by the Agreement as their counterparts from the EU.

When the negotiations of the EEA Agreement started in 1989 the then European Community had 12 Member States. EFTA consisted of Austria, Finland, Iceland, Norway, Sweden and Switzerland. Liechtenstein joined EFTA in 1991. Shortly after the signature of the Agreement in 1992, Switzerland rejected the EEA in a referendum. This was a period when Europe as a whole stood at a crossroads. The end of the Cold War was in sight and thus the end of the division of Europe. These dramatic changes helped pave the way for Austria, Finland and Sweden to choose membership in the EU in 1995. Consequently, the EFTA pillar of the EEA has since then consisted of

‘ Irrespective of the positive cooperation, however, there are special challenges for the EEA EFTA States in their involvement in the development of EU legislation, which they eventually will be bound by. ’

Iceland, Liechtenstein and Norway. Successive EU enlargements have increased the number of parties to the EEA to 30. Thus, the EEA of 2009 differs considerably from what was originally envisaged, both on the EU and the EFTA side.

The fundamental changes in the political and economic landscape of Europe over the last 15 years have led many to predict that the EEA would be a short-lived experiment. When the EEA was negotiated in the early 1990s, probably few imagined that not only would the EEA survive and thrive, but would eventually become the largest single market in the world. But that is exactly what has happened.

At the same time, we do not close our eyes to the challenges that these changes have had and will continue to have for the effective functioning of the EEA Agreement. The profound transformation of EU, not least in institutional and policy-making terms as well as the enlargements, have been met with close and pragmatic cooperation and mutual goodwill on all sides. Irrespective of the positive cooperation, however, there are special challenges for the EEA EFTA States in their involvement in the development of EU legislation, which they eventually will be bound by.

The 15th anniversary of the entry into force of the EEA Agreement provides a timely occasion to look back at the creation of this extended Internal Market, one of the great achievements of economic integration in Europe.



■ The 31st EEA Council took place in Brussels on 19 May 2009. From left to right: Dr Aurelia Frick, Minister of Foreign Affairs of Liechtenstein; Prince Nicolaus of Liechtenstein, Head of the Mission of Liechtenstein to the EU; Marteinn Eyjólfsson, Ministry of Foreign Affairs of Iceland; Ambassador Stefán Haukur Jóhannesson, Head of the Mission of Iceland to the EU; Mr Össur Skarphéðinsson, Minister of Foreign Affairs of Iceland; Mr Jonas Gahr Støre, Minister of Foreign Affairs of Norway; Ambassador Oda Sletnes, Head of the Mission of Norway to the EU; Christian Syse, Ministry of Foreign Affairs of Norway; Kåre Bryn, Secretary-General of EFTA; Bergdis Ellertsdóttir, Deputy Secretary-General of EFTA; Lars Erik Nordgaard, EFTA Secretariat.

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This commemorative publication revisits the origins of the EEA, and reproduces extracts of some of the key official texts and documents from the time of its inception, supplemented by pictures from the period.

We also invited several of the main protagonists of the EEA, including some of the key political leaders in the EFTA States and the negotiators of the Agreement, both from the EFTA and the EU side, to give their personal accounts. Our request was received with the enthusiasm evident in the various contributions. Their original, informative and at times thought-provoking essays include anecdotes and personal impressions from the negotiations, reflections on how the EEA has evolved, and, not least, informed views on the future prospects of the EEA. The President of the EFTA Surveillance Authority and the President of the EFTA Court have also contributed highly interesting accounts of the development of our two sister organisations which were created by the Agreement.

In sum, the contributions highlight the challenges from the different perspectives which the negotiators faced at the time. The EEA was, and remains, a unique

project, challenging some of the key concepts of European integration. It remains the most comprehensive treaty ever concluded by the EU and by the EFTA States. And, despite the monumental changes which have occurred in Europe, the Agreement has to this date delivered results in accordance with its original intentions.

We would like to extend our gratitude to all the contributors to this commemorative publication. We are particularly appreciative of the essays by former Prime Minister of Norway, Dr Gro Harlem Brundtland and former Foreign Minister of Iceland, Mr Jón Baldvin Hannibalsson.

Kåre Bryn

Secretary-General



The starting point

At the initiative of EFTA, the first multilateral EC-EFTA meeting at ministerial level was convened in Luxembourg on 9 April 1984. EFTA and the EC agreed to intensify economic cooperation and launched a process culminating in a series of agreements to ease or remove trade barriers between the two sides. These agreements would lay the ground for the EEA Agreement.

French Foreign Minister Claude Cheysson (left) discussing the Luxembourg Declaration with Swedish Trade Minister Mats Hellström.



■ *The EC-EFTA ministerial meeting in Luxembourg on 9 April 1984.*

The Luxembourg Declaration (extracts)

EC-EFTA ministerial meeting, 9 April 1984

Ministers were therefore convinced of the importance of further actions to consolidate and strengthen cooperation, with the aim of creating a dynamic European economic space of benefit to their countries.

With this in mind, Ministers considered it essential ... to pursue their efforts towards improving the free circulation of the industrial products of their countries, in particular in the following areas: harmonisation of standards, elimination of technical barriers, simplification of border formalities and rules of origin, elimination of unfair trading practices [and]

state aid contrary to the Free Trade Agreements, and access to government procurement. In this regard the Community's efforts to strengthen its internal market are of particular relevance. Ministers are confident that, as in the past, it will prove possible to find well-balanced solutions, based on reciprocity, in the spirit of the Free Trade Agreements.

Ministers stressed the importance of continued pragmatic and flexible cooperation between the Community and its Member States and the EFTA States beyond the framework of the Agreements.

The Way It All Started: A very personal account of events leading up to the Agreement on the European Economic Area

By Georg Reisch, Secretary-General of EFTA from 1988 to 1994

After I had been appointed to the post of Permanent Representative of Austria to the UN and other international organisations in Geneva in 1983, participation in the EFTA Council and its activities became part of my responsibilities. The main focus of the EFTA agenda at the time was to try to improve and expand the trade relations of its members with the then European Community (EC) on the basis of the existing Free Trade Agreements. The EC was the most important trading partner of all EFTA States and, in turn, the EFTA States were by far the most important trading partner of the EC. EFTA meetings at all levels were characterized by a congenial and constructive atmosphere which became commonly known as "the EFTA spirit".

In January 1989, soon after my election to the post of Secretary-General of EFTA, the then President of the European Commission, Jacques Delors, in a speech before the European Parliament, proposed to the EFTA States a new form of a more effective and structured cooperation with joint institutions and new organs. At the time when some EFTA States began reflecting on the possibility of a full membership in the EC, this offer opened a new dimension in EFTA-EC relationships and a possible alternative to full membership.

■ *George Reisch, EFTA Secretary-General 1988-1994, with Austria's Minister for Economic Affairs Wolfgang Schüssel during the Austrian Chairmanship of the EFTA Council in the first half of 1991.*



Fascinated by this new idea – but perhaps also somewhat frightened by the prospect of having to take over the entire *acquis communautaire* in the fields covered by such an agreement – the EFTA States embarked on a period of intensive brainstorming with the Commission. There was no model or pattern to go by and no precise idea existed as to what such a structured relationship should look like, what organs would have to be created and which form of EFTA participation in EC decision-making – if any – would be possible. It was new territory to both sides and all implications had to be considered. For the EFTA States it soon became clear that it was paramount for them to speak “with one voice” in these negotiations, which required intensive and lengthy preparatory consultations before each of the joint meetings that frequently lasted into the late hours of the night. For the EFTA Secretariat, the whole process resulted in an enormously increased workload, and required the hiring of additional expertise, an increase in budgetary resources and other measures such as the opening of an EFTA office in Brussels. In retrospect, the years 1989 to early 1992 were probably the most challenging and intellectually captivating period in EFTA's history.

After many unexpected roadblocks – not least the negative outcome of the Swiss referendum which required numerous adjustments to the Agreement – the Treaty was finally signed at a formal meeting in Oporto in May 1992. The negotiations leading up to

this result were presumably the most complex and comprehensive ever conducted by any of the parties to the agreement. The complete set of documents including annexes and lists, kindly provided by the host country to each delegation, were too heavy to be taken home by air!

For those EFTA States which later decided to join the new EU, the Agreement on the European Economic Area spared them detailed accession negotiations; for those who remained in EFTA, it was and still serves as the basis of their relations with the EU. Although this agreement was definitely tailor-made for the EFTA States and therefore cannot as such be applied to any other potential partner, the rich experience gained in these negotiations and some of the basic concepts developed might prove their usefulness again in the future.

‘ In retrospect, the years 1989 to early 1992 were probably the most challenging and intellectually captivating period in EFTA's history. ’

■ *Swiss Federal Councillor Jean-Claude Delamuraz (left) and EFTA Secretary-General Georg Reisch at the inauguration of the second EFTA office in Brussels, which was in use from 1990 to 1993.*



The Delors initiative

The EC's plan to establish a single market by 1992 posed a challenge for EC-EFTA relations. In January 1989, President of the European Commission Jacques Delors proposed a significant upgrade of relations with EFTA, including "common decision-making and administrative institutions". This initiative was welcomed by the EFTA side, calling for the creation of a "dynamic and homogenous European Economic Space".

Jacques Delors, President of the European Commission 1985-1995.



Statement on the broad lines of Commission policy (extracts)

Jacques Delors, President of the European Commission
Strasbourg, 17 January 1989

... As far as the 'other Europeans' are concerned, the question is quite simple: how do we reconcile the successful integration of the Twelve without rebuffing those who are just as entitled to call themselves Europeans? As you know, the Commission has already adopted a position on this: internal development takes priority over enlargement. Nothing must distract us from our duty to make a success of the Single Act...

Let us consider our close EFTA friends first. We have been travelling with them along the path opened up by the Luxembourg Declaration of 1984 on the strengthening of pragmatic cooperation. With each step we take the slope is getting steeper. We are coming up to the point where the climber wants to stop to get his breath, to check that he is going in the right direction and that he is properly equipped to go on. There are two options:



■ Jacques Delors (third from left) during the EC-EFTA ministerial meeting in Brussels on 20 March 1989.

(i) we can stick to our present relations, essentially bilateral, with the ultimate aim of creating a free trade area encompassing the Community and EFTA;

(ii) or, alternatively, we can look for a new, more structured partnership with common decision-making and administrative institutions to make our activities more effective and to highlight the political dimension of our cooperation in the economic, social, financial and cultural spheres.

It would be premature to go into the details of this institutional framework. I have my own ideas, but they need to be discussed by the new Commission and then informally, without obligation, with the countries concerned.

It should be noted however that the options would change if EFTA were to strengthen its own structures. In that case the framework for cooperation would rest on the two pillars of our organizations. If it did not, we would simply have a system based on Community rules, which could be extended — in specific areas — to interested EFTA countries and then perhaps, at some date in the future, to other European nations.

