

EFTA BULLETIN

THE EUROPEAN ECONOMIC AREA
AND THE SINGLE MARKET
20 YEARS ON

SEPTEMBER 2012

20^{th anniversary}
Signing of the EEA Agreement



The European Economic Area and the Single Market 20 Years on

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FOREWORD

20th anniversary
Signing of the EEA Agreement



This issue of the EFTA Bulletin is published 20 years after the signing of the Agreement on the European Economic Area (EEA). Two decades have passed since the EEA EFTA States joined the European Community (EC) in an effort to complete the Single Market. The anniversary represents an opportune occasion to review the past, take stock of the present, and look into the future of the EEA.

When the EEA Agreement was signed on 2 May 1992 in Porto, Portugal, it constituted one of the major political events of the year in Europe. Not only was it the most comprehensive trade agreement in Europe up until that point. It also marked the most significant step towards the realisation of a genuine Internal Market, an idea originally conceived in the 1950s with the creation of the EC. The new economic zone that was laid out in the Agreement comprised all the major economic powers of Western Europe.

But Europe has changed drastically since 1992. The EC became the European Union (EU) in 1994, and has since undergone profound institutional reform and grown considerably in both membership and scope. At the same time, EEA EFTA membership has dwindled. Following a referendum, Switzerland withdrew from the Agreement only a few months after the signing, while Austria, Finland and Sweden acquired full membership of the EU in 1995. Of the seven EEA EFTA signatory states, three remain.

EEA membership provides invaluable access to the Single Market for the EEA EFTA States. Despite the many changes in Europe since its inception, the

Agreement remains the basis of their cooperation with the EU. Both academic and political assessments have shown that the Agreement is efficient in ensuring homogeneity in the Internal Market. Few would contest that it has proved to be a durable instrument of integration in Europe. The 20 years anniversary is therefore well worth celebrating.

At the same time we must acknowledge that there are challenges. The Agreement was a compromise to enable participation in the Single Market of both members and non-members of the EC. A truly integrated market with homogeneous rules requires the continuous dedication of EEA EFTA States to incorporate Single Market legislation. Furthermore, the amount of legislation covered by the Agreement, and hence the impact, has increased manifold since the inception of the EEA. However, the vast majority of EEA legislation is of technical nature. While it has a real and wide ranging impact on ordinary people's daily lives, most of it is uncontroversial, and passes under the political radar.

The last few years have seen renewed interest in the EEA Agreement. A comprehensive review of Norway's relationship with the EU was published earlier this year with considerable press coverage. Also, the EU is currently working on a report examining the functioning of the Agreement.

Although the Agreement is 20 years old, the idea of an Internal Market is much older. Completion of the Single Market has been the goal of European integration ever since the creation of the European Community in 1957. The process gained momentum in the 1980s, mostly due to the efforts of the President of the European Commission, Jacques Delors. The Single European Act in 1986 set a clear objective of completing the Single Market. Subsequent policy initiatives have been important for driving the process forward. The first part of the Bulletin gives an account of these developments.

Looking back, we can state that the EEA Agreement has been successful in its mission to foster economic integration in Europe. The general consensus is that the Agreement is working as intended, and a revision is not on the political agenda. It is important nevertheless that we continue to critically assess the functioning of the EEA. Studies can help to improve the operation of the Agreement and support future political debates. Discussions on the EEA benefit from informed analysis of both the strengths and the weaknesses of the Agreement. Three articles, penned by authors from each of the three EEA EFTA States, offer different perspectives on the functioning, current challenges, and future of the Agreement.

The EEA does not exist in a vacuum. As previously mentioned, the EU has changed profoundly since 1992 and the dynamic nature of the EU poses specific challenges to the Agreement. This issue is addressed in the contribution by researchers from the Centre of European Policy Studies, which discusses whether the EEA needs a strategy to adapt to the changing circumstances.

Parliamentarians and social partners have contributed significantly to the success and legitimacy of the Agreement through the EFTA Parliamentary Committee and the EFTA Consultative Committee. Two longstanding Committee members give their personal views on the 20 years of the EEA and its future challenges.

The final pages contain statistics to illustrate various elements of the EEA Agreement, including trade in goods, mobility of persons, financial contributions by EEA EFTA States and the volume and character of the legal acts incorporated into the EEA Agreement.

Kristinn F. Árnason
Secretary-General

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FROM THE COMMON MARKET TO THE SINGLE MARKET ACT

Constructing the Single Market



President of the European Commission Jacques Delors speaking at the EEA signing ceremony in Porto, 1992. Delors is often regarded as the father of both the Single Market and the Monetary Union.

The Treaty of Rome and the Common Market

The 1957 Treaty of Rome, which established the European Economic Community, called for the establishment of a Common Market. This was to be accomplished by the creation of the following:

- A free trade area;
- A customs union;
- “*The abolition, as between Member States, of the obstacles to the free movement of persons, services and capital*”;
- The launch of common agricultural and transport policies;
- “*The establishment of a system ensuring that competition shall not be distorted in the Common Market*”; and
- The coordination of the economic policies of the Member States.

The Common Market would be established progressively during a transitional period of 12 years (i.e. by the end of December 1969), divided into three stages of four years each.

The customs union was completed more quickly than expected. The transitional period for enlarging quotas and phasing out internal customs ended on 1 July 1968, 18 months ahead of schedule. By the same date, Europe had also adopted a common external tariff for trade with third countries. This swift progress was partly as a result of the reduction of tariff barriers on industrial goods since the establishment of the General Agreement on Tariffs and Trade in the late 1940s. This had contributed to the high growth rates seen in Western Europe in the two decades following the end of World War II.

From the early 1970s onwards, however, this period of continuous growth ended, triggered in particular by the break-up of the Bretton Woods monetary system in 1971 and the oil shock of 1973. The increasing use of non-tariff barriers as a response to the difficult economic situation, a situation in which much of the developed world found itself in the 1970s and the early 1980s, further exacerbated the problems of the European economy.

In other areas, progress towards completion of the Common Market was also slow, owing to problems with the “old” regulatory approach of harmonisation and the requirement of unanimity.

The 1992 Project and the Single European Act

Jacques Delors took over as Commission President in January 1985. Following consultations with leaders from the European Community (EC), he decided to make it his main priority to complete the Internal Market by 1992. The Commission’s White Paper, *Completing the Internal Market*, was adopted on 14 June 1985 (the 1985 White Paper).



Where it all started. Signing of the Treaty of Rome, 1957.

© Photo: European Commission

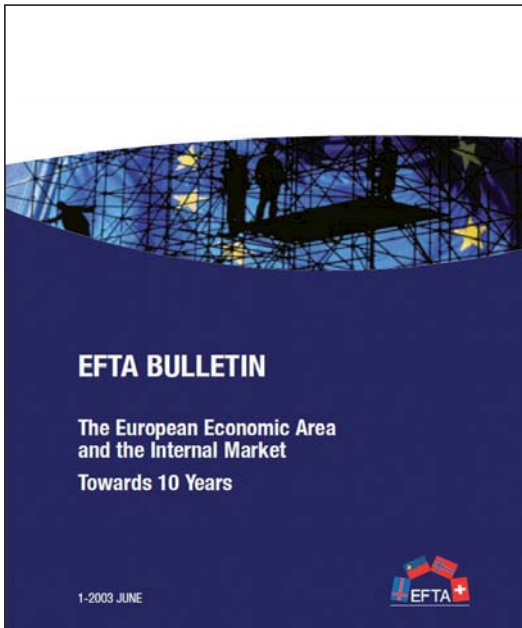
The 1985 White Paper proposed a programme and timetable of around 300 measures to remove physical, technical and fiscal barriers to the four freedoms. The measures to remove physical barriers pertained to the control of goods and individuals, while those concerning fiscal barriers targeted value added tax and excise duties. The numerous measures to remove technical barriers covered various areas such as public procurement, labour, services and capital, as well as industrial cooperation and the application of Community law.

A key element of the Commission's approach to technical barriers to trade was to "move away from the concept of harmonisation towards that of mutual recognition and equivalence". This was a response to the perceived shortcomings of the *"harmonisation approach [which had been] the cornerstone of Community action in the first 25 years"*. Such a fundamentally new approach was made possible by the 1979 Cassis de Dijon decision of the European Court of Justice, which established the principle of mutual recognition in Community law.

The new strategy on technical barriers had three components:

- An assessment for each initiative to determine whether or not harmonisation was required. If it was not, mutual recognition would apply;
- A new approach to legislative harmonisation, which was restricted to laying down essential health and safety requirements, i.e. minimum rather than harmonised standards; and
- The development of European standards adopted by qualified majority voting (QMV).

A major study on the benefits of completing the Internal Market and "the cost of non-Europe" - the Cecchini Report - was completed in 1988. The Report concluded that the completion of the Internal Market would add around 5% to the EC's gross domestic product (GDP), mainly through savings made by the removal of barriers to internal trade and the exploitation of economies of scale made possible by a genuine single market.



Following the European Commission's 2003 publication "Ten Years Without Frontiers", EFTA issued a Bulletin dedicated to the first decade of EEA EFTA participation in the Internal Market.



The shift towards QMV proposed by the 1985 White Paper was helped by the fact that discussions on this subject were already under way. The Dooge Report, which was presented to the European Council in December 1984, had proposed significant institutional changes to the European Community. In June 1985, the European Council launched an intergovernmental conference with a view to what would be the first major revision of the Treaty of Rome. This led to the Single European Act, which was signed in February 1986 and set the objective of completing a Single European Market by the end of 1992 (the 1992 project) in line with President Delors' deadline. This was to be achieved by more QMV in the Council and greater cooperation with the European Parliament. The Single European Act entered into force on 1 July 1987, facilitating the completion of the Single Market.

Completing the Internal Market

The Single Market was launched formally on 1 January 1993, as scheduled by the Single European Act. More than 90% of the legislative acts proposed in the 1985 White Paper had been adopted, including the abolition of checks on goods at internal frontiers, the full liberalisation of capital movements by the removal of exchange controls and national preferences, the

opening up of public procurement markets and the introduction of a horizontal approach to veterinary and plant health law. Regulations on work and health in the workplace had been adopted and the principle of mutual recognition with regard to diplomas introduced. Furthermore, progress had been made with regard to the freedom of establishment and the free movement of services, paving the way for a Single Market in road and air transport and in financial services, as well as laying the groundwork for European intellectual property rights laws.

Despite these watershed developments, they did not mean that the Single Market had been completed. Much of the adopted legislation had not actually been transposed or implemented in the European Union (EU) Member States. In addition, controls on persons had not been removed, transport services had not been liberalised and there had been very limited progress towards the harmonisation of tax regimes. This was because the "White Paper [was] not intended to cover every possible issue which affects the integration of the economies of the Member States and the Community". Key issues relating to the Single Market in services that had not been included in the 1985 White Paper included, notably, network industries and public service sectors.

Action Plan, Strategies and Reviews

The process of completing the Single Market has been driven subsequently by a series of policy programmes proposed by the European Commission and approved by the EU Member States. These are:

- The 1997 Single Market Action Plan
- The 1999 Strategy for Europe's Internal Market
- The 2003 Internal Market Strategy
- The 2007 Single Market Review

The first comprehensive review of the 1992 project culminated in the 1997 Single Market Action Plan. Its main conclusion was that the Single Market had contributed significantly to growth, competitiveness and employment in Europe by an increase in income of between 1.1% and 1.5% of GDP and the creation of between 300 000 and 600 000 jobs. It also found that the full potential of the Single Market had not been realised, in particular with regard to social policy, employment, economic convergence and cohesion, and overall implementation and enforcement of existing legislation. To address these issues, the Action Plan proposed around 100 measures to be introduced by the end of 1999.

GENERATION 1992.eu

YOU IN THE EUROPEAN SINGLE MARKET

On the occasion of the 20th anniversary of the European Single Market, the European Commission launched a competition among people born in 1992: “What does the Single Market mean to YOU?”

This was followed in November 1999 by a five-year strategy for Europe’s Single Market and a three year Single Market strategy, adopted in 2003. Both these strategy papers contained numerous new actions aimed at completing the Single Market.

The Single Market Review adopted in November 2007 represented an approach somewhat different from the previous Single Market strategies, by being broader and more comprehensive and by setting out new governance principles for the Single Market. More than 30 measures were introduced, focused on improving the governance of the Single Market through the development of new working methods and the use of a diverse set of policy instruments. The stated aim was to make Single Market policy more evidence-based, impact-driven and targeted, more network-based and less centralised, and more accessible, better communicated and enforced.

On the tenth anniversary of the “completed” Single Market, the Commission undertook a major study to assess the benefits of the Single Market. Finalised at the beginning of 2003, the study, *Ten Years Without Frontiers*, estimated that the Single Market had delivered 2.5 million extra jobs and added EUR 900 billion in extra wealth. A similar study undertaken as part of the 2007 Single Market Review found that the Single Market had resulted in an increase in welfare of more than EUR 500 per head, corresponding to a 2.15% increase in GDP in the period 1992 to 2006 and an extra 2.75 million jobs.

Progress on the Four Freedoms

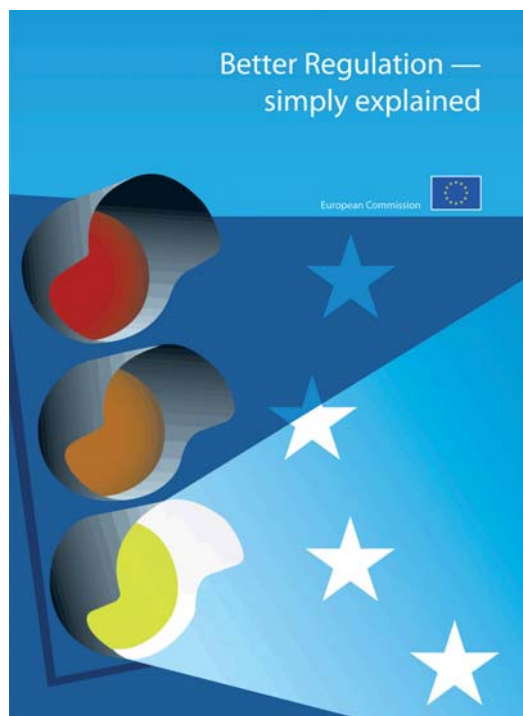
The free movement of goods and services was the main focus of the 1985 White Paper and has been central in subsequent policy programmes. A steady stream of policy initiatives and secondary legislation to “*enhance efficiency of product and capital markets*”

(1999) by removing “*remaining and new barriers*” (1997) and thus facilitating “*the free movement of goods ... the integration of services markets ... [and ensuring] high quality network industries*” (2003) have been proposed and adopted since the early 1990s.

Free movement of goods

The free movement of goods had come closest to realisation by January 1993, although numerous obstacles remained. These have been challenged by a series of important new initiatives and regular revisions of legislation, both in specific sectors and on more horizontal issues (i.e. pertaining to all policy areas rather than targeting only specific sectors), all of which have been aided by developments in technology. Key initiatives include the Regulation on chemicals (REACH), which entered into force in 2007, and the so-called Goods Package on the marketing of products, which entered into force in 2010.

In relation to intellectual property rights, progress has been uneven. On the one hand, a number of measures have been introduced to protect copyrights in an attempt



To emphasise the importance of the Better Regulation agenda, the European Commission produced an explanatory brochure in 2006 and set up a dedicated website for the project.



to combat counterfeiting and piracy. On the other, despite numerous attempts from the 1970s onwards to develop an EU patent, the EU Member States have not been able to reach agreement on an EU patent.

Free movement of services

Progress had been considerably slower on the free movement of services. Although services account for approximately two-thirds of wealth creation and employment in Europe, trade in services accounts for only around one-fifth of intra-European trade. Indeed, developing the Internal Market for services has arguably been the principal goal in the evolution of the Single Market in the last two decades.

The liberalisation of various network industries such as transport, energy, post and telecommunications in stages from the 1990s onwards was the first step towards creating an integrated, single market for services. In May 1999, the Commission proposed a Financial Services Action Plan with more than 40 further measures to be implemented within five years. These were followed by a general directive on services. First proposed by the Commission in 2004, the Services Directive was adopted in a modified version in 2006, following a contentious debate, and finally implemented at the end of 2009. Less progress has been achieved as regards measures to open up public utilities and “services of general economic interest”.

In light of technological developments, the establishment of a regulatory framework for electronic commerce has become increasingly prominent on the Single Market policy agenda.

Free movement of persons

Measures to ensure the free movement of persons constitute another priority in the various Single Market policy programmes. A central aim has been the extension of the rights of workers to all citizens. This is highlighted by the change in terminology: from the free movement of workers in the 1985 White Paper, to the free movement of persons. Key initiatives include the 1996 Posting of Workers Directive, the 2003 Working Time Directive and the 2004 Directive on the right to move and reside freely in the EU, as well as other measures to promote the mutual recognition of professional qualifications.

Horizontal Approaches

One key feature of EU policy is the growing prominence of horizontal approaches to the development of the Single Market, which is evident from the following developments:

The growing prominence attached to citizens and consumers through a strengthening of the social dimension of the Single Market



EFTA Ministers and Chief negotiators preparing for the signing of the EEA Agreement in 1992. First row from left: Bjorn Tore Godal, Minister of Foreign Affairs, Norway; Jean-Pascal Delamuraz, Swiss Federal Councillor in charge of the Federal Department for Economic Affairs; Ulf Dinkelspiel, Deputy Minister for European Affairs and Foreign Trade; Jón Baldvin Hannibalsson, Minister of Foreign Affairs, Iceland; Pertti Salolainen, Minister of Foreign Affairs, Finland; Hans Brunhart, Head of Government and Minister of Foreign Affairs, Liechtenstein; Wolfgang Schüssel, Minister of Economic Affairs, Austria; Birgitt Ederer, State Secretary, Austria; Alois Mock, Minister of Foreign Affairs, Austria; Second row: Eivinn Berg, Norway; Franz Blankart, Switzerland; Frank Belfrage, Sweden; Secretary-General Georg Reisch, EFTA; Hannes Hafstein, Iceland; Veli Sundbäck, Finland; Prince Nikolaus, Liechtenstein; and Manfred Scheich, Austria.

This is partially owing to the introduction of EU citizenship by the Maastricht Treaty and the gradual integration of EU social and consumer protection policy – which was not covered in the 1985 White Paper – with Single Market policy.

These developments are linked strongly with the efforts to realise the free movement of persons, which include a series of measures to strengthen consumer rights, to promote labour mobility while balancing flexibility and security and to reinforce the social dialogue by introducing new measures of consultation and dialogue with stakeholders. These developments have in turn been bolstered by the development of EU justice and home affairs policies, most notably with regard to the removal of internal borders through the Schengen Agreement.

The growing focus on the environment and climate change

These factors have increasingly become an integral part of all Single Market measures, be it standardisation, public procurement or financial reporting, which are three of the areas highlighted in the 1999 Strategy for Europe's Internal Market. Growing concerns about climate change have become a central element in this respect, leading to the launch of an EU emissions trade scheme in 2005. In 2008, the EU adopted an ambitious energy and climate change package aimed at combating climate change and transforming itself into an energy-efficient, low-carbon economy.

The increased emphasis on facilitating business

There has been an increasing focus on the need to promote innovation in the European economy, as can be seen from the measures taken to simplify the regulatory regime and the implementation of the tax agenda set out in the 1985 White Paper.

The removal of tax barriers was one of the three principal aims of the 1985 programme. A number of measures have since been adopted, including the Energy Taxation and Savings Tax Directives, both from 2003, the so-called VAT Directive of 2006 and the 2008 Directive concerning the general arrangements for excise duty.

In relation to the regulatory regime, a series of initiatives have been tabled, culminating in the adoption of the Better Regulation agenda in 2005. Key measures included the introduction of mandatory

impact assessments of new legislative proposals, more extensive use of public consultations in the development of Single Market policy and legislation, better coordination with and between the Member States on Single Market issues and various programmes to simplify Single Market legislation and reduce the administrative burdens on businesses.

These measures increasingly target small and medium-sized enterprises, which comprise a large majority of businesses and employment in Europe, but are often regarded as not having benefitted from the Single Market to the same extent as larger companies. A Small Business Act was subsequently adopted in 2008 as one of the initiatives proposed under the Single Market Review.

The increasing importance of the EU's broader economic policy agenda

This has become more significant following the establishment of the Economic and Monetary Union in 1999 and the launch of the Lisbon Strategy to strengthen economic policy coordination between the Member States in 2000. Successive treaty reforms – the Amsterdam, Nice and Lisbon Treaties – have facilitated this approach, by harmonising decision-making procedures across the three pillars established by the Maastricht Treaty. As a result, Single Market initiatives and legislative measures cover other areas of EU activity, including structural economic reforms at the national level and justice and home affairs policy. Another consequence has been the increased use of a more varied set of policy instruments, including the growing use of various “soft law” measures such as targets, benchmarks, guidelines and self-regulation.

The continued relevance of the external dimensions of the Single Market

This has primarily been an issue related to EU enlargements, most notably the fifth, which was the most substantial: negotiations were launched formally in 1997 and led to the accession of 12 new Member States in May 2004, primarily from Central and Eastern Europe.

The external dimension had, however, already been on the agenda before the launch of the Single Market. Negotiations with seven European Free Trade Association (EFTA) States on the creation of a European Economic Area (EEA) were launched in

1990. The EEA Agreement, which was signed in 1992, has allowed for the extension of the EU's Single Market to non-EU Member States, currently Iceland, Liechtenstein and Norway. This was followed in 1995 with the establishment of a customs union between Turkey and the EU.

Governance of the Single Market

The governance of the Single Market has evolved considerably since the early 1990s through the development of various tools that ensure the adopted legislation is implemented and enforced and that citizens and businesses are able to take advantage of the opportunities provided by a Europe-wide Single Market.

At the political level, the role of the European Parliament in the decision-making process has been strengthened considerably through successive extensions of the codecision procedure. This has altered profoundly the way in which Single Market policy is made.

Another key development was the establishment of the Internal Market Scoreboard in 1997, whereby the Commission monitors the transposition of Single Market legislation by the Member States. In 1997, only 65% of directives were fully operational and the number of open infringement cases had more than doubled in the ten years following the launch of the Single Market. The Scoreboard was supplemented by a broader annual cycle of monitoring and review introduced by the 1999 Strategy. An ambitious transposition deficit target of 1.5% was introduced, later lowered to 1%.

A number of additional measures to improve Single Market governance proposed by the 1997 Single Market Action Plan were introduced subsequently. These included the establishment of Single Market coordination centres in the Member States and an internet shop for information on all Single Market regulations. In 2002, the SOLVIT online problem-solving network was established. SOLVIT's purpose is to handle questions and complaints regarding the misapplication of Internal Market law by public authorities. The 2007 Single Market Review introduced further tools to improve the governance of the Single Market, including the creation of a consumer scoreboard, a new methodology for market and sector monitoring, and the consolidation of various citizens' assistance services into a single gateway.

Re-Launching the Single Market

Facilitated by the entry into force of the Lisbon Treaty in 2009, the EU's response to the economic crisis has led to considerable changes in the economic governance of the EU. The trend towards a more comprehensive and horizontal approach to economic policy making, which merges measures for the Single Market and Economic and Monetary Union with national economic policy coordination, has been strengthened further. Most of the major initiatives taken by the EU to counter the financial and economic crisis have focused on the Economic and Monetary Union and the coordination of national economic policy.

However, the numerous actions taken regarding financial services, the seven flagship initiatives of the Europe 2020 strategy, and the Single Market Act include hundreds of measures to further develop the Single Market. These were in large part inspired by the Monti Report of 2010, which was a study on how to remove existing bottlenecks and fill in the "missing links" in the Single Market, requested by Commission President Barroso in autumn 2009. As well as addressing these issues, the Monti Report proposed a more comprehensive "re-launch" of the Single Market.

Although subsequent actions have tackled many of the issues raised in the Monti Report, the consensus in the EU at the time of writing is that more needs to be done to promote growth in Europe and that the completion of the Single Market is one of the key instruments in achieving this.



Mario Monti, former Member of the European Commission, now Prime Minister of Italy, discussing his report "A New Strategy for the Single Market" with Joaquin Almunia, Vice-President of the European Commission, in 2011.

© Photo: European Commission © Photo: European Commission

THE EEA: STRENGTHS, WEAKNESSES AND CHALLENGES

Iceland's Position in the EEA⁽¹⁾



Eiríkur Bergmann
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Iceland

The European Economic Area (EEA) has facilitated the active Europeanisation of Iceland. The EEA Agreement brings three of the Member States of the European Free Trade Association (EFTA) – Iceland, Liechtenstein and Norway (collectively EEA EFTA) – into the European Single Market, with those countries agreeing to adopt the regulatory framework of the European Union (EU).

It does not, however, provide access for the EEA EFTA Member States to the EU's institutions and decision-making processes. It also does not cover the Common Agricultural Policy and regional cohesion policies and, perhaps most importantly for Iceland, it does not include the Common Fisheries Policy. EEA EFTA does not participate in the EU's trade policy, monetary policy, tax regimes, foreign affairs or many of the EU's internal matters, including judiciary affairs that fall outside the Schengen and Dublin Agreements.

Level of Integration

The EEA Agreement calls for the constant revision and update of Icelandic law to ensure the country is in line with the laws and regulations on the European Single Market, as dictated by the EU. To understand Iceland's involvement, it is beneficial to map its participation according to the 35 chapters the EU uses during membership negotiations.

Iceland already participates either fully or mostly in 23 out of the 33 chapters covering EU legislation, the *acquis communautaire* (chapters 34 and 35 do not cover any specific policy areas). Whatever unit of

measurement is used, it becomes evident that Iceland is deeply involved in Europe and is excluded from very few areas. In certain matters, such as those relating to the environment, transport and food hygiene, the vast majority of all legislation passed in the Icelandic parliament is initiated through the EEA. Furthermore, the border between what is considered part of the Single Market (and therefore what is EEA relevant) and other parts of EU legislation is becoming increasingly blurred.

The EEA facilitated the transformation of the Icelandic economy, which has not only grown rapidly but has also become more diversified and internationalised. However, despite the obvious economic benefits, the EEA Agreement has also presented grave challenges to Iceland's tiny economy and, more importantly, to its cherished democracy.

Democratic Challenges

Despite the equality of the EU and EEA EFTA in the formal institutional framework of the EEA Agreement, it has always been clear that the EU is the leading partner. As a result, the automatic implementation of EU legislation is rarely discussed in the Icelandic parliament. According to many legal scholars, however, this harmonised legal framework is in violation of the Icelandic constitution. When Iceland does try to deviate from the EU rules, the EFTA Surveillance Authority (ESA) intervenes. More than a dozen times, the Authority has taken direct action or issued formal infringement procedures against Iceland before the EFTA Court for being in violation of EU law. The number of cases against Iceland increased substantially after the 2008 economic crash.

Even though EEA legislation needs to be passed through the Icelandic Parliament, it has increasingly become evident that the EEA EFTA Member States cannot refuse EU legislation without threatening the whole arrangement. If this were to happen, it would go against the overall aim of the EEA Agreement,

⁽¹⁾ The article is based on my more extensive report, *Iceland and EEA, 1994-2011*, published by The Norwegian EEA Review Committee in March 2011.

Table 1. EU accession negotiation chapters and how they relate to Iceland's adoption of EU law through the EEA and the Schengen Agreements.

Participates		Mostly Participates	Does not participate
1	Free movement of goods	12 Food safety, veterinary and phytosanitary policy	11 Agriculture and rural development
2	Freedom of movement for workers	14 Transport policy	13 Fisheries
3	Right of establishment and freedom to provide services	15 Energy	16 Taxation
4	Free movement of capital	18 Statistics	17 Economic and monetary policy
5	Public procurement	19 Social policy and employment	22 Regional policy and coordination of structural instruments
6	Company law	20 Enterprise and industrial policy	29 Customs union
7	Intellectual property law	21 Trans-European networks	30 External relations
8	Competition policy	23 Judiciary and fundamental rights	31 Foreign, security and defence policy
9	Financial services	24 Justice, freedom and security	32 Financial control
10	Information society and media	27 Environment	33 Financial and budgetary provisions
25	Science and research	28 Consumer and health protection	34 Institutions
26	Education and culture		35 Other issues



which is to ensure legal homogeneity in the Single Market, and it would be in the hands of the European Commission to decide whether or not to suspend the part of the EEA Agreement that refers to vetoed legislation. Vetoing EU legislation could lead to withdrawal from the EEA Agreement, not only for the individual Member State, but also for its two other EEA EFTA partners. Often referred to as the “thermonuclear clause”, the formal veto right could be effective, but it might not be to anyone’s benefit if it was used.

On a few occasions, however, EU directives (the directives on electricity providers and sewers and,

most recently, the service directive) have, however, been disputed to the extent that they have prompted a general political debate over the veto right. Recently the Norwegian Parliament refused to implement the amended directive on postal services. The Icelandic Government is of course following that process with interest.

Economic Challenges

In economic terms, the EEA Agreement altered the composition of the Icelandic economy, for example by opening up the international financial markets to Icelandic businesses. As was the situation



Chair of the EFTA side, Jón Baldvin Hannibalsson, Foreign Minister of Iceland, speaking at the EEA signing ceremony in Porto.

accompanying membership of EFTA, however, there were also segments of the economy, e.g. vegetable and flower producers, that lost out after the country entered the EEA.

More importantly, this new access to the EU financial market created a major weak spot for Iceland that became evident during the 2008 financial crisis. After privatisation and extensive deregulation, the Icelandic banks grew rapidly on the European markets and well beyond Iceland's capability to bail them out when the crisis hit. Three major banks and virtually the whole Icelandic financial sector were devastated. The depositors' guarantee fund set up on the basis of an EU directive never had enough funding to cover a systemic collapse and no help came from the European institutions that Iceland was not part of. This "neither in nor out" arrangement, with one foot in the European Single Market, with all the obligations that entails, and the other foot outside the EU institutions, and therefore without access to backup from, for example, the European Central Bank, proved to be flawed when faced with a crisis of this magnitude.

Operational Challenges

Even though the EEA is dynamic, it does not, however, respond to the operational and institutional changes of the EU. Since the 1992 Maastricht Treaty, various political shifts and institutional turns have taken place within the EU, meaning the political and legal environment in which the EEA operates has changed dramatically.

Four new treaties and the Eastern Europe enlargement have, for example, marked a transformation of the EU that has led to the increased influence of the European

Parliament and the European Council at the expense of the European Commission. Within the EEA, the Commission is the voice of the EFTA Member States and should speak on their behalf in the EU's institutions. The diminished capacity and influence of the Commission has, therefore, subsequently further narrowed the influence that EEA EFTA has on the European legislative process.

In addition, the balance of EFTA and the EU within the EEA is being challenged. With only Iceland, Liechtenstein and Norway representing EFTA, while the EU has grown to 27 Member States with a total of around 500 million inhabitants, the influence of the EEA EFTA Member States within the EEA has diminished significantly.