But if we leave the institutional aspect of such a venture aside for a moment and focus on the substance of this broader-based cooperation, several delicate questions arise. It becomes clear in fact that our EFTA friends are basically attracted, in varying degrees, by the prospect of enjoying the benefits of a frontier-free market. But we all know that the single market forms a whole with its advantages and disadvantages, its possibilities and limitations. Can our EFTA friends be allowed to pick and choose? I have some misgivings here.

The single market is first and foremost a customs union. Are our partners prepared to abide by the common commercial policy that any customs union must apply to outsiders? Do they share our basic conceptions? The single market also implies

harmonization. Are our partners willing to transpose the common rules essential to the free movement of goods into their domestic law and, in consequence, accept the supervision of the Court of Justice, which has demonstrated its outstanding competence and impartiality? The same question arises in connection with state aids and the social conditions of fair competition directed towards better living and working conditions. These are the questions that arise; these are the questions we will be asking.

‘...we can look for a new, more structured partnership with common decision-making and administrative institutions...’

But the Community is much more than a large market. It is a frontier-free economic and social area on the way to becoming a political union entailing closer cooperation on foreign policy and security. The marriage contract is, as it were, indissoluble, even though its clauses have not been applied in full. Only that *affectio societatis* which binds our 12 countries enables us to rise above the difficulties and contradictions, to advance in all areas of our collective activity. It is extremely difficult, within this all-embracing union, to provide a choice of menus.

These comments are simply designed to fuel the discussion that is already under way in each EFTA country. These issues will no doubt be on the agenda for the next EFTA meeting, to be held in March with Norway in the chair. My own feeling is that the Twelve must be prepared for a full and frank discussion of the scope for closer cooperation with the EFTA countries...

Gro Harlem Brundtland

Prime Minister of Norway 1981, 1986–1989, 1990–1996

From the middle of the 1980's, the EC embarked on a dynamic policy to develop a common market for goods, services, capital and labour. Our most important trading partner was changing, fast. Norway and EFTA needed to change as well.

Already in 1986, during the official visit to Norway of the president of the European Commission, Jacques Delors, it became clear that we could agree on the desirability of a comprehensive agreement between the European Free Trade Association (EFTA) and the European Community (EC). We had both governed under difficult political and economic conditions, and experienced the limits of what one country could achieve on its own. As social democrats we shared the vision of inclusive welfare states.

The EFTA summit which I hosted in Oslo in March 1989 laid the foundation for joint EFTA negotiations with the EC. Both in dealings with the EC and with our EFTA partners, the personal relations between the principals played a decisive role in reaching an understanding. My Swiss colleague Jean Pascal Delamuraz certainly was crucial in getting the Swiss on board although, as we now know, they opted out of the process at a later stage.

Most people have forgotten that many at the time were of the opinion that it would not be possible to create a legal and institutional bridge between the EC and EFTA. Others saw this as undesirable, either because they were against the EC or because they wanted full membership. It is true that we needed to create something entirely new, in an environment which was challenging. Still, with creativity and persistence it turned out to be possible to establish the European Economic Area (EEA).

The EEA negotiations took place against the background of a situation in which we had experienced a shrinking of GDP and a number of bank failures, not unlike the situation many countries are facing today. An important precondition for improving the economic situation was to widen and deepen our cooperation with other countries. I believe this is the way forward today as well.

‘...with creativity and persistence it turned out to be possible to establish the European Economic Area (EEA).’



■ Gro Harlem Brundtland in conversation with Trade Minister Bjørn Tore Godal during the debate on the EEA in Stortinget in 1992. Photo: Helge Mikalsen / SCANPIX.



■ EFTA Heads of Government met in Oslo on 11-12 March 1989 to discuss a response to the Delors initiative.

The Oslo Declaration

Meeting of the Heads of Government of the EFTA countries, 15 March 1989

We, the Heads of Government of the Member States of the European Free Trade Association, met in Oslo on 14 and 15 March 1989 to discuss EFTA's contribution to European integration, the relations between the EFTA States and the European Community and EFTA's objectives in a global context.

We give our positive response to Mr. Delors' initiative and declare our readiness to explore together with the EC ways and means to achieve a more structured partnership with common decision-making and administrative institutions in order to make our co-operation more effective.

**‘ We give our positive response to
Mr. Delors' initiative... ’**



■ Jón Baldvin Hannibalsson (second from left) with Secretary-General Reisch (left) and EFTA ministers.

Delors' Baby

Jón Baldvin Hannibalsson, Minister of Finance and Foreign Affairs of Iceland 1987–1995

The EEA Agreement is a product of the Cold War era. Five of us defined ourselves as neutral or outside alliances. Two of us were NATO members, but suspicious of the European Community for different reasons.

We were small nations in terms of population, but strong in terms of trade and economics. This awkward mix meant that we were marginal vis-à-vis the process of European integration. Somehow this gap had to be bridged.

Jacques Delors – still today the greatest of the EU Commission presidents – was the consummate political fixer. In his time he had saved the

Mitterand regime from floundering on the rocks of out-of-date economics. Now he proposed to square the circle with us.

The EEA is Delors' baby. It is the product of Gallic logic and Nordic/Alpine flexibility. It was designed to be a bridge across the Cold War divide. When the Berlin Wall came tumbling down, it became in fact obsolete.

All of the neutrals soon got the message and behaved accordingly. They crossed the bridge safely into the EU, fifteen years ago. The three loners – Norway, Iceland and Lichtenstein – are still hesitating at the wrong end of the bridge, counting their losses for fifteen years.

In the more than one thousand year history of the Icelandic Althingi, no issue – not even the adoption of Christianity – has been more hotly debated than the EEA. Only the social democrats gave it unqualified support from the beginning to the end.

The conservatives were against it while they were in opposition, but after joining the government the majority of them came to accept it. The socialists and the agrarians gave it their blessing at the beginning but turned their back on it when they went into opposition. It was adopted almost by default.

‘ The EEA is Delors' baby. It is the product of Gallic logic and Nordic/Alpine flexibility. ’

For 15 years the EEA Agreement has been Iceland's mainstay in its relationship with Europe. It gave our island nation a home market of 500 million customers at one stroke. This cleared the way for Iceland's economic miracle. Accordingly, almost everyone thought the EEA was so marvellous that we need not bother to take the final step into the EU.

Now that Iceland has earned the dubious reputation of becoming the first rich country to fall victim to the international financial crisis, the EEA Agreement is suddenly being blamed for the fall. Thus the EEA is deemed to be the root cause of both the Rise and Fall of the island nation of the high north.

This is not a bad record at all. And it might even be a worthy obituary, if we ever summon the courage to cross the bridge we built 15 years ago.



■ Jón Baldvin Hannibalsson with Commission President Jacques Delors and Steingrímur Hermannsson, Prime Minister of Iceland (1983-1987, 1988-1991).



- *The EEA negotiations entered the final stages in the Autumn of 1991. The negotiators were able to reach initial agreement on 17 October, paving the way for a final negotiation round at ministerial level. This took place in Luxembourg on 21 – 22 October. The picture is from the press conference following the meeting, jointly chaired by the Foreign Minister of the Netherlands and President of the EC Council Hans van den Broek (second from left) and Finland's Minister for Trade and Chairman of the EFTA Council Pertti Salolainen (third from the left).*

The Negotiations

At the EC-EFTA ministerial meeting in Brussels in December 1989 it was decided that negotiations on what was then called the European Economic Space would be launched in the first half of 1990. Following exploratory talks, negotiations commenced in June 1990. The negotiations on the EEA Agreement were concluded at the political level on 22 October 1991.

Ulf Dinkelspiel, chief negotiator of Sweden, on the phone during the EEA negotiations.



EEA 15 Years – A Vassal Contract?

Eivinn Berg, chief negotiator of Norway

The EEA Treaty is the most comprehensive international agreement ever signed by Norway. It covers practically every aspect of economic activity, and its effects are felt daily by the vast majority of Norwegians. Despite the unique character and importance of the EEA, its entry into force fifteen years ago did not get the attention it deserved. This is not so surprising since at that time in 1994, four out of six EFTA members were already in the crucial final stage of their negotiations for EU membership, with no time to waste on the EEA.

This contrasts sharply with the overwhelming interest in EEA matters triggered by President Delors in his New Year address to the European Parliament in January 1989, when he presented his generous invitation to EFTA "to enter into a structured new partnership with the EC based on equal rights and obligations with common decision-making and administrative institutions". From then on until the signing of the Treaty in Oporto in May three years later, the EEA Agreement was the undisputed top item on the political agenda in Norway.

Delors' daring initiative was well-timed. A critical overhaul to revitalize EFTA's stale relationship with the European Community was long overdue. The Luxembourg talks between EFTA and the EC to foster trade relations had ended in a lofty Declaration underpinning the resentment widely felt in the EC with regard to EFTA's restrictive "à la carte" approach to cooperation. Action was needed to ensure that the EFTA states were not falling further behind. The trade agreements of 1972 were seen as obsolete and totally inadequate to cope with the new challenges posed by the accelerating economic integration in the EC.

At an early stage in preparing his Strasbourg speech, Delors (a French socialist and admirer of the Nordic welfare-state model, and known to favour Norwegian EC membership) contacted us to learn whether an initiative as envisaged might embarrass our Labour

■ EFTA ministerial meeting during the Chairmanship of Iceland in the second half of 1989.





■ Norwegian officials during the EEA negotiations.

government and stand in the way of a future membership bid by Norway? When I was reassigned from NATO to take over the Delegation to the EC it was on the tacit understanding that I was to prepare for a second membership bid from Norway in a not too distant future. In my initial reporting to the MFA I advocated cautiousness, echoing Delors' concern. I feared that a comprehensive treaty as outlined, confined to trade and economic matters, would have more appeal to EC-sceptical Norwegians than membership, if asked to choose between the two. I was also concerned, as were my European-minded colleagues in the Ministry, that an EEA agreement was likely to sidetrack and eventually block future efforts to achieve our overriding objective of full EC membership.

My Government, however, did not share our concerns and hastily summoned the EFTA Heads of Government to a meeting at Holmenkollen in Oslo where they welcomed the invitation to start negotiations on the proposed treaty as soon as feasible. No sooner were formal talks under way before an unprecedented series of historic events radically changed the European political scene. EFTA members which at Holmenkollen would not have been in a position to accept even a customs union with the EC because of their neutral status, were quick to take advantage of the new situation, and had all applied for full EC membership before the ink was dry on the draft EEA agreement. On the Norwegian side we were not ready for this rapid turn of events, but managed to get our act together in time to catch up with the talks under way with Finland, Sweden and Austria.

The laborious and exacting examination of the EEA's 1,500-odd relevant pieces of EC legislation that preceded the negotiations helped establish the negotiating dossiers for EFTA "speaking with one voice" and to expose the hardcore issues of individual countries. For Norway these were apparent from the outset and related to capital movements (investment in natural resources) and rules of competition (e.g.

regional development schemes). In addition Norway was faced with unacceptable demands in the fisheries and agricultural sectors, presumed to fall outside the scope of negotiations. The thorny issue of "cohesion fish" (Spanish demands for increased fish quotas in Norwegian waters) remained unresolved until the very last night of the talks. I also recall a demand on the part of the EC relating to the hydroelectric power sector, which caused some very ill feelings and forced the resignation of the then Conservative government.

On the home front, the Treaty soon came under attack from two sides. Norwegian industry spokesmen, and EC sympathizers generally, were openly frustrated that we were not negotiating for membership, and referred consistently to it as a "vassal contract" (*husmannskontrakt*) with no or little real influence. There was no denying this sad fact, but as I had gradually accepted that in the foreseeable future there was no realistic alternative, I feared that such derogatory characteristics could weaken the Treaty's chances of ratification. EEA opponents on the other hand saw the Treaty as a concealed attempt to bring Norway into the EU through the back door. Their fear was also that by extending the scope of cooperation and transposing an increasing flow of legal acts from Brussels into national law, Norway would over time become a de facto EU member. But luckily, despite this twofold opposition the Treaty was in the end ratified by a scant majority in Parliament.

‘ I feared that a comprehensive treaty as outlined, confined to trade and economic matters, would have more appeal to EC-sceptical Norwegians than membership, if asked to choose between the two. ’

Today the EEA as such is no longer on top of any political agenda despite hefty demands from time to time that Norway apply its right of reservation or "veto" as it is wrongly but commonly termed – the

Services Directive being a case in point. Norwegian industry has acquiesced with the situation for the time being, and supports the EEA as a guarantee for continued free access to the rapidly growing EU market. The general attitude towards the EEA Treaty is one of complacency and disinterest. Nevertheless, it can be said that on its Fifteenth Anniversary there is a more solid majority behind it in the Storting than at the time of its ratification. The chances are, whether one likes it or not, that the EEA Treaty, which has shown a remarkable resilience to changed circumstances so far, may be with us for more than its present fifteen years provided no unforeseen events surface that could further weaken the already fragile and shaky EEA EFTA pillar.

‘ Nevertheless, it can be said that on its Fifteenth Anniversary there is a more solid majority behind it in the Storting than at the time of its ratification. ’

Post Scriptum

I must confess that today, fifteen years after the entry into force of the EEA Treaty, I still ponder the question of whether Norway was right in accepting it, and if not, would Norway by now have been a full-fledged member of the European Union?

Firstly, the Government in reacting to the Delors' initiative in January 1989 would have acted irresponsibly if they were to have not welcomed it. Norway had just taken over the EFTA Presidency and was expected to act on behalf of all seven Members in preparing for their upcoming talks with the EC. Since all our EFTA partners were prepared to join we had no choice but to follow suit. Our bilateral trade agreement of 1972 was totally irrelevant for protecting our strong trade and economic ties with EC and a second bid for membership was simply not yet in the cards. In this situation my masters in Oslo were right in deciding on the EEA as the only sensible option. But had Delors acted only half a year later we might not have had an EEA Treaty to celebrate today.

Secondly, in this situation with the three EFTA "neutrals" safely inside the EU, and with only Switzerland, Liechtenstein and Iceland left in EFTA (and no EEA Agreement), I cannot help feeling that a majority of Norwegians would have opted for membership, but considering the result of the referendum of 1994, I would not bet on it!



■ Norwegian negotiators during the final hours of EEA negotiations in Luxembourg, 22 October 1991. From left, chief negotiator Eivinn Berg, Foreign Minister Torvald Stoltenberg, and Trade Minister Eldrid Nordbø in conversation with the Finnish chief negotiator Veli Sundbäck (back to the camera).



■ Franz Blankart (center) with EFTA and EC officials.

The negotiation of the EEA Agreement: a Swiss View

Franz Blankart, former State Secretary and chief negotiator

For Switzerland, the EEA Agreement was the most comprehensive treaty ever negotiated and signed, and, one of the biggest challenges ever met by our democracy, in which the people and the 26 Cantons have the last word.

The growing attractiveness for EFTA countries of the EC internal market, the interest of EFTA countries in joining the EC (Austria would file an application in 1989), the limited resources of the EC Commission and the search for a global solution led the President of the European Commission, Mr. Jacques Delors, to propose the concept of the EEA to the European Parliament on January 19, 1989, in terms of a new form of association with common decision-making and management bodies, the cooperation being based

on two pillars consisting of both institutions, EC and EFTA, and covering the whole range of the internal market. One year later, however, Mr. Delors no longer alluded to common organs, reflecting the position of the European Commission in intensive exploratory talks with EFTA countries. This drawback created in Switzerland a deep mistrust in Mr. Delors' statements.

For Switzerland, the EEA negotiations had two very difficult dimensions: first, the institutional part; second, the opening up of sectors such as movement of persons and road traffic, or the adjustment to EC competition policy.

Referring to the institutional part, Switzerland had always had a particular sensitivity concerning her own

institutions based, amongst others, on the control of the legislative process by the people through the referendum. This implies that Switzerland had to put a very strong emphasis on the institutional part of the Agreement. She contributed significantly to the agreed "decision-shaping" (art. 99) that was considered, by the end, as satisfactory. In case of disagreement as to a new *acquis*, the Swiss position was also secured with the option of the mutual recognition of the equivalence of the existing legal regulation (102(4)). These important Swiss requests, however, were met at the latest stage of the negotiations; due to the fact that the institutional regime of the EEA had been seriously criticized in the Swiss press over the previous months, it was then very difficult to put it into a bright light, all the more so as the text of the Agreement was very complex.

‘ For Switzerland, the EEA negotiations had two very difficult dimensions: first, the institutional part; second, the opening up of sectors such as movement of persons and road traffic, or the adjustment to EU competition policy. ’

Referring to the liberalisation of the domestic market, Switzerland had to cope with a foreign work force of 25% and a foreign resident population of 18%, a protected domestic services' sector, a lenient competition policy and significant sensitivity to lorry traffic through the Alps, to just name a few problems. Through considerable efforts, Switzerland managed to conclude the EEA negotiations with, in particular, a five-year transition period for the movement of persons and a special regime for lorries maintaining in

particular the Swiss weight limit of 28 tons and concluding a separate bilateral agreement on transit through the Alps.

Whereas the Swiss Parliament accepted the EEA with a comfortable majority, the public discussion was very tense due to the possible impact on key parts of the society, the complex institutional set-up and its consequences for direct democracy.

The positions of the EFTA States during the negotiations of the EEA were affected by the basic changes in Europe with the fall of the Berlin Wall, the end of the Cold War and the dissolution of the Soviet Union. The reunification of Germany and the reuniting of Eastern and Western Europe eliminated some political barriers that had prevented some EFTA Members to apply for EC Membership. At the same time, EFTA Members realized that the EEA meant a partial accession to the EC internal market with limited institutional rights. As we all know, most EFTA States drew conclusions very quickly so that by the end of the EEA negotiations, Austria, Sweden, Norway and Finland had applied for EC Membership.

In May 1992, six months before the EEA referendum, the Swiss Government also applied for EC membership. This decision was a total surprise for the Swiss citizen and was never understood by the public; it transformed overnight the EEA into a transitory agreement. This new situation was not compatible with the Swiss mentality, which gives considerable value to trust, quality, security and durability. The thrust of the referendum was then changed by EC opponents into a referendum on EC Membership, which was inevitably turned down.



■ Jean Claude Delamuraz, Swiss Federal Councillor in charge of the Federal Department for Economic Affairs 1987-1998, played a key role in the EEA negotiations. This picture is from a meeting of the EFTA Council in Geneva on 22-23 October 1990, during the Swiss Chairmanship of EFTA.



■ EFTA officials during the informal ministerial meeting in Geneva on 1 March 1991.

Joint Declaration (extracts)

EFTA-EC ministerial meeting, Brussels, 19 December 1989

Convinced of the need to deepen these relations still further in order to achieve the European Economic Space and to give them a new dimension as part of a common European outlook, [the Ministers] agreed to seek jointly to define a more structured framework for cooperation between the EC and all of the EFTA countries together.

To this end, they decided to commence formal negotiations as soon as possible in the first half of 1990, with the aim of concluding them as rapidly as possible. ...

In the light of the above discussions, they felt that this framework should ensure the greatest possible mutual interest for the parties concerned as well as the global and balanced character of their cooperation. ...

They take the view that this framework should inter alia respect in full the decision-making autonomy of the parties. ...

The negotiations between the Community on the one hand and the EFTA countries acting as a single interlocutor on the other hand shall have as their aim the conclusion of a comprehensive agreement ...

They consider moreover that a political dialogue could be envisaged including at the ministerial level.

‘ ...they decided to commence formal negotiations as soon as possible in the first half of 1990... ’



■ Veli Sundbäck during the EEA negotiations.

The EEA Negotiations – Bumpy Road, Worth Travelling

Veli Sundbäck, Chief negotiator of Finland

In January 1989, when the European Commission President Jacques Delors presented his ideas on a third road approach between the EFTA countries and the EC, they were immediately applauded in Finland. The solution suggested matched the Finnish needs and possibilities so well that "it could even have been invented by the Finns". The essence of securing the economic interests with equal treatment within the European Single Market without compromising our then established foreign policy position was exactly what we needed and could do.

So, from the outset we in Finland strongly supported the EEA and worked hard to achieve it. But it was not an easy road to get there.

After about one year of negotiations, in December 1990 the joint Ministerial Meeting confirmed the objective of concluding the EEA negotiations before the summer 1991. During the Austrian presidency of EFTA in the first half of 1991, two joint Ministerial meetings with the Community were held. The Brussels meeting on 13 May "achieved a breakthrough" in the negotiations, and after the following Ministerial in Luxembourg on 18 June, the EC presidency through the Council chairman Jacques Poos announced that a political agreement had been reached on all open issues. Alas, these statements proved to be premature. The initialing of the Agreement was planned to take place in Salzburg on 25 June, at the end of the Austrian chairmanship of EFTA, but could not happen.



■ *The EEA negotiations attracted considerable interest from the media.*

Finland took over the rotating chairmanship of EFTA on 1 July 1991. That automatically implied also that we got the responsibility to coordinate and drive the EEA negotiations and act as spokespersons on behalf of the EFTA countries. Pertti Salolainen became the responsible Minister to lead the negotiations and I took over the Chief Negotiator's position at the officials' level.

At the time of this handover the EEA negotiations were in a critical phase. There was deep disappointment as a result of the unsuccessful Ministerial meetings. More than 20 of the most difficult issues – for instance in fisheries, transit traffic, juridical and institutional issues, Cohesion fund and others – were still unresolved. Austria and Sweden had decided to apply for EC membership. Actually Sweden presented its application to the EC Presidency in The Hague the very same day that we were getting the EFTA chair. There was no strong interest in the EC member countries towards the EEA, and within the Commission increasing fatigue and suspicion was emerging as a result of all the difficulties encountered in the negotiations.