Icelandic officials working within the field of the EEA Agreement are convinced that the EEA is becoming increasingly less important to the EU. This has resulted in the Agreement being relegated within the Commission, to a status lower than it enjoyed previously. Increasingly, the European Commission "forgets" to involve specialists from EEA EFTA when new legislation is being prepared. Consequently, the EEA and the EU clash on an increasingly regular basis. A good example of this is when Iceland was treated as a third State outside the internal trade framework when the EU invoked tariffs on steel in a trade dispute with the United States. More serious, however, was the fishmeal crisis in 2000 when the EU unilaterally banned imports of fishmeal for animals in response to the mad cow disease crisis. Only by lobbying for support from EU States with similar interests – such as Denmark – could Iceland avoid a comprehensive ban on fishmeal imports, even though the Icelandic product was completely safe.

The Eastern Europe enlargement almost resulted in the collapse of the EEA Agreement when the EU threatened to halt simultaneous enlargement of the EEA until Iceland, Liechtenstein and Norway agreed to increase their contribution to the EFTA development fund. The process showed how vulnerable Iceland is against the EU, but the resulting compromise also indicates that, when there is a mutual political will to find solutions, suitable measures can be found within the framework of the EEA.

Cooperating with Norway

As a small country of little more than 300 000 inhabitants, Iceland can only operate a very small

administration and has thus been forced to prioritise specific policy areas on which it can focus its limited efforts. It compensates for its lack of resources by relying on close cooperation with and help from the services of neighbouring countries, especially the other countries in the Nordic region (Denmark, Finland, Norway and Sweden). In addition, under the EEA Agreement, the EEA EFTA Member States are meant to harmonise their position and speak with one voice within the EEA. As a result of these two factors, Iceland relies very heavily on Norway.

It is not always a happy relationship. Senior diplomats in Iceland's foreign service claim that their Norwegian counterparts seem to forget on occasion that they are in a binding agreement with two smaller partners. Norway, as the largest power within EEA EFTA, tends to operate alone on issues that are of concern to all three of them. The Icelandic Government therefore feels that Norway does not always honour the partnership and tends to voice opinions unilaterally, or even enter into negotiation with the European Commission without consulting Iceland.

Despite being linked in the EEA, Iceland and Norway have often been in significantly different positions when it comes to cooperation with Europe and operate quite different European policies. It is claimed that, after the population has twice refused to accede to the EU, the Norwegian Government is very concerned with proving itself to be a good European. Iceland, on the other hand, has never felt the same need to gain that kind of approval in Brussels. As a result, the Icelandic Government feels that Norway is keen to give into the demands of the EU, rather than sticking firmly to the principles of the EEA Agreement and, indeed, the EFTA Convention.

Further tension is also felt over Norway's cooperation with the EFTA Secretariat. Like many small States within the EU that rely on the European Commission more than the larger States that can use resources within their own administration, Iceland tends to rely more on the EFTA Secretariat than Norway. Norway, in contrast, is in a much better position to handle EEA-related matters directly. Icelandic officials claim that their Norwegian counterparts systematically bypass the EFTA Secretariat on many EEA relevant issues, thereby avoiding coordination with Iceland.

The relationship between Iceland and Norway in the EEA can perhaps be compared to an arranged marriage between distant cousins. This is not a relationship

entered into on the basis of true love; there is, instead, an uneven balance of power and ongoing and unresolved tensions between the two parties that are exacerbated by the obligation to make it work.

Updating the EEA Agreement

As a direct result of these operational difficulties and diminished capacity to influence EEA legislation, the Icelandic Government started pressing for a revision of the EEA Agreement at the turn of the century. Four main goals were identified:

1. Bridge the ever increasing gap between the EU and the EEA by updating the text of the EEA Agreement so it would be in line with the changes made by the EU treaties.
2. Increase and broaden Iceland's access to European Community specialist committees.
3. Provide access for the EEA EFTA Member States to other EU institutions, i.e. the European Council and the European Parliament, that have increased their influence within the EU machinery.
4. Revisit stipulations in Protocol 9 with the aim of lowering tariffs on Iceland's export of fisheries goods.



Villy Søvndal, Denmark's Minister for Foreign Affairs (left), representing the Danish EU Council Presidency, and Óssur Skarphéðinsson, Iceland's Minister of Foreign Affairs, at the EEA Council in May 2012.

© Photo: Council of the European Union



In May 1999, President of the EU Council Günter Verheugen and Foreign Ministers Knut Vollebæk of Norway and Halldór Ásgrímsson of Iceland, signed the agreement on the two EFTA countries' participation in the Schengen area.

Apart from making changes to Protocol 9, the EU proved unwilling to revise the EEA. The Icelandic Government felt quite alone in pursuing its four goals as the Norwegian Government showed little or no interest in revisiting the EEA Agreement.

It is clear that Iceland is a very active participant in Europe, perhaps even more so than some of the EU's official Member States. Britain, for example, has chosen to remain outside the Schengen Agreement while Iceland participates actively.

By delegating economic decision rights to the EU or to joint bodies that operate with the EU, and by automatically implementing EU and EEA legislation (the Icelandic parliamentary process is a formal exercise in implementing EU and EEA legislation), Iceland could be said to be a model Member State. It could be concluded that, in any politically meaningful way, Iceland has transferred real decision-making power to the EU. It could even be claimed that Iceland is a de facto member of the EU through its close cooperation agreements.

In recent years, the EEA Agreement has clearly proved problematic for Iceland's democracy, as it puts limits on the country's ability to generate and implement its own legislation and take other kinds of decisions. Although Iceland has been able to find room to manoeuvre when it comes to its fundamental interests, and on a few occasions has even negotiated important

opt-outs and derogations from EEA relevant legislation, the fact remains that it is extremely vulnerable to the EEA and EU decision-making processes, in which it has little or no say.

Economically, the EEA has both proved instrumental in both the boom and the bust of the Icelandic economy. The realisation of the systemic flaw that caused Iceland's financial trouble in 2008 but denied it access to EU support is perhaps the main reason for Iceland's EU application in 2009. A referendum on accession is expected in 2013.

If EU membership is refused, the Icelandic Government will have to revisit the EEA Agreement. Revisiting the Agreement is not, however, without risk for Iceland. One good example is the agreement on exchange of fishing quotas. The EU transferred its Icelandic region fishing quota mainly to Spanish fishermen, who have had difficulties meeting it, while Icelandic fishermen have had no trouble catching all they are allowed. If the Agreement is renegotiated, it is likely that the EU would also want to revisit arrangements that it finds unsatisfactory, potentially to the detriment of Iceland.

Despite this, it is unlikely that Iceland will have any choice other than to demand that the Agreement is renegotiated in order to provide a stronger safety net for its fragile economy and, perhaps more importantly, to tackle the evident democratic deficit.

An Assessment of the Functioning of the EEA^[2]



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To assess the functioning of the European Economic Area (EEA), it is necessary to look at it from at least three different perspectives.

First, the functioning of the EEA can be examined from the perspective of the European Union (EU). Every two years, the Council of the European Union adopts conclusions on the EU's relations with the three EEA Member States of the European Free Trade Association (EFTA): Iceland, Liechtenstein and Norway (collectively EEA EFTA). In December 2010, the Council highlighted again the very positive and close political relationship. Implicit in this assessment is a comparison of the EEA with the bilateral approach of Switzerland, which doubtlessly places the EEA in a more positive light, and may have led the EU to overlook problems with the technical functioning of the EEA. Either way, on the surface, the EU's perspective is mostly positive.

Second, from the perspective of the EEA EFTA Member States, the EEA is highly appreciated as the main instrument for managing their relations with the EU. This applies particularly to Liechtenstein, where you can find hardly any criticism of the EEA. The Liechtenstein Government highlights, above all, the benefits of access to the EU Single Market and the legal certainty provided by the EEA Agreement. In addition, it views the EEA as a good starting point for further integration with the EU. This pragmatic interpretation of the EEA reflects the selective integration strategy of Liechtenstein, which is mainly driven by its economy. All the EEA EFTA Member States have, however, identified some challenges to the effective and smooth functioning of the EEA. In the case of Liechtenstein, these challenges mainly

embrace its own public administrative capacity as well as the compatibility of its EEA membership with its close regional cooperation with Switzerland. Other shortcomings include the absence of monetary cooperation (Iceland) and the democratic deficit (Norway). As a result, the EEA represents the best alternative to full EU membership, but it is itself not an optimal solution for the EEA EFTA Member States.

The third approach examines the functioning of the EEA from the perspective of the EEA policy cycle and its ultimate aim of creating a homogeneous and dynamic economic area. In contrast to the perspectives of the EU and the EEA EFTA Member States, this functional approach, set out below, is not restricted to the political dimension and takes into account the technical aspects of the EEA.

The Efficiency of Policy and Legislative Implementation

To ensure the functioning of the EEA, the EEA EFTA Member States have to implement all EEA relevant EU legislation. Nevertheless, the EFTA Secretariat has so far identified more than 1 200 EU acts marked as EEA relevant by the European Commission that were contested by experts from the EEA EFTA Member States. An analysis by the Liechtenstein Institute concludes that these rejections were quite consistent with the EEA Agreement because most of these were excluded for technical reasons. Disagreements on EEA relevance among the EEA EFTA Member States, or between the European Commission and the EEA EFTA Member States, occur only in relation to very specific issues, such as water policy. The following sections will therefore focus on the adaptations made by the EEA Joint Committee as well as the time lapse between the adoption of an EU act and its incorporation into the EEA Agreement.

Adaptations

The EEA EFTA Member States also have the option to adapt an EU act to their specific requirements in the EEA Joint Committee. Approximately 20% of EU acts incorporated into the EEA Agreement and thereafter implemented by the EEA EFTA Member States are adapted in this way. In most cases, these adaptations

^[2] For a more extensive analysis, see Christian Frommelt and Sieglinde Gstöl: Liechtenstein and the EEA: the Europeanisation of a (very) Small State. Published by the Norwegian EEA Review Committee, September 2011.



Hans Brunhart, Head of Government and Minister of Foreign Affairs of Liechtenstein, signing the EEA Agreement in Porto.

are merely technical adjustments that do not affect the functioning of the EEA. In other cases, however, the adaptations are such that the implementation of the legislation may differ between the EU and EEA EFTA Member States taking into account the different depth and scope of the EU and the EEA. Adaptations by the EEA Joint Committee may potentially reduce the legal certainty and thus the functioning of the EEA. In addition, the time lapse between the adoption of an EU act with an adaptation and its incorporation into the EEA Agreement is, on average, twice as long as the time lapse of an EU act without an adaptation.

The EEA Joint Committee can also make country-specific adaptations that exempt an EEA EFTA Member State from the implementation of EU legislation or from certain of its provisions. Regarding Norway and Iceland, most of these country-specific adaptations correspond to specific exemptions for certain EU Member States provided by the respective EU legislation and thus have not led to a threatening level of differentiation. By contrast, country-specific adaptations for Liechtenstein, in particular sectoral adaptations as they have been adopted for Annex I of the EEA Agreement, cause a new degree of differentiation across the EEA. This is, however, not really a problem as due to its smallness country-specific adaptations for Liechtenstein can hardly jeopardise the functioning of the EEA.

Time lapse

Another crucial aspect is the time the EEA Joint Committee takes to incorporate EU legislation into the EEA Agreement and the time each country's parliament

requires to ratify an EEA Joint Committee Decision in case of such constitutional requirements. Studies suggest there is a serious time lapse between the adoption of an EU act and its incorporation into the EEA Agreement which takes, on average, more than 400 days. This is much higher than the 180 days stipulated by the EEA Agreement. As a result, EU Member States comply with EEA relevant EU legislation earlier than the EEA EFTA Member States. At least from an academic point of view, the different speeds of the EU and EEA EFTA weaken the homogeneity of the EEA and compromise its functioning.

The difference in speed can be regarded as one of the ways in which countries protect their interests and sovereignty. From this perspective, the delayed incorporation of EU legislation into the EEA Agreement may result from an attempt by the EEA EFTA Member States to reclaim their sovereignty in the face of what is widely depicted as a quasi-automatic integration process. However, according to a study by the Liechtenstein Institute, this applies only to a few EU acts, whereas for the vast majority of EU legislation the different speeds of the EU and EEA EFTA occur mainly due to the different depth and scope of the EU and the EEA.

Against this background, one might hypothesize that, despite its good functioning, the EEA as such remains vulnerable as its functioning depends strongly on the political environment. Thus, not only the institutions and procedures provided by the Agreement but also the political will and capacity of the Contracting Parties to adjust those institutions and procedures to the respective challenges are decisive. This hypothesis may be crucial for a debate on a potential future enlargement of the EEA. However, the issue also begs the question how realistic the homogeneity across the EEA is.

What Degree of Homogeneity is Realistically Attainable in the EEA?

Based on a dynamic approach that requires the continuous incorporation of EU secondary legislation, the EEA is the most far-reaching model of differentiated integration outside EU borders. EU and EEA law are largely adopted in parallel and have to be interpreted uniformly. Yet EEA law is polycentric in the sense that it is selected, adopted and applied within two different institutional pillars, the EU and EEA EFTA. Additionally, the dynamic approach of the EEA is limited to EU secondary law and the EEA Agreement does not adjust to the evolution of EU

primary law. As a result, complete homogeneity in the EEA might be impossible.

To assess the degree of homogeneity attainable across the EEA in its current shape, a wide range of factors play a role. These can be divided into country-related and policy-related factors. Whereas country-related factors focus on the adaptability of the domestic structures to international developments, policy-related factors are determined by the scope and depth of the respective integration regime.

Country-related factors

Country-related factors that are usually likely to affect homogeneity are the administrative capacity as well as the decision-making autonomy of the government. In addition, homogeneity may be determined by the political power of the respective EEA EFTA Member States as well as their economic dependence on the EU. There is, however, very little variation in these factors across the three EEA EFTA countries. Moreover, compared to the EU members, the EEA EFTA states are more likely to comply as they have highly capable, autonomous governments with little political power or influence outside their countries, and their economies are highly dependent on the EU's Single Market. As a result of these factors, it is realistic to assume that a high degree of homogeneity across the EEA is attainable.

Policy-related factors

The most important policy-related factors refer to the different policy scope of the EU and the EEA as well as the different level of power wielded by the institutions of these two regimes.

While the scope and depth of the EEA was from the beginning smaller than that of the EU, the gap has widened further over the last 20 years. Owing to the various EU treaty revisions, the boundaries between EU policies have blurred, which hampers the assessment of their relevance to the EEA. In addition, the institutional requirements of an EU act have become more oriented towards a supranational institutional framework, which may conflict with the two-pillar structure and the intergovernmental conceptualisation of the EEA.

These policy-related factors do not a priori exclude a high degree of homogeneity because the tight institutional cooperation between the EU and EEA

EFTA, and the high level of government autonomy of the EEA EFTA Member States, facilitates a flexible interpretation of the EEA Agreement. This applies in particular to the role of the EEA Joint Committee, which has a strong mandate but can still reach decisions in a non-political atmosphere and with little public attention.

The capacity and credibility of the EFTA institutions is a crucial factor in ensuring the functioning of the EEA and might help to compensate for the fact that changes in the EU's primary law have not been taken into account in the EEA Agreement. On the other hand, the actual scope and institutional centralisation of the EEA, in terms of the number of integrated issue areas and the level of power wielded by its institutions, remain unclear. Clarification of this uncertainty will be one of the main challenges for the EEA in the near future.