Domestically the situation in Finland was not easy either. From within industry and also some political parties, e.g. the Conservative party headed by Pertti Salolainen, suggestions were made that Finland should follow Austria and Sweden and apply for membership in the Community.

With the strong guidance from the President of the Republic, Dr Koivisto, support by Prime Minister Aho and political leadership by Pertti, however, we were sticking to the EEA. Our main arguments were: (a) the underlying necessity of becoming a part of the Single European Market in any case; (b) the claim that it was still unknown whether the EC at all was ready for any new accession negotiations (it decided only in December 1991 to open the negotiations) and (c) that we would put the whole EEA at risk if we were to send in our membership application. If we were then followed by Norway: that would have shifted the critical mass of EFTA countries, with four out of seven in favour of the membership option. Given the at most lukewarm support for the EEA in the Community it could have meant a collapse of the whole EEA endeavour.

The outcome of the first Ministerial session under Finnish EFTA chairmanship at the end of July in Brussels was another big disappointment. Fisheries were the main issue under the negotiations. A number of bilateral talks, particularly between Norway and the Commission, were held to prepare the ground for an agreement. But virtually nothing was moving forward. The number of still open issues remained significant. The outlook of an EEA seemed grim indeed.

It took a great deal of effort on the part of all involved to load the batteries during the August summer break for a renewed effort to conclude in the autumn.

Pertti Salolainen, who never lost his determination to fight for the EEA, invited his ministerial colleagues from the EFTA countries to an informal "raising the spirit" meeting in Helsinki in early September. This meeting turned out to be very useful, although it did not result in any greatly modified EFTA positions which would have facilitated the negotiations ahead. But it restored at least part of the fading belief in the EEA.

The Chief Negotiators' meeting at the end of September in Brussels was particularly challenging. There were clear differences in the EFTA group between the hard-liners and those wishing to proceed quickly in the negotiations – not to mention the differences of views between EFTA countries and the Community.

The task of a spokesperson to introduce a common EFTA position was not easy, as it often turned out to be impossible to agree on one. Therefore also the task of the EFTA Secretariat to draft speaking notes for the chairman was close to mission impossible, but Georg Reisch, Sven Norberg, Per Wijkman, Per Mannes and others deserve high praise for their efforts. Often the chair just had to use his judgement, improvise and then be ready to face criticism afterwards. I am still grateful to my dear colleagues Franz, Prince Nicolaus, Manfred, Ulf and later Frank, Eivinn and Hannes for their good support throughout the Finnish chairmanship.

The decisive meetings in the EEA negotiations took place in Luxembourg in late October 1991. It was then, and only then after long, complicated, frustrating and



■ EFTA officials prepare for negotiations with the EC.

sometimes almost chaotic negotiations, that the necessary breakthroughs in key issues were achieved. There were hundreds of participants in the Kirchberg conference center those days and nights, but surprisingly few that really had a control over the totality of issues that had to be solved. Key players on the EC side were Commissioner Andriessen, Horst Krenzler and Claus van der Pas, the Dutch chair represented by Piet Dankert and Albert Oosterhoff as well as in particular Niels Ersböll, the Secretary General of the Council, who gave a major contribution by his constructive, compromise seeking and active role.

The conclusion of the negotiations was celebrated with champagne and a couple of nice speeches early in the morning of 23 October 1991.

As it turned out later that year, this was premature.

I was leading a Finnish business delegation to South Africa, when during an official luncheon on November 14 hosted by the Mayor of Capetown, His Worship van der Velde, I was suddenly asked to answer a phone call. It was a message from Horst Krenzler, the EC Chief Negotiator who said that the European Court of Justice was heavily criticizing the institutional structure of the EEA Agreement. The initialing of the EEA, which was planned for the following week, had to be cancelled. I then had to interrupt my trip in South Africa and fly to Brussels to meet Horst, Claus van der Pas and the chief legal counsel of the Commission Jean-Louis Dewost to discuss how to proceed.

After the opinion of the European Court of Justice was published in December, claiming that certain provisions of the EEA were in conflict with Community law, it was self-evident that parts of the EEA had to be renegotiated. On the EFTA side this work was headed by the legal expert in our negotiations team Leif Sevón, later President of the Supreme Court in Finland. With his and his colleagues' innovativeness a new legal structure to replace the initially planned EEA Court was created, and that enabled the conclusion of the negotiations for the second time, in February 1992. The Agreement was then initialled by the Chief Negotiators in April and signed by the Ministers in Oporto on May 2, 1992.

It was a particularly bumpy road to arrive to the goal. But it was certainly worth travelling.

Despite the fact that the popular vote in Switzerland on December 6th 1992 rejected the EEA, and that Austria, Sweden and Finland joined the EU as members on January 1st 1995, the EEA has proved its great importance.

For us in Finland the EEA greatly facilitated our accession negotiations and has secured the continuation of free trade and further development of the other three freedoms with our former EFTA partners.

‘ It was a particularly bumpy road to arrive to the goal. But it was certainly worth travelling. ’

What we learned from the EEA negotiations

Anders Olander, Director, Council of the European Union, former negotiator of Sweden

The EEA negotiations bring back a lot of memories, most of them pleasant ones. From a professional point of view it is a great privilege to have been part of the extremely demanding and challenging process which eventually led to the most complex and comprehensive agreement ever concluded between the EC and third countries.

On a personal note the EEA meant working together with highly professional and dedicated colleagues both in the EFTA camp and on the EC side, above all in the Commission. In spite of, or maybe because of, the hard work and the tough negotiations, many became good friends with whom I shared many memorable moments.

What then did we on the EFTA side learn from the EEA process?

A short answer is: a lot – both about the very substance of the EC legislation and policies which we wanted to become connected to and the complicated

institutional set-up and decision-making process within the Community. For example, if we did not realize it beforehand, we soon understood that the EEA Agreement, although comprehensive and rich in substance, could never be something even close to membership of the Community.

We all remember how the EEA came about: in the late 1980's the EC was busy developing its internal market of which we desperately wanted to become part. When Jacques Delors in a speech in Strasbourg in January 1989 outlined his views on the relations between the EC and EFTA, talking about a special relationship and more or less invited the EFTA countries to join the internal market project as equal partners (our interpretation), we all jumped to our feet, full of enthusiasm and expectations that a new era in our relations with the European Community had been born. In retrospect it is hardly surprising that the EFTA countries over-interpreted the meaning of what the President of the Commission had "offered".



■ Anders Olander during the EEA negotiations.



■ Journalists covering the fourth joint EC-EFTA ministerial meeting in Luxembourg on 18 June 1991.

At the time we did not quite understand that he did not present any official position of the Commission. He had simply set out his own, personal ideas and visions but for a clear political purpose: to offer the EFTA countries an alternative to membership until the EC was ready for the next enlargement. Anyhow, the speech became the starting point for intense political lobbying from the EFTA side for negotiations to start as quickly as possible with the aim to achieve the closest possible association with the internal market (and certain other policy areas). Some EFTA countries wanted to explore the idea of a customs union but this proved not to be a realistic option at the time. There were also EFTA colleagues (no names!) who floated the idea that EFTA ought to have its "own" member of the Commission!

We fairly soon realized that what the EC had in mind was something considerably less ambitious than what the EFTA countries were aiming at: an agreement between sovereign parties, based on a two-pillar institutional set-up. There could be no such thing as EFTA involvement in the Community's internal decision-making. We also had to accept that, as a principle, permanent derogations from the *acquis communautaire* were out of question. This was a bitter pill to swallow for many EFTA politicians who brought long lists of requests for exemptions from the EC *acquis* to the negotiating table. I remember a meeting of EFTA's High Level Negotiating Group in Gothenburg in June 1990 in connection with the 30th Anniversary EFTA Ministerial meeting, where agreement was reached to reduce the number of requested permanent derogations considerably although the remaining list was still quite long! This was an important step since the formal negotiations were about to start only a few days later – on 20 June 1990.

Looking back at the negotiations one can only welcome the fact that the final agreement did not include any such list of derogations, but only transitional arrangements, review and safeguard clauses etc., leaving the substance more or less in line with the EC position. We would otherwise have created an agreement which would have been like a Swiss cheese with more holes than cheese.

The fact that the EEA Agreement might leave a lot to be desired from the point of view of influence for the EFTA countries does not, in my view, diminish its importance. It has allowed for an extension of the internal market and meant an important development of cooperation in Europe in many other areas. For my country, Sweden, it was a stepping-stone towards full membership of the EU. Without the EEA Agreement, and the process leading up to it – the best European Integration School that I can think of – we would not have been able to conclude our accession negotiations so easily and rapidly as was the case. It was like starting a marathon run at the 25 km mark!

EEA definitely has an important role to play in today's Europe as well, by offering a framework for close cooperation between 30 countries. On the occasion of the 15th anniversary of the entry into force of the Agreement I wish all those involved in its continued development a lot of success.

‘ The fact that the EEA Agreement might leave a lot to be desired from the point of view of influence for the EFTA countries does not, in my view, diminish its importance. ’

Declaration of EFTA Heads of Government and Ministers

Gothenburg, Sweden, 13 and 14 June 1990

We are now on the verge of taking a new step forward in the integration of Europe by forging a close and structured partnership with the EC, as envisaged in our Oslo Summit Declaration. We expect to start in the immediate future negotiations, following the adoption by the EC Council of an EC negotiating mandate. The EFTA countries have made their aims and positions clear for these negotiations both with regard to substantive issues and legal and institutional aspects.

The EES treaty should be broad and comprehensive and should, as jointly defined by EFTA and EC Ministers on 19 December, achieve the free movement of goods, services, capital and persons, as well as strengthen and broaden co-operation on an equal footing in flanking and horizontal policies, such as environment, research and development, education and social policy.

... A satisfactory solution will have to be found to the question of joint management and development of EES legislation before the EFTA countries can take a

final position on the integration of the relevant EC legislation as the common legal basis for the EES.

An appropriate legal and institutional framework will be required in order to safeguard the homogeneity of the EES and to exploit its potential mutual benefits. ...

The establishment of a genuine joint decision-making mechanism in substance and form is a basic prerequisite for the political acceptability and legal effectiveness of an agreement. We are convinced that arrangements to that effect can be reconciled with the need to safeguard the decision-making autonomy of each party.

The EFTA countries have presented common positions with one voice throughout the high-level talks, and will continue to do so during the negotiations.

... We reaffirm our aim that negotiations should be concluded within the year and that the entry into force of the resulting treaty should be set for 1 January 1993.



■ Ministerial meeting in Brussels between the EC, its Member States and the EFTA countries on 19 December 1990.



- Gunnar Snorri Gunnarsson participated in the EEA negotiations as part of the negotiating team from Iceland.

Gunnar Snorri Gunnarsson

Negotiator for Iceland

It is probably a sign that you are getting older when periods in your life marked by pressure and strain stand out with a kind of glow in your memory. It helps if the events in retrospect turn out to have some historical significance. Later in life, referring to the times of the French revolution, Wordsworth said, "Bliss it was in that dawn to be alive and to be young was very heaven". Far be it for me to compare a minor incident in the history of European integration to the mighty French revolution but on a personal level this makes sense. I now certainly look back with some affection to the period in the late eighties and early nineties devoted to work on the preparation, negotiation and ratification of the EEA Agreement. Maybe lingering traces of

adrenaline rush compensate for the equally clearly remembered frustrations and disappointments.