The Main Challenges for the EEA

The EEA is by its nature an intergovernmental organisation. By contrast, the EU Single Market is characterised by a high degree of supranational centralisation, which has even increased recently due to the establishment of several agencies and decentralised bodies which, for instance, can carry out inspections within the EU Member States or impose binding decisions on them. The intergovernmental element of the EEA, however, limits the leeway of the EEA EFTA Member States to delegate decision-



Aurelia Frick, Liechtenstein's Minister of Foreign Affairs, speaking at the EFTA Ministerial Meeting in Iceland, June 2010.

making authority to supranational institutions or to accept specific, institutional requirements of EU secondary legislation which strengthen the enforceability of EU legislation across the EEA.

Because decision-making power in the EU policy-making process is available only to EU Members and therefore not to EEA EFTA Member States, the Contracting Parties will repeatedly be forced to negotiate EEA-specific adaptations in the EEA Joint Committee. Such adaptations are, however, more of a symbolic nature and therefore rather unlikely to restrict the enforceability and legal bindingness of EU legislation across the EEA. The limited access of the EEA EFTA Member States to the EU policy-making process is thus not balanced by the fact that adaptations by the EEA Joint Committee may to some extent restrict the tasks of EU bodies within the EEA EFTA. These adaptations do not safeguard the sovereignty of the EEA EFTA Member States, nor do they prevent the extension of the scope and depth of the EEA.

The controversy surrounding the democratic deficit is not new, but because the integration of the EEA EFTA States has intensified significantly - both quantitatively and qualitatively - the debate has gained new impetus. To solve the problem, the EEA EFTA States would need to be gradually more included in the EU policy-making process, but this is most unlikely. From a domestic perspective, the democratic deficit could be reduced slightly by increasing public and political interest in EEA matters. Owing to the complex and delicate policy cycle of the EEA, however, increased domestic interest in the EEA might hamper rather than assist the functioning of the EEA as it may reduce the flexibility of the EEA EFTA institutions.

What Might the Future Hold?

The regulatory boundary of the EU's policy fields has become increasingly blurred over the last 20 years, making the selection of EEA relevant EU legislation more difficult. An extension of the policy scope of the

EEA might thus be in the interest of the EEA EFTA Member States, in particular as they have already concluded additional bilateral agreements with the EU. In this regard, the EU itself has demonstrated a high degree of flexibility, providing many examples of differentiated integration across the various policy fields under its legislative competence. In contrast to the policy scope, however, the inclusion of the EEA EFTA Member States in the EU policy-making process is less flexible. In particular the decision-making power is explicitly tied to EU membership and therefore out of reach within the EEA context.

The EEA is often referred to as a model of association to consolidate the EU's external relations. A number of commentators have also suggested that an enlargement of EEA EFTA might give the EEA EFTA Member States a more powerful voice. Legally speaking, except for Switzerland, potential members of EEA EFTA would first have to join EFTA. The EFTA Convention does not specify the modalities of an accession procedure, nor of association, although both options are possible and have been practiced in the past. The EEA Agreement does not foresee direct accession nor association, but such procedures could be explored under the condition that a solution can be found beyond the EEA's current two-pillar structure. Nonetheless, it remains unclear whether the EU or the current EEA EFTA Member States would benefit from an EEA EFTA enlargement. Instead, the heterogeneity of the EEA EFTA would certainly increase, which is likely to hamper the functioning of the EEA.

The euro-scepticism in all EEA EFTA Member States reduces the likelihood of a more active integration with the EU, although Iceland is currently negotiating EU membership. Nonetheless, taking into account the steady boundary shift of the EEA and the increasing level of differentiation within the EU (the Fiscal Compact being the most recent example), one cannot help but think that the EEA EFTA Member States may already have tacitly crossed the Rubicon where full EU membership would provide more flexibility and thus would actually strengthen their sovereignty and democracy.

“The EEA is Functioning Well.” True or False?



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True. The European Economic Area (EEA) is functioning surprisingly well. It is easy to forget that, at its inception; the EEA Agreement was deemed quite unattractive and was even contested. Few believed at the time of signing that it would last for long. During the final period of the EEA negotiations, most parties had lost interest in the Agreement, and were more interested in joining the European Union (EU). In addition, Switzerland, which participated in the negotiations, rejected the EEA in a referendum, and some of the European Free Trade Association (EFTA) Member States left a short time after it entered into force. It is therefore, in many ways, quite surprising that the Agreement has lasted so long and functioned so well. There are five key successes that are worth drawing attention to.

First, the EEA Agreement has fulfilled its initial purpose. For almost 20 years, the EEA has helped to ensure homogeneity and a level playing field between the EU and EEA EFTA Member States (Iceland, Liechtenstein and Norway). The Agreement has ensured the integration of the EEA EFTA Member States into the Single Market, with its freedom of movement of persons, capital, services and goods. The EEA Agreement has also provided for common rules on state aid, public procurement and competition policy. Moreover, the institutions set up to ensure monitoring and compliance, such as the EFTA Surveillance Authority and the EFTA Court, have demonstrated their ability to handle these difficult tasks.

Second, it has proved robust and adaptable when coping with the rapid expansion of the EU's agenda and the constantly varying number of countries involved, owing to the shrinking of EFTA (from seven

Member States to three) and the rapid expansion of the EU (from 12 Member States to 27).

In addition, the Agreement has been expanded in terms of the amount of legislation it encompasses. At the time of signing, it covered around 2 000 legal acts. Since then, more than 6 000 legal acts have been added. Some of these are entirely new, others have replaced or modified existing acts.

Third, the Agreement has proved to be flexible. The asymmetry between the parties involved has increased since the signing. Significant developments have taken place without the need for a formal renegotiation of the main Agreement. The EEA is an over-institutionalised system, and yet the Member States have been able to find workable and practical solutions, well-suited to the level of activity.

In addition, the EEA has served as a stepping stone for promoting closer cooperation between the EU and EFTA in numerous areas outside the scope of the Agreement, such as in the Common Foreign and Security and Defence Policy and in cooperation in the field of Justice and Home Affairs.

Fourth, the EEA Agreement is probably one of the most well-functioning agreements the EU has entered into with any third party. From the perspective of the EU, it organises the relationship with one of their largest trading partners, it has limited administrative costs, and the procedures ensure a rather smooth day-to-day, routine management of the relationship between the EU and the EFTA EEA Member States.

Finally, and perhaps most importantly, Member States, voters and parties from the EU and EEA EFTA have so far supported the Agreement and have wanted to gradually expand its cooperation and integration with the EU. For the EEA EFTA Member States, the EEA Agreement has been considered as a model of association, ensuring that these countries' economic and political interests can be pursued effectively. This is despite the fact that there are serious democratic weaknesses related to being part of the EEA, especially as the EFTA EEA Member States are not properly represented in EU decision-making bodies.

^[3] Secretary to the Norwegian EEA Review Committee 2010-2012.



Norwegian Minister of Foreign Affairs Bjørn, Tore Godal, signing the EEA Agreement in Porto.

Homogeneity in the EEA?

The motto of the EU is “unity in diversity” and if the EEA had a motto it could easily be the same. There is a desire for homogeneity, but at the same time there is an understanding of the benefits of diversity. The EEA is a rare construct that enable the EEA EFTA states to be outside and inside at the same time. Although laudable, this does create some boundaries for what is realistically attainable in terms of homogeneity.

There are at least two different sets of issues related to the question of unity. On the one hand, we can talk about homogeneity in a broad sense, encompassing political, ideological, social and economic elements. On the other hand, we can talk about homogeneity in the narrow legal sense of the framework of the EEA Agreement.

Homogeneity in the EEA: the broad view

Broadly speaking there is considerable homogeneity between the EU and the EEA EFTA states. Developments in the EU will automatically also impact on the EEA EFTA Member States as all the countries involved operate on the same economic and political field. In addition, the EU and EEA EFTA are also highly integrated and interconnected socially and through shared goals and values; they are “like-minded”. As such, there is already considerable unity across the EEA.

It is, however, unrealistic to attain complete homogeneity across all the Members States. It is fundamental to the design of the EEA that the EEA EFTA Member States have a different status to that of the EU Member States. The EEA EFTA Member States have decided deliberately to not have direct representation and responsibility when it comes to participation in the EU and, similarly, the EU is eager to keep its autonomy. The EEA EFTA Member States will therefore almost always have less access to information, fewer contact points and less opportunity to influence political processes either formally or informally. As such, they will always have a different status.

Moreover, this mode of association has implications for self-awareness and identity among the EEA EFTA Member States. The EEA was always meant to be something other than full EU membership. It is therefore not surprising that the citizens of EEA EFTA see themselves as different, and consider themselves more as outsiders than insiders.

Homogeneity in the EEA: the narrow view

Now, if we look at the more narrow perception of homogeneity within the areas covered by the EEA Agreement, we should in principle expect a high degree of homogeneity. After all, the primary goal of the EEA is to ensure unity. There could of course be differences related to, for instance, geography and climate, which could lead to differing interpretations of legislation and policies, but so far these have been limited.

Our study of the workings of Norway’s agreements with the EU (NOU 2012: 2 Utenfor og Innenfor (Outside and Inside)) examined critically the development of the EEA and the factors that could affect homogeneity. The report considered three issues in detail:

1. If we consider developments in the EU, and the many treaty revisions that have been made since the EEA Agreement was signed, few of them have fundamentally affected the homogeneity of the Member States. However, it is noteworthy that in some areas it is becoming increasingly difficult to determine the boundaries of the EEA and to determine the relevance to the EEA of certain EU legislation. Increased use of “packages” in the EU, and more policies coordinated with countries outside the EU, makes the assessment of relevance to the EEA more difficult, which naturally is a challenge to unity. In addition, the increased use by

the EU of agencies, which have decision-making powers, raises some constitutional issues, and thus also difficulties in relation to unity and cohesion.

2. The study also found that the EEA EFTA Member States have few permanent or temporary derogations from the rules. The EEA EFTA Member States have never reserved themselves to new legal acts, and they have, in general, implemented rules and regulations in a manner and at a level that is, at least, comparable with the average EU Member State. In addition, their national courts and administrations have, in general, been willing and able to comply with EU and EEA rules and regulations, to the same extent as the average EU Member State, or better.
3. Homogeneity between the EU and the EEA EFTA states is also affected by the delay between the date EU legislation enters into force in the EU and the date it enters into force in EEA EFTA Member States. The study found that the majority of legislation typically entered into force in the EEA EFTA Member States 12 to 18 months after it entered into force in the EU. These delays challenge the notion of homogeneity. Still, it would be wrong to consider these delays as a serious threat to the homogeneity across the EEA. The great bulk is implemented in appropriate time, but there are some acts that are delayed for a particularly long time and these longer delays could potentially undermine cohesion across the EEA. However, to some extent, these delays must be interpreted as representing some sort of “safety valve”, compensating for limited influence in decision making.

Main Challenges to the EEA?

The EEA is challenged in several ways, perhaps more so now than at any time since the Agreement was signed. The following challenges are often viewed independently of each other, but they are also inter-related.

The first, and arguably most important challenge, is the developments of the EU. The current drama related to the future of the euro, and by default the future of the EU, will also impact on the EEA. The Single Market is in many ways the driving force of European integration. At the same time, high unemployment, social unrest, public debt and weak public finances naturally create a stress on the Internal Market. While

a well-functioning Single Market may be a proper solution to ensuring growth and employment, the notion of an open and competitive market might very well be challenged for protective measures.

A second serious challenge to the EEA is the fact that EFTA’s involvement is limited to just three countries, two of which are geographically small. The EEA structure is vulnerable to further changes in the composition of EFTA. At the moment, Iceland is negotiating conditions for its accession to the EU and although the outcome of these negotiations is uncertain and the Icelandic people may yet vote no to joining, it must be borne in mind that Iceland may well leave EFTA.

If this happens, the functioning of EEA institutions, the EFTA Surveillance Authority and the EFTA Court, will have to be altered. The legal and formal issues of an EEA EFTA with two states might perhaps be solved if there is enough political will. So far the parties have indicated strong will to continue with two states. Nevertheless, if Iceland leaves EFTA, the rationale for maintaining the EEA for the remaining EFTA Member States could be questioned. One option would of course be to enlarge EEA EFTA to also include Switzerland or states like San Marino, Andorra, Monaco, current candidate states, or perhaps even current EU member states. Alternatively, if the EU and Switzerland successfully negotiate a new framework agreement, this would also have implications for the EEA, because another alternative mode of association would then be available and the EEA EFTA countries might be interested in moving in the same direction.



Catherine Ashton, High Representative of the European Union for Foreign Affairs and Security Policy and Vice-President of the European Commission, with Jonas Gahr Støre, Norwegian Minister for Foreign Affairs, in Brussels 2011.



President of the European Commission Jacques Delors and Norwegian Prime Minister Gro Harlem Brundtland, two of the central architects behind extending the Single Market to a wider Europe, shaking hands in Brussels in 1991.

© Photo: European Commission

The third challenge to the EEA is its status in Norway as a domestic compromise. In Norway, the EEA Agreement has always been considered as a “second best” alternative, balancing the desire for European integration with national autonomy. Some have wanted EU membership, others have wanted less integration. Few have supported the EEA as such. It has been a political compromise, uniting the pro and no to EU membership side. As a political compromise it has functioned well and it has often been taken for granted; all parties have governed on the basis of the Agreement, it has served as a predictable framework and it has served to remove EU membership from the political agenda.

Over the last few years, however, there has been growing tension as the national debate has started to challenge this compromise. One reason for this is that the original political participants in the Agreement are leaving office and the new generation of politicians and bureaucrats have less knowledge of and feel less committed to the EEA. Another reason is the increased mobility and the increased scope of the legislation, making the EEA Agreement a visible and contested factor in areas such as labour law and welfare arrangements. We observe that appreciation for the EU and EEA is in a slight decline in Norway, as support for European integration is declining across the EU as well. The Norwegian compromise is fragile.

To conclude, the EEA has been successful for more than 20 years. It has worked and the parties have been

content. However, the EEA is a strange construction; it is based on association without membership. In an international context, this is an unusual form of cooperation. In principle, this is a difficult arrangement, with inherent structural tensions and problems. EEA EFTA is not represented in EU decision-making processes that have direct consequences for Norway, Iceland and Liechtenstein, and neither does it have any significant influence on them. Moreover, the form of association with the EU dampens political engagement and debate and makes it difficult to monitor the governments and hold them accountable in their European policy. In practice, however, this form of association has worked, and far better than many expected. Experience so far is that the problems with the EEA, Schengen and other agreements are greater in principle than in practice.

While the EU has at times experienced major changes and considerable ups and downs, the EEA has turned out to be surprisingly stable and flexible. At the same time, it is a vulnerable structure.

For Norway, at least, the association is contingent on two equally vital factors. Firstly, it is underpinned by a compromise reached by the political parties in Norway. For a political compromise, it has already lasted a very long time. There are no strong indications that it is at risk, but at times, however, there are signs of strain and dissension. Secondly, Norway’s current form of association with the EU depends on external circumstances that are largely beyond Norway’s control. There are constant institutional tensions due to the fact that the EU is developing while the framework for the EEA is more static.

I have my doubts that this specific institutional arrangement will last for another 20 years. However, the underlying substance is probably far less vulnerable. In fact, most European countries have been through far-reaching integration processes in the past few decades that have affected most areas of society. The economies of the European countries are more closely interwoven than ever before, joint infrastructure has been built, an extensive common legal system has been developed, it has become easier to work, travel, do business and study across national borders, and ties have been forged at all levels of society. EEA EFTA countries take part in these processes in their own special way, and for 20 years have followed the processes in the EU; they will probably continue to do just that in the years to come, regardless of the speed and direction of the EU.

Towards a more strategically focused EEA?



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The European Economic Area (EEA) is a well-established element in the complex institutional landscape of European economic integration. Two decades of effective functioning, despite its complexity and its ambition of thorough economic integration, have led participants and stakeholders to be broadly satisfied with the EEA and, perhaps, to take the (usually smooth) running of the EEA for granted.

Those closely involved often emphasise that the EEA has not only earned a good reputation, but that it functions better and has delivered more than almost anybody could have reasonably expected when it was established 20 years ago. Such success is an excellent reason for celebration and would justify another two decades of “more of the same”.

If we look beyond the anniversary party, however, it is worth asking whether simply continuing the EEA routine for another 20 years is what is needed. More precisely, should the EEA have a strategy? This question has perhaps been alien to the nature of the EEA so far, given that it is a framework arrangement designed purposefully without any further political aim.

We would argue, however, that the strategic environment of the EEA is changing, and that in itself requires a cohesive, strategic response from its 30 Member States. At the very least it poses several questions about the future of the EEA that need to be addressed. The answer to these questions might well be that the EEA needs only minor changes or adaptations, but other options should also be considered. Even when a reflection on the future of the EEA would yield the conclusion that “more of the same” is the preferred option, it is not unreasonable to hold the view that it



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will take a strategic focus to ensure that even this humble objective can be realised.

The Convoluted Establishment of the EEA in a Turbulent Europe

The signing of the EEA Agreement on 2 May 1992 marked the end of a long-standing divide of Western Europe into two teams of economic integration. After the conclusion of Free Trade Agreements between the European Free Trade Association (EFTA) Member States and the European Economic Community (EEC), in response to the accession to the European Union (EU) of the United Kingdom and Denmark (as well as non-EFTA Ireland) in 1973, by welcoming both the EU and the EFTA Member States, the EEA finally allowed for the almost complete participation of EFTA States in the EU’s Single Market. This historic achievement was realised by creating a contractual bridge, unique in its complexity and depth until nowadays, between EFTA and EU countries.

In sharp contrast to the qualities the EEA is known for today, such as stability, effectiveness and reliable EEA EFTA institutions, the initial period from 1989 to 1995 was characterised by convoluted debate about the meaning and membership of the EEA in a Europe beset by turbulence not seen since the end of World War II.

On the EFTA side, the convolution was manifested in the variable strategic positioning of four, if not five, of the six EFTA States at the time. The Swiss referendum of 1992 led to a withdrawal from the EEA by Switzerland, to be followed later by an avalanche of bilateral agreements with the EU (now totalling around 140), partially (and somewhat selectively) mimicking



The EEA Council is composed of EEA EFTA and EU foreign ministers and representatives of the European External Action Service. The EEA Council meets twice a year and provides political impetus for the development of the EEA Agreement and guidelines for the EEA Joint Committee.

© Photo: Council of the European Union

the integration of the EEA. Even more remarkable, four EFTA signatories to the EEA Agreement (Austria, Finland, Norway and Sweden) were also applicants for EU membership; for them, the EEA was merely a “waiting room” before entering the EU. Had the Norwegian referendum yielded a yes vote, only Iceland would have remained in the EEA. In the meantime, however, the Principality of Liechtenstein had been (re)negotiating its deep and long-standing relations with Switzerland (including a customs union and a currency union) in such a way as to enable Liechtenstein to join the EEA in 1995.

With the Norwegian people voting no, three countries – Iceland, Liechtenstein and Norway (EEA EFTA) – found themselves in the EEA in 1995 alongside the EU itself. Given that these three countries had no intention of joining the EU in the foreseeable future, the functions of the EEA and its (EFTA-based) institutions such as the EFTA Court and the EFTA Surveillance Authority had the breathing space to build up a solid reputation. At the same time, the EEA EFTA Member States could focus on the substance of aligning with the EU Single Market insofar as it was covered by the EEA.

The EU was also evolving in the post-1995 period. When the Oslo process of negotiating the EEA began in 1989, the EU was still the EEC, as per the Treaty of

Rome and as adapted by the Single Act. Less than three years later, the Maastricht Treaty not only deepened and widened the EU’s core (the Single Market and its connected common policies), it added the Economic and Monetary Union and widened (with a blend of intergovernmentalism and the “Community method”) its remit to include foreign and security policies and – as it was then known – justice and home affairs, linked to the Schengen Agreement.

The EU (via the European Court of Justice) was strong enough in 1991 to be able to take a firm stance against the original idea, promulgated in the EEA negotiations, of the EEA having its “own” legal institutions. As a result, the EEA two-pillar structure was born.

Moreover, the turbulence across Europe suddenly catapulted the EU into a leadership role, if not that of a benign hegemon. The Cold War was over, communism collapsed, the Soviet Union imploded and Central European countries – liberated from totalitarianism and a planned economy – looked to the EU as an anchor and were drawn to its prosperity and market. By the time the EEA Agreement came into force, the first Europe Agreements were already creating expectations of future EU membership for many Central European countries.

In contrast to the positioning of EEA EFTA by 1995, which was characterised by stability and the desire to benefit from the Internal Market, the EU was going to change quite radically in the following two decades, with no less than three more treaties (Amsterdam, Nice and Lisbon), leading to, among other things, a deepening and consolidation of the three pillars of: European Communities, the Common Foreign and Security Policy, and the Police and Judicial Co-operation in Criminal Matters, as well as a much more active European Parliament. Moreover, the euro was introduced and 17 countries joined the Eurozone. Last but not least, in two further enlargements, membership of the EU grew to no less than 27 countries. All this has not been without consequences for the EEA. Indeed, the long-term implications of the transformation of Europe may still have to be digested.

Compared with the highly dynamic EU and the ongoing evolution of Europe, the EEA has remained remarkably stable. It is sometimes described as an agreement that is both static and dynamic at the same time. This refers, respectively, to the EEA Agreement, which hardly ever changed, and to the formidable and steadily increasing substance of market integration and EU regulation incorporated into the domestic law of the EEA EFTA Member States. The Agreement, negotiated 20 years ago, is still governing how the EEA EFTA States regulate their market-based relations with the EU. It proved to be a static arrangement that nevertheless has had continuous dynamic repercussions for the EEA EFTA States.

Reflections on The Working of The EEA

The Council of the EU, Liechtenstein, Norway, EFTA organs and the European Parliament have all assessed the EEA and come to the conclusion that it is a well-functioning entity. Even Iceland, which applied for EU membership in 2010, does not believe it is replacing the EEA with EU membership, but sees EU accession as a natural development in its relationship with Europe for reasons not connected directly with the EEA.

Of course, this praise does not mean the EEA is perfect. The question is whether its imperfections can be addressed in an ad hoc manner, or whether a more strategic readjustment of the working of the EEA is needed. The Council of the EU concluded in December 2010 that an overall, holistic “review” is appropriate after two decades of functioning. Such a review will need to be strategic in the sense that it will need to take into account the need for balance between i) the EEA EFTA Member States’ understandable sensitivity to encroachment upon their sovereignty (or at least autonomy) seemingly beyond what the Agreement stipulates and ii) the now so much bigger EU, which has a far deeper economic integration than it had in 1995, and which is eager to keep the economic and regulatory consequences of its internal market decisions as homogeneous as possible also for the EEA.



The EEA Joint Committee meeting in July 2012. More than 6 000 legal acts have been added to the EEA Agreement since its entry into force in 1994.

with

EEA EFTA influence

Sensitivity regarding economic and regulatory consequences is visible in the occasional lack of consensus when incorporating the EU *acquis* into the EEA Agreement. There are examples showing that the trade-off between participation in the EU's internal market and having only a minor influence in the internal decision-making process of the EU is not always easy for the EEA EFTA Member States to accept. Just two examples are the deposit guarantee scheme and the third postal directive. The "nuclear option" provided for in the later paragraphs of article 102 EEA has, so far, never been used, but the disagreement on these two issues was strong. At the same time, it has to be acknowledged that, as the Agreement provides for mechanisms designed to resolve such events, it is clear that the negotiators were well aware that political disagreement might arise. From this perspective, even resolved disputes can be regarded as good examples of the effective functioning of the EEA.

Timely incorporation of legislation

Another point of contention is the time lapse between the incorporation of EU legislation into the annexes of the EEA Agreement and subsequent national implementation across the EEA Member States. This does not always correspond with the wording of article 102 EEA, which stipulates that this should happen "*as closely as possible to the adoption by the Community of the corresponding new Community legislation with a view to permitting a simultaneous application of the latter*".

Despite the occasional delay, the Council, in its conclusions of December 2010^[4], held that the EEA EFTA Member States at least "*have demonstrated an excellent record of proper and regular incorporation of the *acquis* into their own legislation and encourages them to maintain this good record to ensure the continued homogeneity of the internal market*". The Council likewise held that "*with regard to the 'technical' functioning of the Agreement, the possibility of updating and simplifying some of the procedures, which were established when the EEA Agreement was first conceived, should be explored*". On 30 April 2012, the EFTA Standing Committee and EEA Joint Committee adopted new rules in order to make the process of incorporating new EU *acquis* into the EEA Agreement more efficient. This is evidence of a



Formal discussions between the EEA EFTA States and the EU side on new EU legislation to be incorporated into the EEA Agreement start in the EEA Joint Subcommittee. The EU Chair, Gianluca Grippa, European External Action Service, and the EEA EFTA Chair, Per Strand Sjaastad, Norway, at a meeting in 2011.

fruitful cooperation between the EU and EEA EFTA Member States.

Development of the EU Single Market

Another fundamental issue concerns the ramifications of the development of the EU in the last two decades. When the EEA was negotiated, the basis for the discussion was the Treaty of Rome as amended by the Single European Act. The legal design of the Single Market was then a rather straightforward one, easily separable from other policies. Over time, however, the EU has undergone numerous changes that have altered several substantial and institutional characteristics of the Single Market and the EU itself.

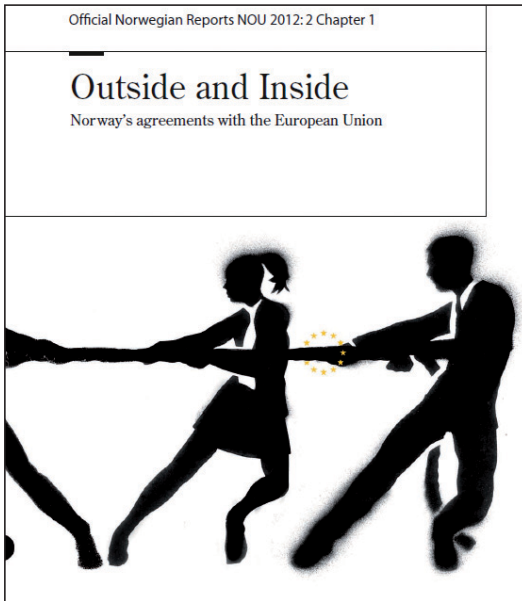
The EEA EFTA States have been confronted with the merger of the Community and the former intergovernmental elements of the EU. Single Market legislation is not exclusively about the economic dimension of the Internal Market anymore, but touches upon many more diverse policy areas, once in a while outside of the scope of the EEA, which still relies on the classical definition of the Single Market as it stood in the early 1990's.

Cultural, social, judicial, environmental, trade and artistic aspects have appeared more and more in Single Market legislation. Recent examples are EU legislation on trade in seal products^[5], where internal and external trade aspects merge, and the *Rimbaud*^[6] judgment concerning direct tax discrimination involving the exchange of information between national authorities. It is likely that in future, the EEA relevance of EU

^[4] Council of the EU, Council conclusions on EU relations with EFTA countries 3060th General Affairs Council meeting, Brussels, 14 December 2010.

^[5] Regulation (EC) No 1007/2009 of the European Parliament and of the Council of 16 September 2009 on trade in seal products.

^[6] ECJ, 28 October 2010, Case C-72/09, *Rimbaud*.



In January 2012, the Norwegian green paper "Outside and Inside" was published. The 911 page study maps the consequences of the EEA Agreement and Norway's other agreements with the EU.

legislation will challenge the EEA EFTA countries Member States more often.

Challenge of the Open Method of Coordination

The Open Method of Coordination (OMC)⁷¹ poses yet another challenge to the EEA. Comprising soft law elements, but without a clear definition, the OMC has been applied to a wide range of policy areas, such as the economy and employment, social exclusion, pensions, health care, research, education, enterprise and the information society. The importance to the OMC of results, ultimately laid down in regulatory instruments, is increasing.

This new approach to regulating parts of the Single Market has not been considered in the EEA Agreement and the EEA EFTA Member States often find the approach difficult to incorporate and implement. For them, it also raises issues of democracy and the rule of law, if not constitutional restraints. The EEA EFTA States find themselves caught in a dilemma resulting from the development of the EU's Single Market and new forms of regulation: to accept such legislation and the OMC as EEA-relevant and witness the clandestine enlargement of the scope of the EEA, or risk disturbing the homogeneity of the Single Market

with possibly painful consequences as provided for in the EEA Agreement.

The European Parliament

Yet another issue concerns the role of the European Parliament, now a fully fledged legislator together with the European Council. The political design of the EEA – participation in the decision-shaping phase of new legislation in exchange for the implementation of the resulting *acquis* – is challenged by this development, as the EEA Agreement does not provide for any participation by the EEA EFTA countries in the internal deliberations of the European Parliament, particularly in the committees relevant to the Single Market.

The rise to power of EU agencies

Finally, the increasing number and power of EU agencies, particularly agencies that have some degree of regulatory autonomy and power, is alien to the EEA as it was first designed. Even though EU agencies cannot be compared with US independent regulatory agencies, their role in the governance of the Single Market is increasing steadily.

The EEA Agreement does not formally regulate the participation of EEA EFTA Member States in such agencies. Until now, the flexibility of all parties involved provided for more or less satisfactory solutions to this challenge and the EEA EFTA States currently participate in 13 EU agencies. As the number and importance of EU agencies increases, however, the call for a formal procedure, guaranteeing well-defined rights and obligations when it comes to agency participation, will have to be answered.

The EEA's strategic environment invites adequate responses

The external environment of the EEA is changing rapidly. The types of challenges are such that the EEA will have to come up with answers of a strategic character, despite the tradition of avoiding such common thinking. One way or another, the repercussions are of interest to all. We list four such challenges: the application for EU membership by Iceland (successful or not), EU market-based and economic policy relations with Switzerland, the predicament of European states of small territorial dimension in European economic integration and the

⁷¹ Cf. Lisbon European Council, Presidency Conclusions, 24 March 2000, pp. 37 et seq.

possible opening up of EEA membership to countries other than Switzerland (as an EFTA country). Questions have to be posed such as: could the EEA function with just two countries on the EFTA side and could new members accede to the EEA? And is it imaginable that a new arrangement with Switzerland might somehow be linked to the EEA or some of its features?

The first query is of course a direct consequence of the Icelandic application for EU membership. The EEA was designed for the seven EFTA countries at the time^[8], its institutional structure is highly complex and the costs of managing the EEA are comparatively high (given the relatively small countries now). If Iceland would finally take the step to accede to the EU, structural reforms of the EEA appear inevitable. The question raised is whether such a reform just includes adaption of the given institutional structures, i.e. adaption of the decision-making and enforcement organs or if it would entail a re-design of the EEA. That the EEA can function with just two members has already been historically proven from January 1995 until Liechtenstein's accession to the EEA in May of the same year. Thus, it is more a question of political desirability and feasibility.