The search for a way for the EFTA countries to be associated with the EU's Single Market was endowed with a great sense of excitement. Delors may have overestimated the difficulties of falling in love with the Single Market because at the time the media, the business community and the political elites were all fascinated, not to say obsessed, with the Single Market. As a marketing operation it was on a level with Beaujolais Nouveau. This general enthusiasm made it possible for Delors to offer and the EFTA leaders to seize the opportunity to create a sui generis compromise.

‘ The search for a way for the EFTA countries to be associated with the EU’s Single Market was endowed with a great sense of excitement. ’

One cannot but admire not only the vision of the leaders on both sides but also their pragmatism and flexibility. If only that spirit could have been maintained it would have been possible to realise the full potential of the EEA Agreement. Every school of thought has its orthodox and its liberals, its talibans and its modernists. Once the original inspiration for the agreement faded, hardliners within the EU have had the tendency to try to limit the scope for cooperation rather than expand it.

Once negotiations started, the internal EFTA meetings were often tougher and more difficult, and certainly more emotional, than the confrontation with the EU. It was not always easy to hammer out a common position or to speak with one voice on difficult issues affecting one country more directly than others, e.g. fish or transit or to accommodate in one text the interests of Alpine and Nordic countries. I distinctly remember one distinguished Minister muttering under her breath, while leaving a long and exhausting meeting, that she hoped she would never see a fish again. I still treasure the comment by an EFTA colleague after a briefing by the Commission. “We are still confused but this time we are confused at a higher level.” Chief negotiators also found the time for friendly banter by devising an improvised competition as to who could find on every occasion the most appropriate quote from the Hollywood film “Casablanca”.



■ *Hannes Hafstein, chief negotiator of Iceland (left) with Lilja Viðarsdóttir from the Icelandic negotiating team.*



■ *Icelandic negotiators: Foreign Minister Jón Baldvin Hannibalsson (left), chief negotiator Hannes Hafstein, and Fisheries Minister Þorstein Pálsson.*

The details of individual texts and declarations are clouded over by the mists of time but what stands out are two realisations or paradigm shifts that took some time to sink in, first that this could only work if the Single Market was taken on as a whole (top down rather than bottom up in the jargon of the day or “no cherry picking” as the Commission used to say). The second was that general safeguard clauses could work just as well as painfully negotiated and detailed derogations from the *acquis communautaire*.

(Negotiations with the Commission were interrupted at regular intervals as the Commission had to go back to consult with Member States, so we on the EFTA side spent more time hanging out in the EU corridors than we had bargained for. With nagging insistence one could not help wondering whether the Commission was presenting our arguments to the Member States with the same force that we imagined we could do. It felt like negotiating at one remove. A similar negotiation today would be even more complicated given the increase in the number of Member States.)

The agreement proved to be but an interlude or a stepping stone for most of the people it was meant to serve. Switzerland opted out and the bulk of the remaining EFTA countries have since decided that they

would be better off inside the European Union. Norway's decision to stay out gave the agreement a new lease on life and it has certainly been the cornerstone of Iceland's foreign economic and trade policy ever since it entered into force. The political debate in Iceland was fierce at the time of adoption and led to one of the longest debates in the Althingi's history. Later it began to be taken as a matter of course and even those who had voted against it started singing its praises.

‘The agreement proved to be but an interlude or a stepping stone for most of the people it was meant to serve.’

The recent economic collapse has seen the critics return but there is no serious suggestion of turning back. Freedom in financial markets may have led to irrational exuberance in certain quarters but it seems farfetched to put the blame on the EEA agreement. The exact balance between liberty and regulation is difficult to ascertain and right now the pendulum may swing towards stricter rules. But those regulations will have to be common ones: they will cover at least the whole of Europe if not the whole world, and cannot serve as an excuse to retreat behind national barriers. The basic idea behind the EEA Agreement is vindicated, not refuted, by the present turmoil.

The EEA, a robust Agreement that fit all sizes

Prince Nicolaus of Liechtenstein, former Chief Negotiator

An entire generation has grown up in Europe in the time since the EEA negotiations began in 1989. Nobody was sure at that time if such a complex agreement would ever see the light of day. Many questions arose: How far should the EFTA States be included in the Internal Market and other EU policies? Would the four freedoms be based mainly on the mutual recognition of legislation or would the EFTA side just have to accept the EU *acquis*? Would there be exemptions from the *acquis* for individual EFTA States or, at best, transitional periods? What would the decision-making and decision-shaping mechanisms between these two unequal blocs look like? How could one design a judicial court?

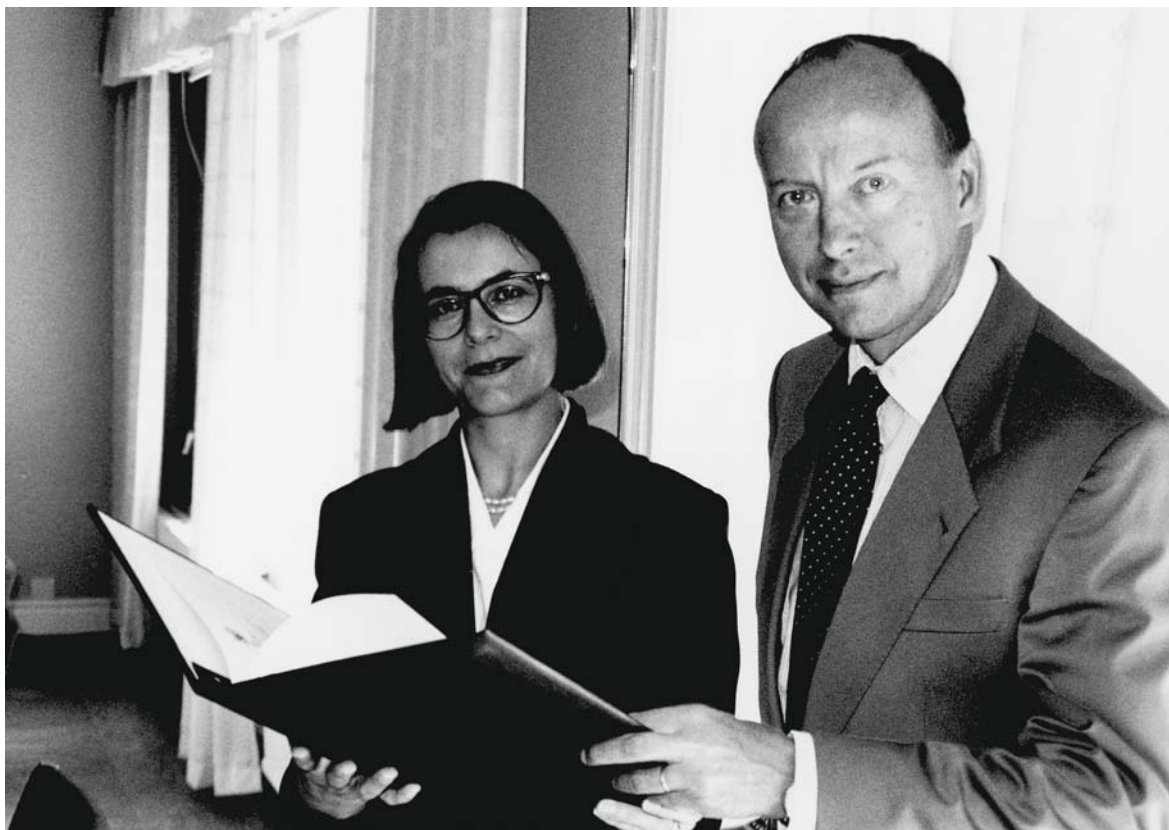
The negotiating parties sent their most experienced trade diplomats and during three years of negotiations we lived through quite a few dramatic moments,

including walkouts. Nevertheless, "tout est bien qui finit bien" and in May 1992 a well-balanced treaty was signed that has proven its worth for the last 15 years; firstly as a training camp for the three EFTA States that joined the EU in 1995 and secondly for three other "EFTAs" as a solid rock in their relations with Brussels.

For the EFTA States, most of them neutral countries, taking part in an economic area with substantial supranational elements was a big leap. For Liechtenstein, this was even more the case: in 1989 it was not yet a member of EFTA but only linked to it through a special protocol and its customs treaty with Switzerland. But we immediately understood that taking part in the negotiations and later in the treaty amounted to a chance to establish the right degree of European integration, politically and economically.



■ Prince Nicolaus (right) with Ambassador Norbert Frick (left) and Kjartan Jóhannsson (EFTA Secretary-General 1994-2000).



■ Ambassador Andrea Willi (left) hands over Liechtenstein's EFTA accession documents to her Swedish colleague Frank Belfrage in Stockholm, September 1991.

We also saw the EEA as an opportunity to become more competitive in international markets and to diversify the economy, not least our financial services. Nevertheless, it was a hard task to convince the voters that Liechtenstein could find its European way irrespective of its closest economic partner, Switzerland, which had taken a bilateral European approach. Two referenda – one in 1992 on the EEA itself and the other in 1995 on the necessary adaptations for the coexistence of our customs treaty with this association agreement – stood as proof that we were on the right track.

After 15 years of participating in the EEA the overall assessment of this Agreement is still positive. The EU's Internal Market functions well, and so does the EEA along with it. In some ways one could even speak of a tailor-made solution for Liechtenstein: we can engage with the EU in a balanced way without being overburdened by treaty obligations.

‘ For the EFTA States, most of them neutral countries, taking part in an economic area with substantial supranational elements was a big leap.’

Is the positive EEA experience in the last 15 years a guarantee for the agreement's survival in the next 15 years? At least it has shown to be a dynamic,

adaptable legal instrument for an integration policy that is a little bit less than membership status. Proof in this respect has been given in spite of the many changes that the EU itself had undergone since 1992. But in Iceland and Norway the case for EU membership seems to be winning more arguments, especially in Iceland. In Liechtenstein, there is little political discussion on alternatives to the EEA. Some voices are raised in favour of EU membership, but many see a continuation of the EEA, if possible, as the best solution. For a very small country like Liechtenstein the lack of voting rights is more bearable due to higher flexibility to adapt to changes and to narrower fields of interests. Also, membership obligations can become heavy burdens in view of limited capacities.

For the moment, the EEA is still running as always and I would not be surprised if it were to survive even in the case of changed membership. I am confident in the EU's proven openness to give all European countries an adequate place in the European construction, irrespective of their size. This is rooted in the respect for European diversity. I am equally confident that, should the need arise, Liechtenstein will again have a constructive democratic decision-making process that will opt for the right solution and contribute its modest but nevertheless irreplaceable share in European solidarity.