Can the EEA be enlarged with new contracting parties? Currently Art. 128 EEA requires any new party to the agreement, which is not an EU Member State, to be a contracting party to the EFTA convention. For the moment EFTA membership does not seem to be an easy possibility for other European countries. The European countries of small territorial dimension currently reassess their integration options, one of which is the EEA. According to the Council conclusion of December 2010, the relations with Switzerland should be regulated in an EEA-like framework. Last but not least, some political leaders in Europe or their closest advisors have occasionally (and indeed rather casually) suggested that Turkey or some European Neighbourhood Policy countries seeking EU membership in the long run might become a member of the EEA.

As a successful integration instrument for two decades, the EEA has become the ambassador of its own success. One might reject some such thoughts, above, as casually as some advisors suggest them, but they are unlikely to go away. The strategic issue will in the end boil down to whether the EEA can serve as a model for economic integration for non-EU countries closely associated with the EU. It has served the current EEA-30 well. The anniversary party seems well-deserved.



^[8] Including Liechtenstein, which was not a formal member of EFTA until 1991.

THE EFTA ADVISORY BODIES AND EUROPEAN INTEGRATION

EFTA's two advisory bodies, the Consultative Committee and the Parliamentary Committee, advise EFTA Ministers and officials on EFTA affairs, including the EEA and international trade issues.

The EFTA Consultative Committee, established in 1961, has representatives from trade unions and employers' organisations in the four member countries and is a platform for dialogue between the EFTA social partners and the EFTA authorities. It aims to raise awareness of the social and economic aspects of the EEA and EFTA free trade agreements. The Committee gives its views on new EU proposals for legislation or policies and how they could affect industry, businesses and workers in the EEA EFTA States.

The EFTA Parliamentary Committee was formed in 1977 and is a forum for parliamentarians from the four EFTA countries. The Committee works on EEA matters and the latest political developments in the EU and their impact on the EEA. The Committee also follows closely EFTA third-country relations, as well as the World Trade Organization multilateral

negotiations and other aspects of free trade, such as human rights and environmental policies.

Since the establishment of the Association, the EFTA parliamentarians and the social partners have maintained regular contacts with their colleagues in the EC, and later, the EU countries. With the entry into force of the EEA Agreement, relations between the Committees and their counterparts on the EU side, the European Economic and Social Committee (EESC) and the European Parliament (EP), were institutionalised through joint bodies that meet on a regular basis. These formal committees are valuable decision-shaping forums for the EFTA side, and the contact with EU counterparts has contributed to an increased awareness of the EEA among members of the EESC and of the EP.

The EFTA Bulletin has interviewed Mr Svein Roald Hansen, a Member of Parliament for the Norwegian Labour Party, and Mr Halldór Grönvold, Deputy Secretary-General of the Icelandic Confederation of Labour. Both are longstanding members of the two Committees and have served as chairmen.



EFTA and EC parliamentarians met in Linköping in Sweden in June 1992, celebrating the signing of the EEA Agreement. From left: Nic Grönvall, Swedish Conservative MP, Georg Reisch, EFTA Secretary-General, and Willy De Clercq, Member of the European Parliament and former EC Commissioner.

New Opportunities to Study and Work



Svein Roald Hansen ^[9]
EFTA Parliamentary
Committee

1. Mr Hansen, looking back over the 20 years that have passed since the inauguration of the Single Market and the signing of the EEA agreement, what are the greatest achievements of the Single Market?

The Single Market and the EEA Agreement have made it possible to integrate the countries of Europe, countries whose economies are strongly interdependent. The common legal framework has created a level playing field for competition, helped to modernise the economies of all countries and contributed to the strong economic growth we have seen, until the financial crisis in 2008. I would also emphasise that through the internal market we have removed national borders that represented an obstacle to 500 million Europeans. This has created new opportunities to study, work and settle in other countries, including the security of being treated as the host country's own citizens.

2. If you think back, has the EEA developed differently from what you expected in the early nineties?

Indeed. At the time, no one could have predicted the dynamics of the EU cooperation. The enlargement to the east was only a vision. The cooperation within the EEA Agreement has been strengthened through our participation in an increasing number of EU

programmes. In addition, the Schengen cooperation has over the last years shown to be just as dynamic as the integration process of the Single Market.

3. What is today's greatest challenge to the Single Market?

The economic crisis, which has created such high unemployment rates and social problems in several countries, and which could threaten the foundations of the euro cooperation.

4. There is much talk about the Single Market bringing prosperity to Europe and how it has increased European trade and economic growth. However, on its twentieth anniversary, Europe is facing its greatest economic crisis since WWII; what has gone wrong?

The financial crisis that started in the autumn of 2008 revealed that some of the member countries had created large budgetary imbalances and unsustainable high debts. The common guidelines they all had agreed upon regarding budget deficits and public debt had not been respected.

5. What is your most memorable EEA moment?

The enlargement of the EEA with the ten Central-European countries.

^[9] Member of the Norwegian Parliament (Labour Party).

6. What is the role of the parliamentarians in the EEA context and how has it developed through the years and what are your expectations for the work of the Committee in the near future?

As the European Parliament's role and power have increased in the EU, the cooperation among parliamentarians in EFTA and between EFTA parliamentarians and the European Parliament has become more important. If we are to protect our interests in the cooperation with the EU, the EFTA countries' parliaments will have to participate in the various forms of cooperation that is developing between the European Parliament and the national parliaments of the EU Member States.

7. The Norwegian Review Committee's report has been welcomed and widely debated not only in Norway but also in Iceland and Liechtenstein, as

well as here in Brussels. What in your view were the most important findings of the report?

The most important element of the report is that it shows how strongly and comprehensively Norway is integrated into the EU, not only in the Single Market by means of the EEA, but also through the Schengen agreement and through over 70 other cooperation agreements. We are more integrated than the United Kingdom, but we are outside the political cooperation and we therefore have much less influence.

8. Will we celebrate the 30th anniversary of the EEA?

Yes, I really hope so. And if not, I hope it's because the three EFTA EEA countries have become EU Member States.



Two Commissioners were among the speakers at the EEA Joint Parliamentary Committee's Forum on Security of Energy Supply and the Impact on the Financial Market, held in the margins of the meeting of the EEA Joint Parliamentary Committee in March 2009 in Strasbourg. From left to right: Benita Ferrero Waldner, External Relations Commissioner, European Commission; Paul Rübiger (Christian Democrats, Austria), Member of EEA Joint Parliamentary Committee; Henrik Olsen, European Parliament Secretariat; Bilyana Raeva (Liberals, Bulgaria), Vice-President of EEA Joint Parliamentary Committee; Harry Quaderer (Patriotic Union, Liechtenstein), President of EEA Joint Parliamentary Committee; Andri Lütherson, EFTA Secretariat; and Andris Piebalgs, Energy Commissioner, European Commission. © Photo: European Parliament

A Driving Force for Decades



Halldór Grönvold ^[10]
*EFTA Consultative
Committee*

1. Looking back over the 20 years that have passed since the inauguration of the Single Market and the signing of the EEA agreement, what are the greatest achievements of the Single Market?

The Single Market is a unique feature of European integration with a set of unparalleled institutions and rules. In my mind there is no doubt that the Single Market has been a driving force for economic growth and job creation for almost two decades.

2. What is today's greatest challenge to the Single Market?

The challenge now is, more than ever, to take full advantage of the remaining potential for growth that Europe so desperately needs to exit the current crisis while at the same time creating renewed confidence in the Single Market among citizens, workers, and consumers. I welcome the renewed focus on the Single Market and the intention to revitalise it as an integral part of Europe 2020. A dynamic Internal Market is both a prerequisite and a support for a successful Europe 2020 strategy. Here it is important to bear in mind that the Single Market needs to be revitalised in order to serve as a more efficient vehicle for smart, sustainable, and inclusive growth in the European Economic Area (EEA). This is especially important against the backdrop of the current economic and financial crisis. This makes it paramount to link the Single Market more closely to current and future exit strategies and macro-economic developments in Europe. The Single Market is a continuous process which deserves a more enhanced role in the European integration and growth process.

Here I want to emphasise the importance of skills development and job creation in the Single Market, especially in the current economic and social crisis. It is crucial not only to consider the quantity, but also the quality, sustainability, and perspective of gender equality in new jobs. We must address skills mismatches, improve lifelong learning measures and reform the system of mutual recognition of professional qualifications.

For the EEA EFTA States the challenge is also to constantly remind our EU partners that the three EEA EFTA States are fully integrated partners in the Single Market and that the rights and obligations in the Single Market cover 30 EEA States and not only EU-27.

Finally, I would like to stress the specific role of social partners in the economy and urge the relevant authorities to recognise this when further developing the Single Market. The social partners through their network of membership organisations are ready, willing and able to take "ownership" of the new Act and in this way maximise the potential of the Single Market.

3. Currently the Monti II provision is being discussed, that is harmonising the right to strike within an EU framework. This is much opposed by influential policy shaping groups. Has the Single Market been established more with the rights of business in mind rather than the citizens?

I fully agree with those who have criticised and oppose the Monti II provision to harmonise the right to strike within an EU and possible also EEA framework. In my mind it is in the common interests of the social partners at EFTA and EEA level to fight for such ideas and I am sure that we will succeed.

As I have already said, the Single Market is a key instrument to achieve economic and social progress in Europe. Economic freedoms and social fundamental rights are essential features of European economic and social systems and safeguarding and implementing the four freedoms enable higher levels of prosperity and social developments in Europe. The social dimension and the rights and well-being of workers and citizens are essential. At the same time respect for the diversity of industrial relation systems is crucial. It is important for the socio-political legitimacy of the Single Market

^[10] Deputy Secretary-General of the Icelandic Confederation of Labour.

that any reforms at European level or of national labour markets do not undermine the social dimension of the Single Market.

4. Much has been said about increasing the efficiency in the Single Market for services. Is it not so that the thrust of regulations in this field have merely enabled social dumping, as exploited workers have arrived from the new EU Member States to undermine national workers in the more affluent older Member States - and in Norway and Iceland?

It is true that cross-border services have posed a threat to the industrial relations systems and the rights of workers in at least some European countries and we have witnessed many and serious cases of social dumping. Improving cross-border services, while reconciling economic freedoms and workers' rights, is crucial. Facilitating the temporary provision of services by companies in another Member State should go hand in hand with guaranteeing the protection of workers posted to another Member State.

This has been emphasised both by the Icelandic and Norwegian governments. To show what I mean, I would like to quote from a "General Statement" made by the Icelandic government in the accession talks with the EU on social policy and employment:

"Furthermore, Iceland emphasises the importance of ensuring that labour market rules are designed to prevent social dumping and encourage high standards of social protection by applying

appropriate measures aimed at protecting domestic and posted workers' rights and maintaining high standards in the workplace. Such measures may include, inter alia, an effective system for general application of collective agreements, and the introduction of joint responsibility and liability for contractors and sub-contractors in order to ensure enforcement of workers' rights."

5. What is the role of the Consultative Committee in the EEA context and how has it developed through the years and what are your expectations for the work of the Committee in the near future?

The aim and mission of the EFTA Consultative Committee is to take part in the shaping of the EFTA and EEA agenda, and influence policies in the areas that affect the social partners. It shall be a forum for dialogue between social partners from all EFTA countries, and a link to social partners in the EU and the EU accession countries. I think that the Consultative Committee has in principle succeeded in its work although we would often have liked to have a stronger influence in the decision shaping and the decision making at EFTA and EEA levels. As regards the future I am sure that the Committee will continue to make important contributions to the EFTA side concerning the EEA.

One important explanation for the Consultative Committee's success is the good and friendly spirit that has characterised the work within the Committee for many years. The social partners have managed to develop a constructive and progressive cooperation in the best sense of that word within this Committee. We have also had good and important support from the EFTA Secretariat in our work.

6. Will we celebrate the 30th anniversary of the EEA?

Yes. I am sure that we will. But the question is who will be on the EFTA side and who will be on the EU side and what kind of EEA will we have then?



In March 2012 in Brussels, the EFTA Consultative Committee discussed the recent Norwegian review of the EEA Agreement. Committee members Thomas Angell (Virke - Federation of Norwegian Commercial and Service Enterprises) and Espen Søylen (NHO - Confederation of Norwegian Enterprise) exchange views with Trine Radmann, Director of the NHO Brussels Office.

Selected Reports and Opinions

EEA Joint Parliamentary Committee

Report on: 'The Review of the EEA' - 3 May 2012

Report on: 'EU Digital Agenda and the EEA' - 26 October 2011

Report on: 'Europe 2020: Innovation and the EEA' - 25 November 2010

Report on: 'EEA and Regional Cooperation: New Channels for Dialogue' - 29 March 2010

Report on: 'The EEA and the Global Financial Crisis: Promoting Recovery' - 28 October 2009

Report on: 'Future Perspectives for the European Economic Area' - 4 November 2008

Report on: 'Health Services in the European Economic Area' - 29 April 2008

Report on: 'The Open Method of Coordination and the EEA' - 7 November 2007

Report on: 'Enlarging the EEA: Experiences and Perspectives' - 4 October 2006

Report on: 'The implementation of EEA legislation' - 4 October 2006

EFTA Consultative Committee

Opinion on The Citizen's Approach to the Single Market - 12 December 2011

Opinion on a single market for the 21st century - 30 June 2008

Opinion on The Treaty of Lisbon and the EEA - 12 March 2008

A New Strategy for the Internal Market - 26 April 2006

The European Neighbourhood and New Challenges for EFTA - 27 April 2005

EEA Consultative Committee

Resolution and report on the EEA review - 4 May 2012

Resolution and report on the Enterprise Dimension of the Internal Market - 4 May 2012

Resolution and report on The Single Market Act - 12 May 2011

Resolution and report on Financial reform in the EEA - 19 May 2010

Resolution and report on Europe 2020 - 18 May 2010

Resolution on the EEA and Norwegian Financial Mechanisms - 16 May 2007

The documents above are all available in electronic form on www.efta.int/advisory-bodies/reports-resolutions-opinions.aspx

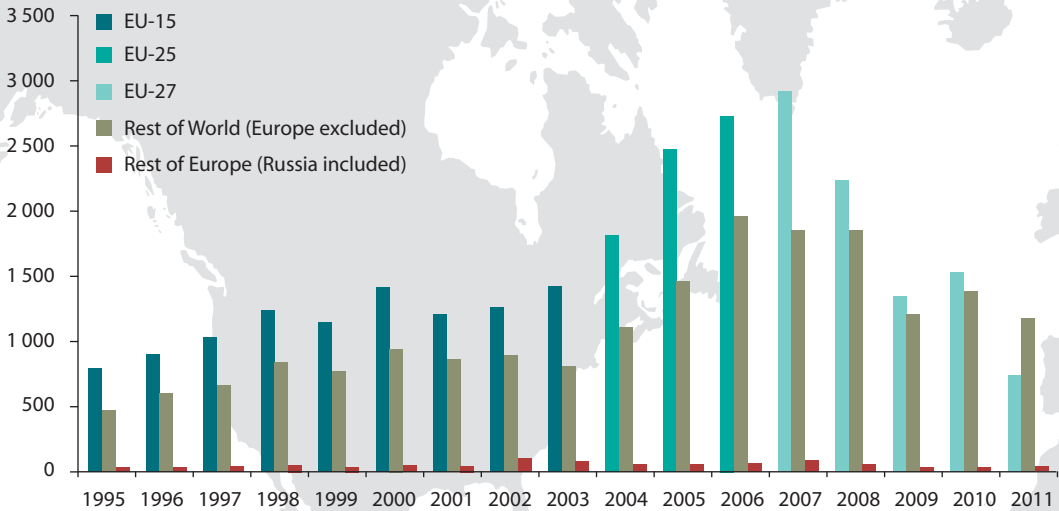
EEA IN FIGURES

Merchandise Trade

The EEA Agreement ensures free movement of goods between Iceland, Liechtenstein, Norway and the EU and provides for homogeneous legislation for removal of technical barriers to trade. Figures 1 to 6 show merchandise trade for the three EEA EFTA countries with the EU, the rest of Europe and the rest of the world.

Iceland's merchandise imports: 1995-2011 (million EUR)

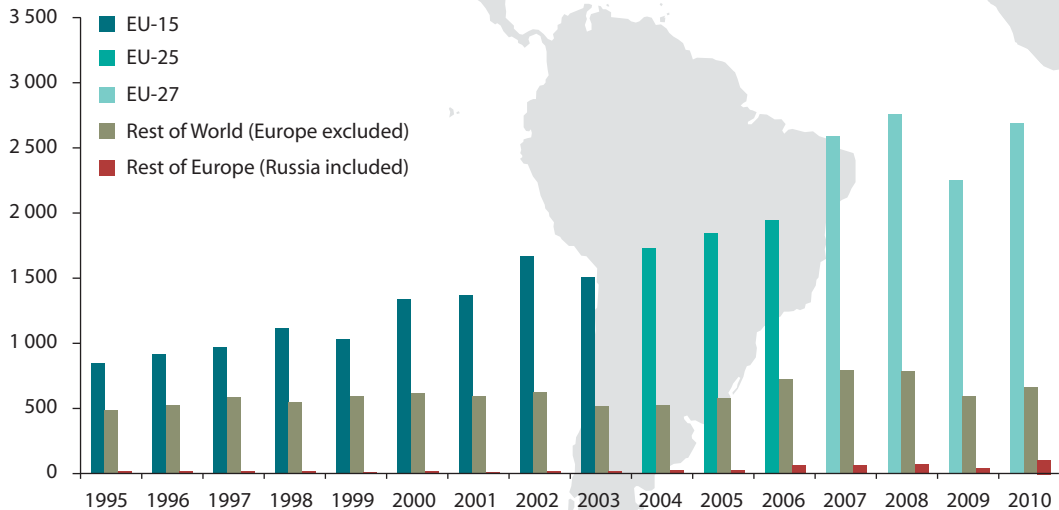
Fig.1



Source: Eurostat (DS_043227)

Iceland's merchandise exports: 1995-2010 (million EUR)

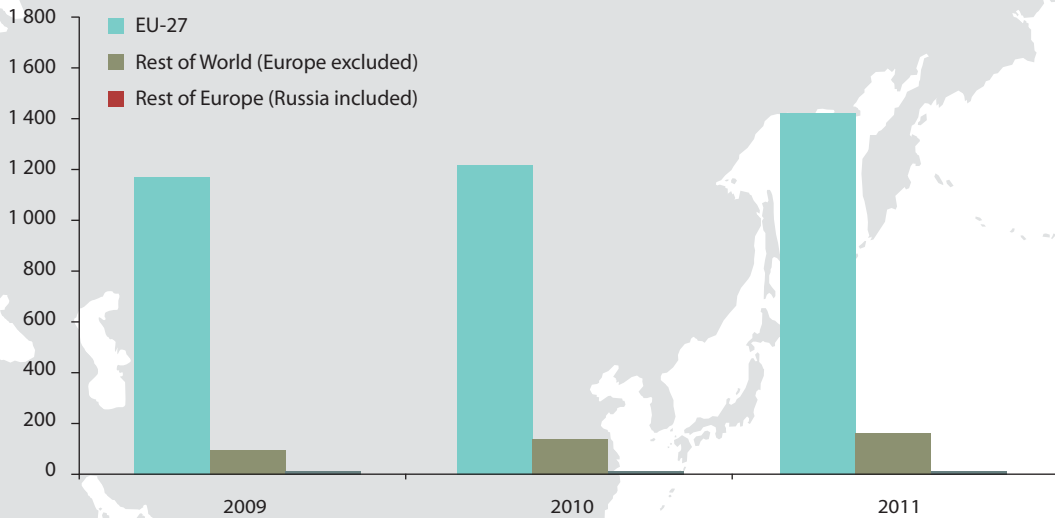
Fig.2



Source: Eurostat (DS_043227)

Liechtenstein's merchandise imports: 2009-2011 (million EUR)

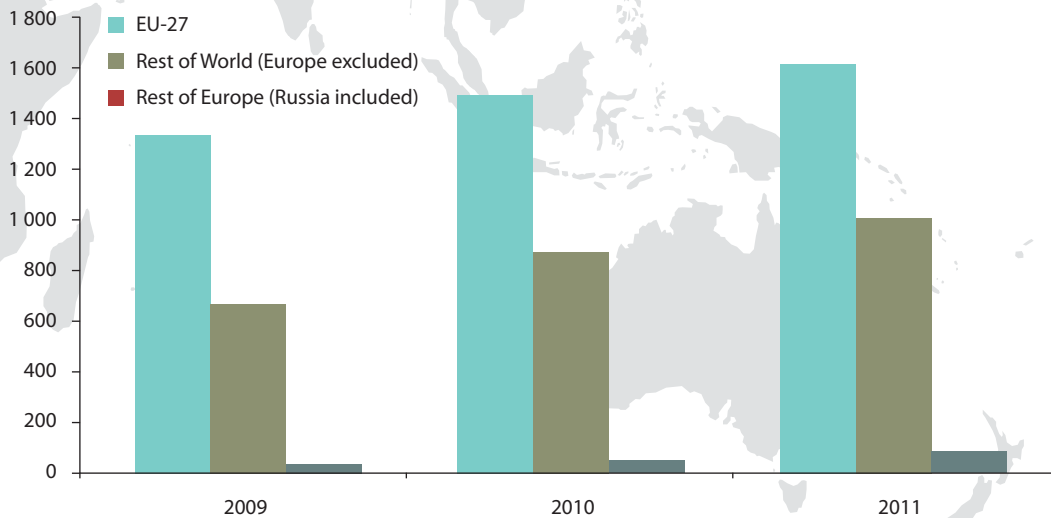
Fig.3



Source: Eurostat (DS_043227)

Liechtenstein's merchandise exports: 2009-2011 (million EUR)

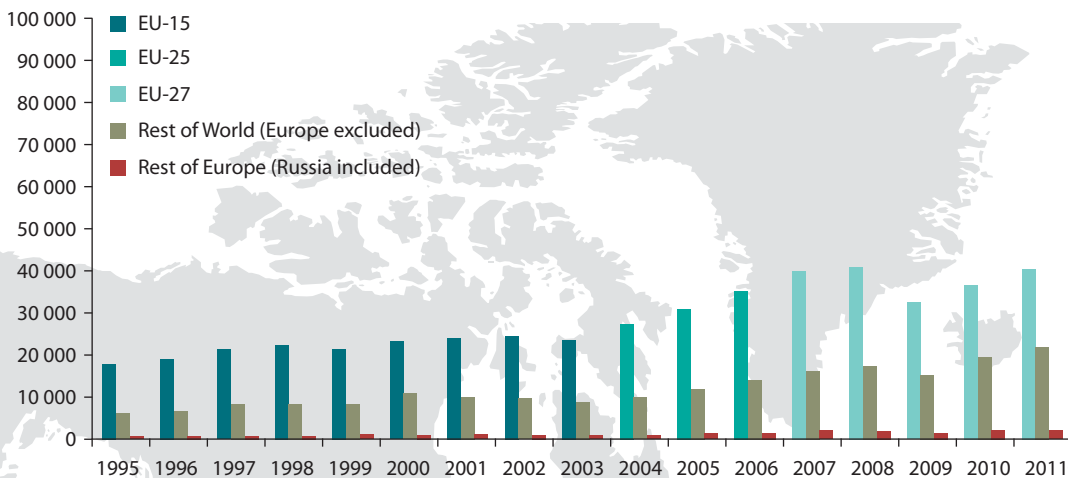
Fig.4



Source: Eurostat (DS_043227)

Norway's merchandise imports: 1995-2011 (million EUR)

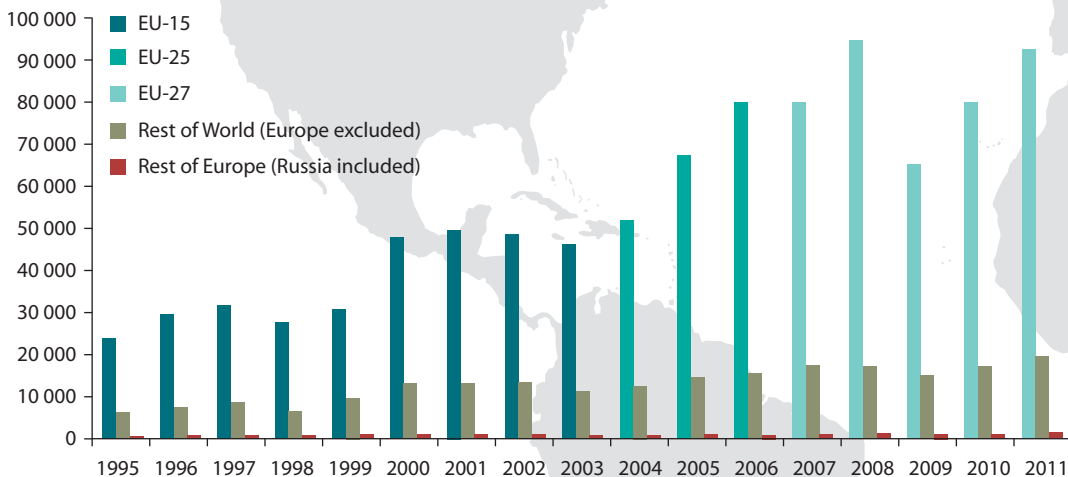
Fig.5



Source: Eurostat (DS_043227)

Norway's merchandise exports: 1995-2011 (million EUR)

Fig.6



Source: Eurostat (DS_043227)

Migration Figures for Iceland and Norway

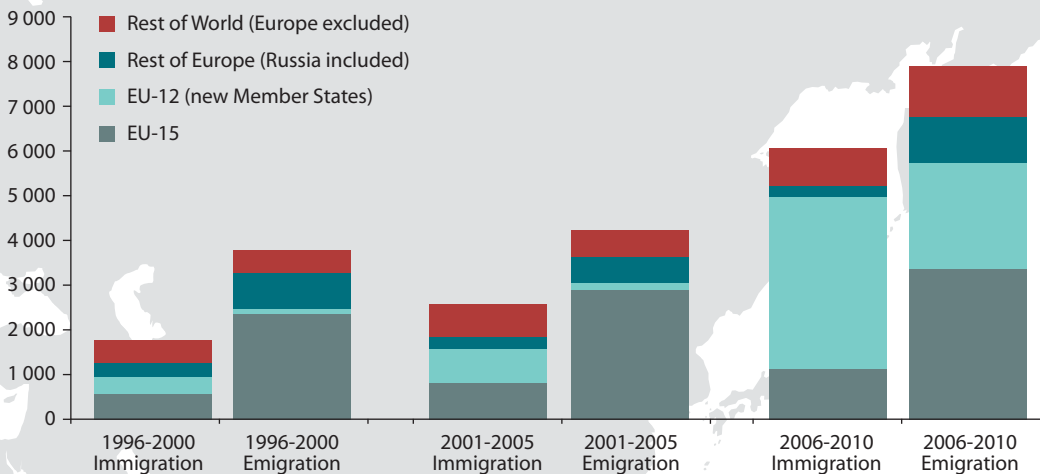
Free movement of persons (workers) is an essential part of the EEA Agreement. The statistics below illustrate the movement of citizens to and from Iceland and Norway in the period 1996 to 2010 (data for Liechtenstein is not available).

While Iceland has observed a net emigration to the “old” EU Member States (EU15), there has been a net immigration to the country from the new Member States (EU12), especially since the enlargement of the EU in 2004.

For Norway, a substantial increase in immigration from the new EU Member States (EU12) has also taken place over the last years, but a high number of immigrants are also coming from the EU15 and the rest of the world.

Migration to and from Iceland: 1996-2010 (number of persons, annual average)

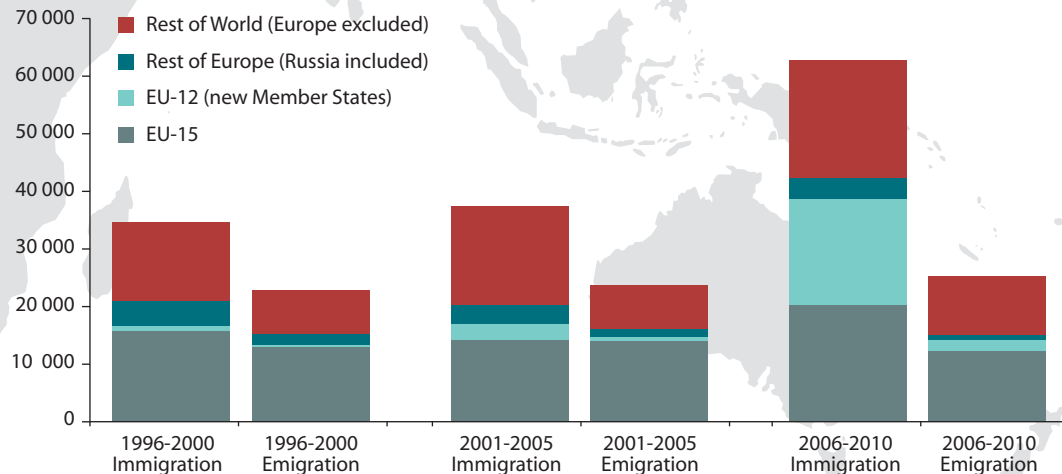
Fig. 7



Source: Statistics Iceland

Migration to and from Norway: 1996-2010 (number of persons, annual average)

Fig. 8



Source: Statistics Norway



Incorporation of EU Legal Acts into the EEA Agreement

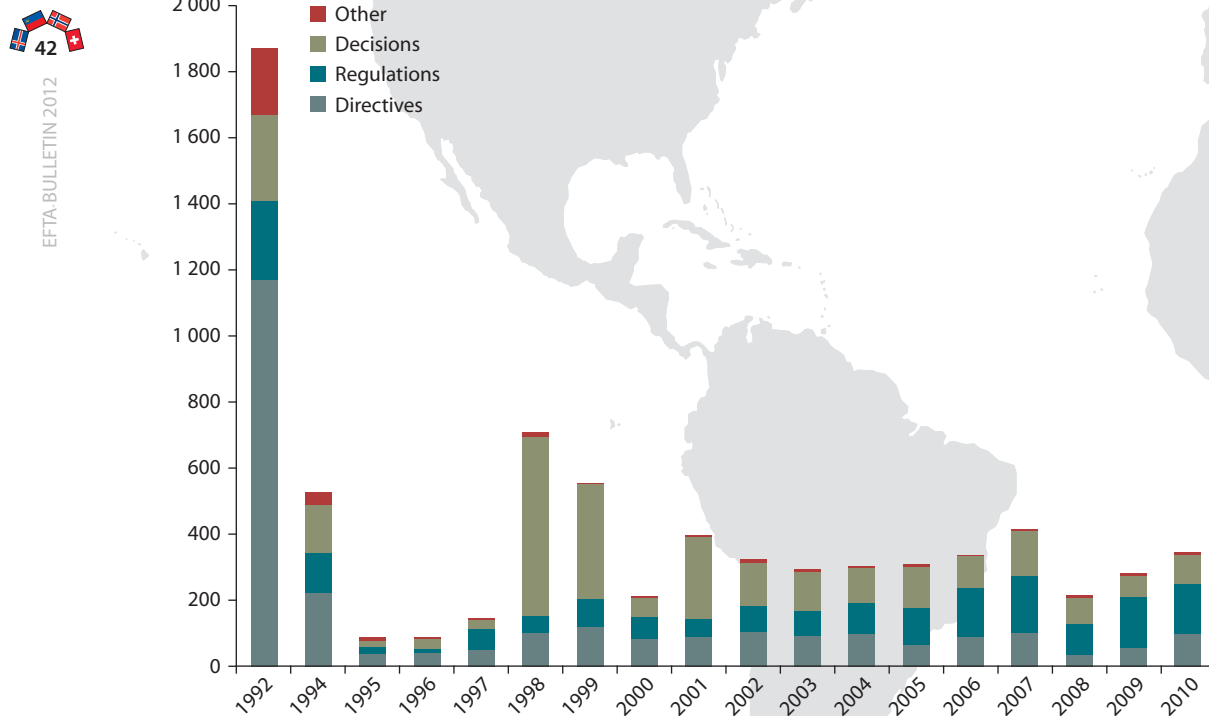
At the time of signature in 1992, the EEA Agreement’s annexes and protocols included 1 875 legal acts. Another 530 were incorporated in 1994, most of which (479) were part of a supplementary package that reflected developments in the EU between 1992 and 1994, when the EEA Agreement entered into force. A large number of acts were also incorporated in 1998 and 1999 as part of the “veterinary package”.