Institutional challenges

The EEA Agreement agreed at the political level in October 1991 contained numerous institutional innovations, including the establishment of an EEA Court. However, on 14 December 1991 the European Court of Justice (ECJ) delivered its opinion that these were incompatible with Community law. A solution was found in February 1992 through the creation of an EFTA Court and the inclusion of new provisions ensuring legal homogeneity.



Opinion 1/91 of the Court of Justice of 14 December 1991¹

In 1991, in what was considered to be the final phase of the negotiations on the EEA, the Commission requested an opinion from the European Court of Justice (ECJ) on the compatibility of the EEA Agreement with EC Treaty. The ECJ concluded that judicial supervision by a joint EEA Court which the Agreement intended to set up was incompatible with the Treaty. Consequently, the Agreement had to be modified before the Community could sign it.

In its opinion, the ECJ raised the fact that the EEA was based on the principle of homogeneity, which required a uniform interpretation and application of the provisions of the Agreement throughout the EEA. The Agreement contained various mechanisms to this end, which the ECJ found to be insufficient or even incompatible with Community law.

In the first place, the ECJ noted that although the wording of the provisions contained in the Agreement and the corresponding Community provisions were identically worded, their purposes and contexts were different. While the EEA Agreement mainly contained rules on free trade and competition in economic and commercial relations, the EC Treaty went much further, creating a new legal order aiming at economic integration with the establishment of a single market and economic and monetary union.

Secondly, the ECJ pointed out that essential characteristics of the Community legal order, such as the principles of direct effect and primacy developed by the ECJ, would not be recognised as such in the EEA.

Thirdly and most importantly, the ECJ analysed the compatibility of the system of courts set up by the first draft of the Agreement, including a joint EEA Court with jurisdiction to settle disputes between the Contracting Parties. In this regard, the ECJ noticed that such a court may be called upon to interpret the expression "Contracting parties." As far as the Community was concerned, this could cover the Community and its Member States, the Community alone or the Member States alone. Consequently, the EEA Court would be given the power to affect the allocation of responsibilities defined in the Treaty and thus affect the autonomy of the Community legal order.

‘The ECJ concluded that judicial supervision by a joint EEA Court which the Agreement intended to set up was incompatible with the Treaty.’

Additionally, the EEA Court would not only have to interpret the rules of the Agreement but also determine the interpretation of the corresponding rules of the EEC Treaty. Furthermore, the EEA Court would not be bound by the rulings given by the ECJ after the signature of the Agreement. This system of courts would therefore conflict with the EEC Treaty providing that the ECJ ensures the interpretation and application of the Treaty.



■ Icelandic newspaper *Morgunblaðið* devoted considerable space to the Opinion in their issue on 17 December 1991, including interviews with high-ranked politicians from both EU and EFTA member states.

¹ Opinion delivered pursuant to the second subparagraph of Article 228 (1) of the Treaty. Draft agreement between the European Economic Community, on the one hand, and the countries of the European Free Trade Association, on the other, relating to the creation of the European Economic Area. Opinion 1/91.

292-09

Montag, 16. Dezember 1991 Nr. 292

Neue Zürcher Zeitung

Eine weitere Belastungsprobe

Der EWR-Gerichtshof auf dem Schafott Negative Beurteilung durch den EuGH

Über das Wochenende hat sich in Brüssel bestätigt, was man bis vor kurzem einfach nicht glauben mochte: Beim heftigen politischen Ringen um den EWR-Vertrag sind Grundzüge des EG-Rechts missachtet worden. Die Einwände des Europäischen Gerichtshofs in Luxemburg sind offenbar so gravierend, dass vermutlich neu verhandelt werden muss.

in Brüssel, 15. Dezember

Der Europäische Gerichtshof in Luxemburg (EuGH) hat am Samstag nachmittag seine rechtliche Beurteilung des EWR-Abkommens abgeschlossen. Die dreizehn Richter gelangten dabei nach Angaben von Brüsseler Vertretern der EG-Mitgliedsstaaten zu einem negativen Urteil. Der Wortlaut des rund 50 Seiten umfassenden Beschlusses ist zwar noch nicht bekannt; er soll am Montag veröffentlicht werden. Die Hauptinhalte konzentrieren sich aber auf die Errichtung eines EWR-Gerichtshofs. Die EG-Kommission sieht sich schon am Sonntag unter anderem mit einer Paraphrasierung des EWR-Abkommens nicht aus dem Auge. Sicher ist, dass vorläufig an Luxemburg für die EG-Rechtsprechung unterhalten, beanstanden die Richter.

Wahlbankstudie zur Lage der Entwicklungsländer

Divergierende Entwicklungen an der Schuldenfront

Düstere Vorzeichen
... wie kann einem Monat, als der EuGH

dass der EuGH auch die nächste juristische Konstruktion genau überprüfen wird. Einflüsse von außen, das hat schon das Schicksal um die EFTA-Mitbestimmung gezeigt, dürfte die EG-samtvertragliche Architektur zu entwerfen.

Erste Aussätze aus dem EuGH-Erscheid
Brüssel, 15. Dez. (ep) Das Abkommen gefährde die "Autonomie und Homogenität der EG-Rechtsprechung", heisst es in der 51 Seiten langen Stellungnahme des Gerichtshofs, die am Sonntag ausgangswise von der österreichischen Nachrichtenagentur APA veröffentlicht wurde. Das Ziel des EWR sei die Verwirklichung eines homogenen EG-Rechtsraumes auf der Grundlage des Wirtschaftsprinzipals. Auf der Grundlage des Rechtsprechungs sieht der EuGH auch dadurch gefährdet, dass lediglich diejenigen EWR-Länder, die vor dem Abschluss des EG/EFTA-Abkommens ergangen sind. Die künftige Rechtsprechung ist dagegen nicht verbindlich für die EFTA-Länder. Damit werde die "Autonomie und Homogenität" der EG-Rechtsprechung unterhalten, beanstanden die Richter.

Vor Neuverhandlungen über den EWR

Gegen fremde Richter

Seit der Gerichtshof der EG Ende November vorgelegt hat, sind Einwände gegen diesen institutionellen Klauseln zu erwarten und ist mit dem Erfordernis nachmaliger Verhandlungen zu rechnen gewesen. Das bestreitet sich nun nach dem «avis» des Luxemburger Richterkollegiums. Diesem wird man politische Feindseligkeit gegen den EWR und juristische Kleinlichkeit nicht vorwerfen können. Seine Aufgabe besteht darin, für die Unantastbarkeit des Gemeinschaftsrechts zu sorgen. Dieses scheint ihm eben rechtlich zu sein, wo es um die Schlichtung von Streitigkeiten im EWR geht, nicht gewährleistet. Wo immer die Gerichte der EG und des EWR gleiche Tatbestände angeben, werden sie, wie der Vorrang des EG-Rechts urteilen, wäre der Vorrang des EG-Rechts betroffen.

EC Court Sends Trade Pact Back To Negotiators

Jurisdictional Questions Threaten 19-Nation Market

By Charles Goldsmith
International Herald Tribune
BRUSSELS — The EC Commission said Sunday that the landmark accord to create a 19-nation European free-trade zone would require renegotiation to overcome an objection by the EC's European Court of Justice.

The Luxembourg-based court invalidated plans by the EC and the European Free Trade Association to establish a joint court to settle disputes within a new European Economic Area. The Court of Justice said the new tribunal would "undermine" the EC treaty by reducing the Community's judicial independence.

"It's a scandal, no less," said the commission during the negotiations whether this structure, with a joint court, could function, and we were assured it could," Foreign Minister Uffe Ellemann-Jensen of Denmark said Sunday on state-run Danish Radio.

Mr. Ellemann-Jensen said he had been in contact with his Nordic colleagues to discuss the situation. "It's a great surprise to us all," he said, "and I can't think how it happened."

An EFTA diplomat said the joint court had been a delicate point to negotiate and that it would be difficult to reopen that chapter. "From what we understand of the court opinion," he said, "it seems to be quite negative. We are not very content with what happened. It's very worrisome."

The court issued a 52-page opinion that was not a judgment or a decision. But observers said the EC could not ignore the objections. Officials said the problem could not be easily remedied through fine tuning by lawyers but would instead require redrafting by negotiators from the EC and the seven-nation EFTA, which comprises Norway, Sweden, Finland, Austria, Switzerland, Iceland and Liechtenstein.

"It will be necessary to negotiate again," an EC official said. "We have to see whether there is a way such a court can be maintained. EFTA countries want something in return for not having a role in our decision-making."

The EFTA diplomat said the next step was an "internal Community matter."

EOS-DRAMAET

EMNE ER VG

ORDENE SOM KAN STOPPE EOS

Her er artikelen i Romo-traktaten som EF-domstolen bruker som argument for at avslutte EOS-avtalen.

DOMSTOLEN

EF-domstolen i Haag har på sitt 12. møte i oktober besluttet at EOS-avtalen er ulovlig. Dette betyr at EOS-avtalen er ugyldig, og at alle EOS-avtaler som er inngått etter EOS-avtalen er ugyldige. Dette betyr at alle EOS-avtaler som er inngått etter EOS-avtalen er ugyldige, og at alle EOS-avtaler som er inngått etter EOS-avtalen er ugyldige.

KOMMISSIONEN

EF-kommisjonen i Brussel har på sitt 12. møte i oktober besluttet at EOS-avtalen er ulovlig. Dette betyr at EOS-avtalen er ugyldig, og at alle EOS-avtaler som er inngått etter EOS-avtalen er ugyldige.

RADET

EF-rådet eller Ministerrådet, som det vanligvis kalles, har på sitt 12. møte i oktober besluttet at EOS-avtalen er ulovlig. Dette betyr at EOS-avtalen er ugyldig, og at alle EOS-avtaler som er inngått etter EOS-avtalen er ugyldige.



Bjørn Tore Godal, norsk handelsminister

... men ikke verre enn at Godal dro i jule-selskap

EF-domstolens nei til EOS-avtalen satte full fyr i det politiske Norge ut over kvelden i går. Handelsminister Bjørn Tore Godal fastslår at situasjonen er alvorlig — men ikke så alvorlig at han ville droppe de planlagte juleselskaper.

FLAUT for Delors

Et solid pressetvillingsforleg for Jacques Delors (blått) og medlemmene av EF-kommisjonen, som er i Brussel for å diskutere EOS-avtalen.



Jacques Delors, leder for EF-kommisjonen

PÅ VEI TIL FEST: — Selsvagt er dette alvorlig, fastslår handelsminister Bjørn Tore Godal, som dro rett fra direktesenteret om EOS-krisen på Dagsrevyen til innstilt på å åpne for forhandlinger om avtalen.

JULEPESANG

eventuelle journalister som hadde tenkt å stille spørsmål om EOS-telefoner på morgenvakten.

JULI FORHANDLING

Pr-leder Carl I. Hagen ser ingen grunn til å stoppe EOS-prosessen. Han mener Norge bør gå til å bli referanse til nye EOS-avtaler som er inngått etter EOS-avtalen.