The figure below shows that for the last decade, the number of acts incorporated annually has been between 200 and 400. By December 2010, the EEA Agreement contained 7 464 acts, of which 4 179 were then in force (see figure 10).

While in the beginning, directives were more numerous than regulations, the reverse has been the case since 2005. This is partly due to a trend whereby directives are being revised and replaced by regulations, as the latter have direct effect in the EU Member States (although not in the EEA EFTA States), ensuring simultaneous and harmonious implementation.

EU legal acts in the EEA Agreement: 1992-2010 (number and type of acts at the time of signing in 1992 and subsequent additions)

Fig.9



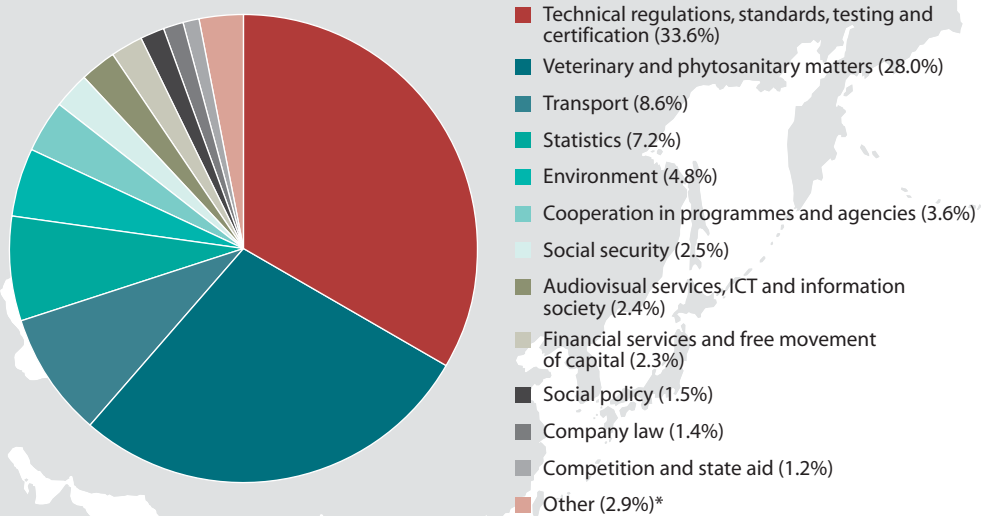
Source: EFTA

Legal Acts in the EEA Agreement by Policy Areas

The figure below gives a snapshot of the size of the various policy areas in the EEA Agreement, represented by the number of “active” EU legal acts (in force) in the Agreement’s annexes and protocols. The total number (4 179) is lower than the number of all acts that have been part of or incorporated into the Agreement since 1992 (7 464), as several old acts have been replaced by new ones or repealed. Acts taken over by simplified procedure (847 since 2000), mainly veterinary acts of short-lived nature, are not included here.

Breakdown by policy areas of EU legal acts in the EEA Agreement: December 2010 (shares of the 4 179 incorporated acts in force)

Fig. 10



* Other: Consumer protection and product liability (0.7%), energy (0.6%), intellectual property rights (0.6%), procurement (0.6%), recognition of professional qualifications (0.3%), and free movement of workers (0.2%).

Source: EFTA

Participation in EU Programmes and Agencies

The EEA EFTA States are participating in a growing number of EU programmes and agencies, as illustrated below by their financial contributions to the EU budget from 1995 to 2012. In 2012, this cooperation included 26 programmes and 13 agencies. Participation in the EU research framework programmes and educational programmes represent the largest budget contributions, with around 85% of total annual expenditure.

The EEA EFTA States contribute funds to the EU programmes and agencies in proportion to the size of the EEA EFTA States' gross national product (GDP) relative to the total GDP of the EU Member States.

Financial contributions from the EEA EFTA States to EU Programmes and Agencies: 1995-2012 (million EUR)

Fig. 11



Source: EFTA

Reduction of Economic and Social Disparities

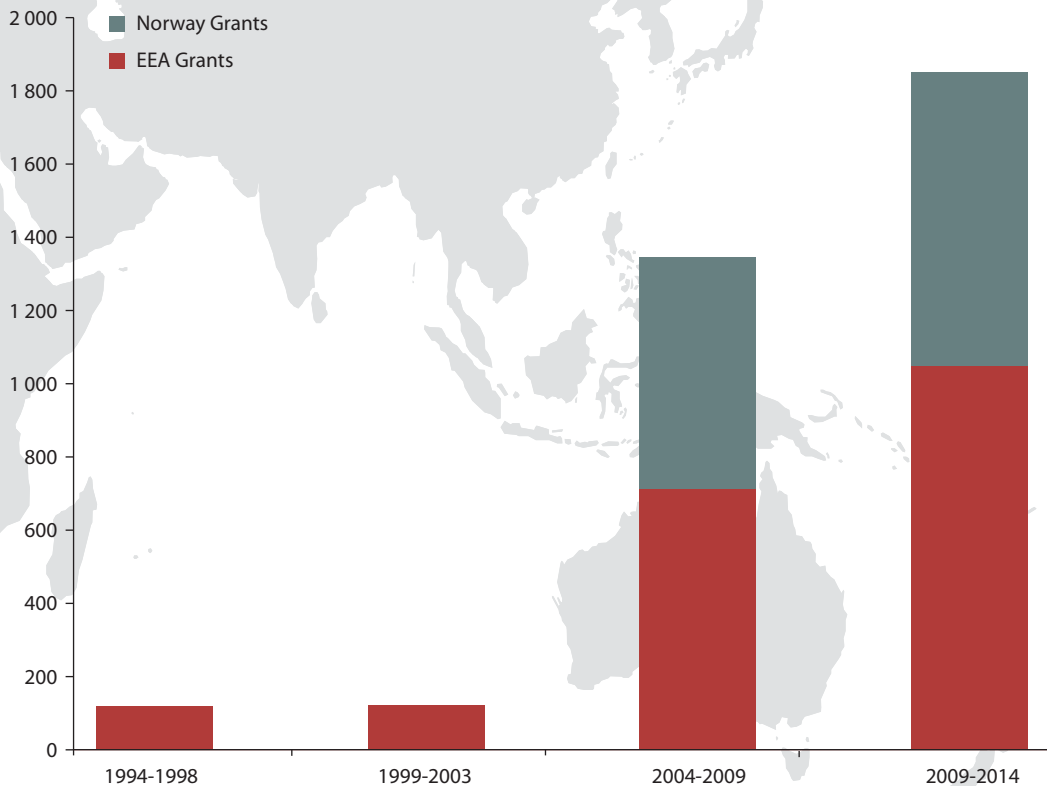
Despite much progress in Europe over recent years, gaps in economic development and living standards persist. The EEA Agreement includes a goal to reduce social and economic disparities in the European Economic Area. The EEA EFTA States have contributed to European cohesion efforts ever since the EEA Agreement entered into force in 1994. The current grants schemes also aim to strengthen bilateral relations with the 15 beneficiary countries through cooperation in programmes and projects.

A substantial increase of the contributions took place with the enlargement of the EU in 2004. From 1 May 2004, two parallel grants schemes financial mechanisms have been in place. The EEA Grants are jointly financed by Iceland, Liechtenstein and Norway, who contribute according to their size and economic wealth. Of the EUR 988.5 million set aside for the 2009-14 period, Norway represents around 94%, Iceland close to 5% and Liechtenstein around 1%. The Norway Grants are financed by Norway alone and amount to EUR 800 million in this period.

Beneficiary countries are Bulgaria, Czech Republic, Cyprus, Estonia, Greece, Hungary, Latvia, Lithuania, Malta, Poland, Portugal, Romania, Slovakia, Slovenia and Spain. Key areas of support include environmental protection and climate change, civil society, children and health, cultural heritage, research and scholarships, decent work, and justice and home affairs. Grants are available for non-governmental organisations, research and academic institutions, and the public and private sectors.

The joint contributions of the EEA Grants (1994-2014) and Norway Grants (2004-2014) (million EUR)

Fig.12



Source: EFTA

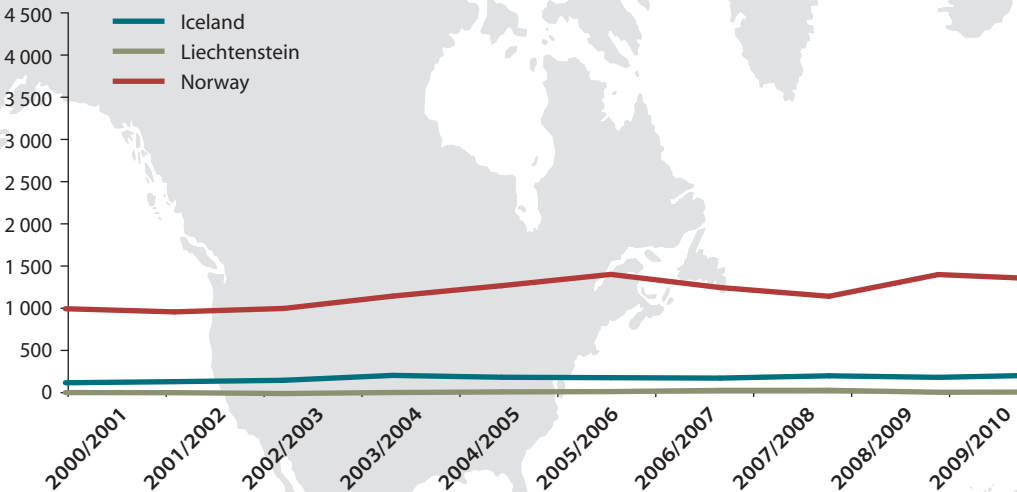


Erasmus Student Mobility

EEA EFTA participation in EU's educational programmes has allowed students from Iceland, Liechtenstein and Norway to study in another EEA country under the Erasmus programme and its predecessors, as well as allowing students from EEA countries to come to their universities. The figures below show how the numbers of outgoing and incoming Erasmus students have developed over the last decade. While the numbers have increased for both categories, the most noticeable development is the sharp increase in the number of incoming students, which has tripled for both Iceland and Norway.

Outgoing Erasmus students from Iceland, Liechtenstein and Norway: 2000-2010 (number of students)

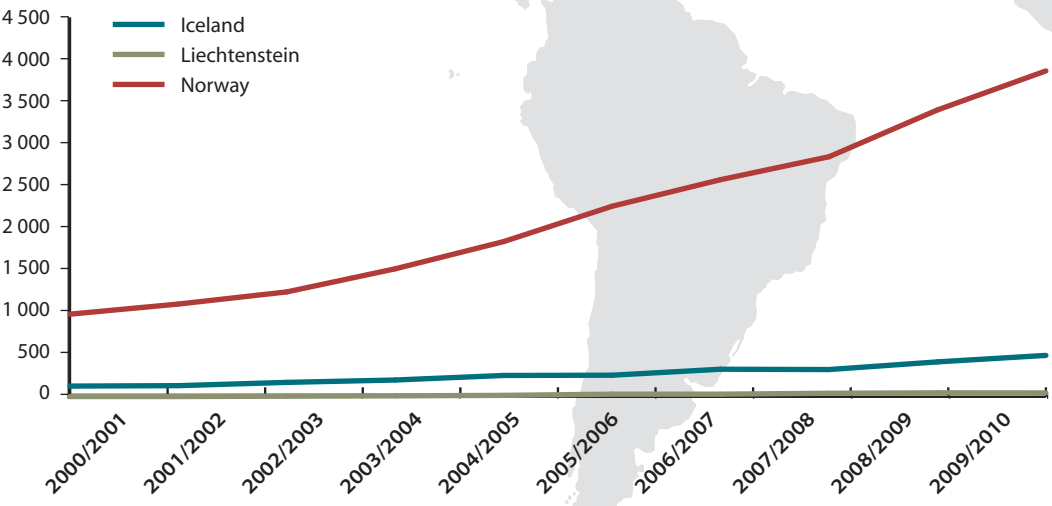
Fig. 13



Source: European Commission

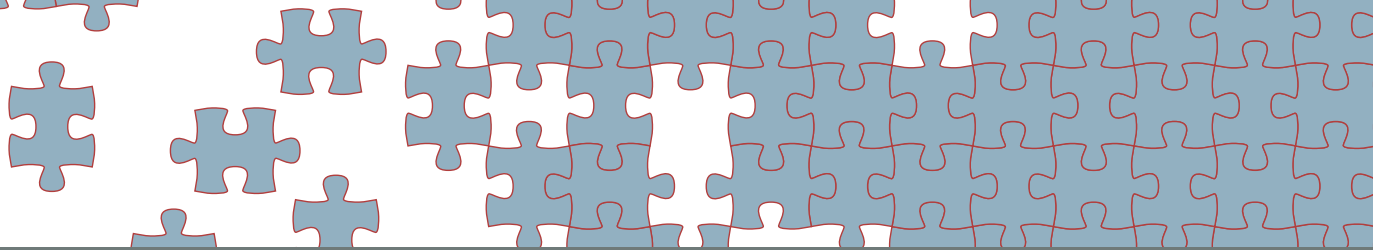
Incoming Erasmus students to Iceland, Liechtenstein and Norway: 2000-2010 (number of students)

Fig. 14



Source: European Commission





The European Free Trade Association (EFTA) is an intergovernmental organisation for the promotion of free trade and economic integration, to the benefit of its four Member States: Iceland, Liechtenstein, Norway and Switzerland. The Association is responsible for the management of:

- The EFTA Convention, which forms the legal basis of the organisation and governs free trade relations between the EFTA States;
- EFTA's worldwide network of free trade and partnership agreements; and
- The Agreement on the European Economic Area (EEA), which enables three of the four EFTA Member States (Iceland, Liechtenstein and Norway) to participate fully in the Internal Market of the European Union.

The EFTA Bulletin is intended to serve as a platform for discussion and debate on topics of relevance to European integration, as well as the multilateral trading system. In this endeavour, the EFTA Bulletin draws on the experience and expertise of academics, professionals and policy makers alike.

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