ÅR 1992

Jeg kunne ønsket meg to helt annen julepesang! Dette betyr etter alt som er sagt om EOS-avtalen, at det er på plass en ny EOS-avtale.

Søndag 15. desember 1991

Søndag 15. desember 1991



■ EFTA negotiators celebrate what they believed to be the conclusion of the EEA negotiations in Autumn 1991.

Prof. Dr. Horst G. Krenzler

Former Director General of External Relations of the European Commission, and EC chief negotiator

The EEA negotiations were a unique experience and legally and institutionally the most complex negotiations I ever had to conduct for the European Commission.

The objective and the institutional challenge were the full participation in the internal market of the EC of European states that were not yet ready or willing to join the EC. The intention to bring the internal market into existence in 1993, as foreseen by the Single European Act of 1986, also defined the tight framework for the EEA negotiations. The participation in the internal market and its legal framework went far beyond simple free trade, which had already been realised between the EU and the EFTA states. It implied intense regulatory activity. The route to this goal was full of obstacles – it was new, uncharted territory.

An important setback was the rejection of a common EEA court by the European Court in its Opinion 1/91. Even though EEA legislation mirrored EC legislation, the interpretation of the rules in the EEA context could differ as the EEA is considered by the European Court a classical agreement based on international law whereas the EC Treaty is defined as a legal order on its own. This part of the EEA had to be

‘ The participation in the internal market and its legal framework went far beyond simple free trade, which had already been realised between the EU and the EFTA states.’

re-negotiated and, following the two-pillar model, an EFTA Court composed solely of EFTA judges was established. This revision was approved by the European Court in its Opinion 1/92.

Another very real difficulty in the negotiations was the decision-making process. The EFTA states wanted elements of co-decision. This was not acceptable to the EC Member States because they wanted to preserve the decision-making autonomy of the EC. In the end, after a conclave of the chief negotiators, a compromise system was created by which the EFTA states participated in the preparatory phase of new legislation like EC Member States, the so-called decision-shaping. The EFTA states were also permanently consulted during the decision-making process while the final decisions were to be taken by the EC institutions alone. However, only a consensus decision by the common EEA committee can guarantee that EC law is also implemented in the EEA EFTA states.

After 15 years of existence of the EEA it must be recognised that this complex decision-making process works highly satisfactorily – in spite of some initial doubts. It was also basically possible to maintain the homogeneity of the law in this large and dynamic European Economic Area thanks to the good functioning of the EFTA Court.



■ Carl Baudenbacher, President of the EFTA Court, gives a presentation at the biannual EEA seminar in Brussels.

The EEA 15 Years On – The Role of the EFTA Court

Prof. Dr. Carl Baudenbacher, President of the EFTA Court

The EEA Agreement is based on a **two-pillar structure**, the EC forming one pillar and EEA/EFTA the other. The law in both pillars is largely identical in substance. In order to create a level playing field for individuals and economic operators, the drafters formulated **homogeneity rules** which essentially bind the EFTA Court to follow relevant ECJ case law. On the other hand, there is no written provision which would oblige the ECJ to take into account relevant EFTA Court case law. This is remarkable since in the vast majority of its cases, the EFTA Court has to tackle **fresh legal questions**. To link the EFTA States to the supranational EC by means of international law was an ambitious task. After fifteen years one can safely say that the experiment has succeeded.

Originally, the fathers and mothers of the EEA Agreement had planned to establish an **EEA Court** which would have consisted of judges from the ECJ and from the EFTA States. In Opinion 1/91, the ECJ declared this judicial system incompatible with Community law. With hindsight, one must concede that as far as the result is concerned, the ECJ did the right thing. The EEA Court would have been a mixed breed which could have led to confusion. However, the ECJ overshot the mark. It argued that the EEA Agreement was but a simple treaty under public international law binding essentially the Contracting

Parties, that its provisions lacked direct effect and primacy and that they were to be interpreted according to the conservative rules of the Vienna Convention on the Law of Treaties. To the ECJ's credit one must say that its approach may have been motivated by the refusal of the EFTA States and their courts to give any effect to the provisions of the 1972/1973 bilateral Free Trade Agreements, a practice that in view of the ECJ's 1982 Kupferberg judgment led to a **judicial restraint** of trade.

In reality, the ECJ's considerations were more some sort of a prognosis than statements carved in stone. This became clear when the EFTA Court in its very first judgment in Restamark held that the main focus of the EEA Agreement was not on alleged differences between EC and EEA law, but on **homogeneity**. The Court also found in this case that quasi-direct effect, i.e. the capacity of EEA rules that had been implemented into the national legal orders of the EFTA States of being **invoked in national courts**, followed from EEA law. Both Community courts honoured this by opening a dialogue with the EFTA Court at the first opportunity, the Court of First Instance (CFI) in its 1997 Opel Austria judgment and the ECJ in the same year in De Agostini and TV Shop i Sverige. In 2002, in Einarsson, the EFTA Court applied the approach used in Restamark also to the issue of primacy.



■ *The panel of judges from the EFTA Court in Luxembourg at the hearing on the Norwegian monopoly on gaming machines. From left: Judge Henrik Bull (Norway), Judge and President Carl Baudenbacher (Lichtenstein) and Judge Thorgeir Örlygsson (Iceland). Photo: Kjetil Elsebutangen / SCANPIX.*

Most importantly, in its 1998 Sveinbjörnsdóttir landmark judgment (against the advice of the Governments of Iceland, Norway and Sweden as well as, a bit surprisingly, of the European Commission) the EFTA Court found **state liability** to be part of EEA law. With this, the ECJ's prognosis in Opinion 1/91 concerning fundamental differences between EC and EEA law was essentially falsified. Six months later the ECJ echoed the EFTA Court's Sveinbjörnsdóttir judgment in Rechberger. The Supreme Courts of Iceland, Norway and Sweden accepted EEA state liability. In later rulings the EFTA Court further held that national courts of the EEA EFTA states are bound to interpret national law as far as possible in conformity with EEA law.

As far as the **legal nature** of the EEA Agreement is concerned, the EFTA Court stated in Sveinbjörnsdóttir that the EEA Agreement is an international treaty sui generis which has created a distinct legal order of its own. Its depth of integration is less far-reaching than under the EC Treaty, but the scope and objective go

beyond what is usual for an agreement under public international law. In its 2003 Ásgeirsson judgment, the EFTA Court, referring to the case law of the CFI and of the ECJ, held that the legal order established by the EEA Agreement was characterized by the creation of an internal market, the protection of individual rights and an institutional framework providing for effective surveillance and judicial review. With this, the EFTA Court has acknowledged that the EEA constitutes a **tertium** between the supranational EC law and classical public international law. The goal of the EEA Agreement to protect individuals and economic operators became also manifest with the recognition of EEA fundamental rights in cases TV 1000, Bellona and Ásgeirsson and of other general principles of EEA law such as non-discrimination, proportionality, good administration, legal certainty and the protection of legitimate expectations. Most importantly, the EFTA Court does not follow the interpretation rules of the Vienna Convention on the Law of Treaties, but the same maxims as the ECJ. This may include dynamic interpretation not only in cases

in which the EC Treaty has been amended since 1994 and the EFTA Court is bound by homogeneity to follow the ECJ's case law, but also in **going first** cases. On balance, the EEA Agreement is closer to supranational EC law than to public international law.

The EFTA Court has dealt with a little more than 100 cases in the first 15 years of its existence. That probably corresponds to what was expected in 1995, after the Court was downsized from five to three judges. Still, there are cases in which national tribunals refrain from making a preliminary reference although parties have asked for it. The widespread assumption that courts of last resort in the EEA EFTA states have an unlimited discretion to seize or not to seize the EFTA Court is questionable. Experience shows that EFTA individuals and economic operators enjoy broad access to the ECJ. National courts of the EEA EFTA states should take that into account and **refer every case** to the EFTA Court in which the interpretation of EEA law is at stake. The EFTA Surveillance Authority, for its part, appears to be more reluctant to bring direct actions against governments than the Commission in the EC pillar.

‘ The EFTA Court has dealt with a little more than 100 cases in the first 15 years of its existence.’

In substance, the EFTA Court has in particular dealt with cases concerning the four fundamental freedoms, State monopolies in the fields of alcohol, tobacco and gambling, EEA state liability, competition and state aid law, equal treatment, labour law, trademark law, insurance law, food law and social security law.

The EFTA Court has established itself as an independent European court of law in the first 15 years of its existence. This is no obvious accomplishment given the fact that the Court has since 6 September 1995 consisted of only three judges (which means, inter alia, that the judge from the country concerned must also sit in politically sensitive cases) and that appointment and reappointment of the judges lay in the hands of the governments.

The Court has from the beginning developed a system of precedent. Its autonomy is strengthened by the fact that the president is elected by the judges and not the governments. The Court's rulings are followed by the national courts and by the governments of the EEA EFTA states. But they also have a significant impact on **Community case law**. The EFTA Court has probably dealt with fresh legal questions in some 60 cases. This has led to an equal number of references by the ECJ, its Advocates-General, the CFI and Supreme and Appeals Courts in the UK, Germany, Sweden, Austria and the Netherlands. The EFTA Court is thereby making a significant contribution to the development of the case law in the whole of the EEA.



■ Institutional issues were one of the most difficult challenges during the negotiations.

EFTA Surveillance Authority – The watchdog

Per Sanderud, President of the EFTA Surveillance Authority

One challenge for the negotiators of the EEA Agreement was to find a way of ensuring the homogeneity of the Internal Market legislation throughout the entire European Economic Area and to give credibility to the full participation and implementation among the EFTA States. There had to be a supervising body providing a guarantee of credibility, and the initial choice – the European Commission – could not be given a mandate outside the EU. The solution was to establish a separate supervising body within the EFTA pillar of the Agreement, the EFTA Surveillance Authority. With the EFTA Court, the Surveillance Authority is thus an authentic creation of the EEA Agreement.

Upon establishment in 1994, the Authority began monitoring the implementation of the Agreement in five of the EFTA States, Austria, Finland, Iceland, Norway and Sweden. Following the enlargement of the European Union on 1 January 1995, only two countries, Norway and Iceland, remained in the EFTA pillar of the EEA, but since the entry of Liechtenstein on 1 May 1995 a total of three EFTA States are under the supervision of the Authority.

Since then, the Authority has established itself as an independent and efficient surveillance body in Brussels, with a highly qualified staff of approximately 60 people. At present, 16 nationalities are represented among the staff of the Authority.



■ Per Sanderud at his desk in ESA's offices in Rue Belliard 35.



■ *The EFTA building in Rue de Trèves 46 in Brussels housed the EFTA Surveillance Authority (ESA), the EFTA Secretariat, and the Mission of Iceland to the EU from 1993 to 2005.*

The Authority must ensure that those parts of EU legislation which are made part of the EEA Agreement (by decision of the EEA Joint Committee) are implemented and applied by the three EFTA states which are part of the EEA. This is a role which mirrors the supervisory role the European Commission has towards the 27 EU Member States. The two institutions thus supervise the application of the same set of rules and regulations in different parts of the EEA. Although both institutions conduct their tasks independently of each other, co-ordination and good knowledge about each other's positions and considerations are essential, as diverging interpretations could jeopardise the good functioning of the agreement.

A common criticism of the Authority is often expressed through the metaphor that "it is more Catholic than the pope", or as a prominent politician once said: "the Authority has as its most important task to torment Norway". The Authority is sometimes accused of being stricter in its surveillance of the EFTA States than the Commission is towards the EU States. When considering whether there is any basis for such a statement, first of all, it is important to emphasise that the Agreement is based on the objective of creation of a homogenous area. It may be interesting to note that

in an article five years ago the President of the EFTA Court, Carl Baudenbacher, after observing that the Surveillance Authority had won all its direct action cases, stated: "that it may have a tendency to bring 'waterproof' cases, whereas the Commission seems to be willing to seek a clarification of the law also in cases where the result may not be that obvious."

‘ A common criticism of the Authority is often expressed through the metaphor that "it is more Catholic than the pope", or as a prominent politician once said: "the Authority has as its most important task to torment Norway". ’

The record shows, however, that the Authority does not shy away from taking on difficult cases and bringing them before the EFTA court. On the other hand, the Authority is not the organisation to push the boundaries of EU or EEA law. A former director of legal affairs once put it as follows: "The Authority views its role and that of the Commission as dancing partners. The two organisations should definitely follow the same rhythm, but it is the Commission that leads the dance and the Authority that follows."

The Authority's role and the question of whether the Authority is too strict, was examined in 2002 by Professor Hans Petter Graver and Professor Ulf Sverdrup at the University of Oslo. In their study, they compared the practices of the two surveillance bodies in Brussels. Their conclusion was that the available statistical material did not support the claim that the Authority was stricter than the Commission.

The Authority has also an important role to play to protect the rights of individuals and market participants that find their rights violated by rules or practices of the EFTA States. Such rules or regulations may for instance have a discriminatory effect, they may impose unnecessary burdens on some commercial activity, or they may constitute unlawful state aid to a competitor of the complainant. The Authority may in such cases initiate infringement proceedings against the relevant EFTA State, asking for a change of the relevant rules or practices.

The vast majority of cases at the Authority relate to fairly uncomplicated matters that are solved without much public attention. Each year, the EFTA States submit a high number of notifications concerning the implementation of EEA acts into national legislation. In addition, several hundred cases relating to different surveillance and enforcement tasks are opened and closed. Only a small share of the cases actually lead to formal proceedings being initiated against an EFTA state, most of them not giving rise to concern or being settled beforehand.

Important tasks are also assigned to the Authority in the field of competition. Here, it is not the EFTA States that are subject to the Authority's scrutiny, but the individual actors in the market. The tasks are conducted on parallel with the European Commission, and in close cooperation with national competition authorities.

Cases relating to energy, climate and the environment have been high on the Authority's agenda over the last few years. The emerging financial crisis has led to an increased involvement of the Authority in supervising that the measures that are taken in order to stimulate the economy are compatible with Internal Market rules and that they are applied in a transparent and non-discriminatory manner. In general, over the last few years state aid cases have taken a more prominent place among the areas that are dealt with by the Authority. Such issues are relevant within almost every area of the economy, and, as the States are taking a more active role the importance of state aid rules – and the role of the Authority as a supervising body – is likely to see a further increase.

‘ The record shows, however, that the Authority does not shy away from taking on difficult cases and bringing them before the EFTA court. ’

The signing

The Agreement on the European Economic Area was signed in Oporto, Portugal on 2 May 1992.

Norway's Minister of Trade Bjørn Tore Godal signs the EEA Agreement.





■ *Journalists gathered outside the conference room where ministers from the EC and EFTA were about to reach political agreement on the EEA, Luxembourg, 18 June 1991.*

Press statement after the signing of the EEA Agreement

Porto, 2 May 1992

The creation of the European Economic Area ushers in a new phase in relations between the Community and its Member States and the EFTA States, and also constitutes a particularly important element in the new architecture of Europe.

The European Economic Area is intended to give fresh impetus to the privileged relationship between the European Community, its Member States and the EFTA States, which is based on their proximity, the importance of their economic relations, their common values of democracy and a market economy and their common European identity.

‘ The European Economic Area is intended to give fresh impetus to the privileged relationship between the European Community, its Member States and the EFTA States... ’

Once the European Economic Area has come into existence, the Community and its Member States and the EFTA States will make up the largest and most important integrated economic area in the world comprising 19 countries and enabling some 380 million citizens, through increased cooperation, to achieve greater prosperity and to assume their responsibilities even more effectively on the international scene, particularly in Europe.

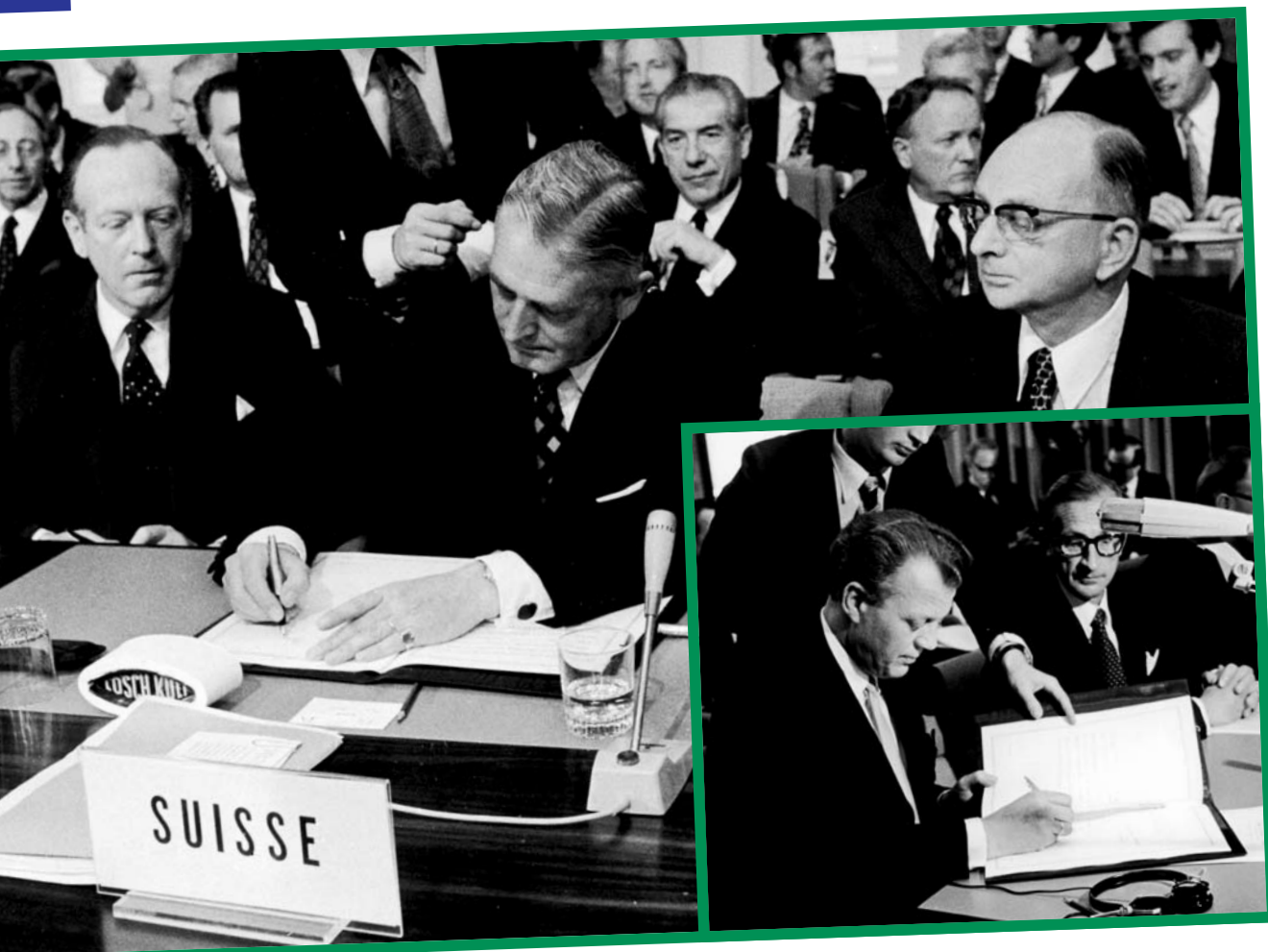
The aim of the Agreement on the European Economic Area is to establish a dynamic and homogeneous integrated structure based on common rules and

equal conditions of competition and equipped with the means, including judicial means, necessary for its implementation; it is based on equality, reciprocity and an overall balance of the contracting parties' benefits, rights and obligations.

The Agreement will make it possible to realize within the EEA the free movement of goods, persons, services and capital (achievement of the "four freedoms") on the basis of the European Community's existing legislation (the *acquis communautaire*) as it has evolved over the past 30 years, subject to a few exceptions and transitional periods....



■ Portuguese Prime Minister Anibal Cavaco Silva and Swiss Councillor Jean Claude Delamuraz on the occasion of the signing of the EEA Agreement.



- How it all started: The EFTA States signed bilateral free trade agreements with the European Economic Community in 1972-1973, leading to the elimination of tariffs on industrial goods in trade between the EEC and the EFTA States in 1977.



- The agreement on the enlargement of the EEA to include Romania and Bulgaria was signed in July 2007. This brought the total number of countries in the European Economic Area to thirty, with a combined population of almost 500 million people.

European Economic Area: Milestones

- 1984** Luxembourg Declaration on broader co-operation between the EEC and EFTA.
- 1986** Portugal leaves EFTA to become a member of the EEC.
Finland becomes a full member of EFTA.
- 1989** European Commission President Jacques Delors proposes a significant strengthening of EC-EFTA relations, which is welcomed by EFTA leaders.
- 1990** Start of negotiations on a European Economic Space.
- 1991** Liechtenstein becomes a member of EFTA.
- 1992** The Agreement on a European Economic Area (EEA) is signed in Oporto, Portugal.
Switzerland rejects participation in the EEA by referendum.
- 1994** The Agreement on the European Economic Area (EEA) enters into force.
The EEA Financial Mechanism is established for the period 1994-1998.
- 1995** Austria, Finland and Sweden leave EFTA to join the European Union.
Liechtenstein becomes a full participant in the EEA Agreement.
- 2000** A new EEA Financial Instrument is established for the period 1999-2003.
- 2004** The EEA increases its membership to 28 countries, as ten countries in Central and Eastern Europe join the European Union on 1 May.

A new EEA Financial Mechanism as well as a bilateral Norwegian Financial Mechanism is established in support of social and economic cohesion for the period 2004-2009.
- 2007** Bulgaria and Romania join the EU and the EEA is consequently enlarged to 30 countries.