

EU and EEA EFTA countries: Different principles, but joint efforts

Blog | 28 August 2019

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Every two years, the council of the European Union (EU) publishes conclusions on the EU's relations with non-EU Western European countries. These conclusions are regarded as a much-noticed barometer of the views of the EU and its member states. But is it at all possible to assess the relationship between non-EU countries and the EU?

Effectiveness and external differentiation

Effectiveness describes the relationship between an achieved state and a defined goal. The closer these two parameters are to each other, the higher the effectiveness. External differentiation is therefore effective when the objectives set for it are achieved. However, the goals and ideas of external differentiation can vary greatly depending on the actor, which is why the effectiveness of a concrete integration model can also be assessed differently depending on the perspective. This will be illustrated below using the example of the European Economic Area (EEA).

Different objectives

From the point of view of the EEA EFTA states, the EEA should ensure the greatest possible market access with the least possible transfer of decision-making powers to the EU and EFTA institutions. This tension between the greatest possible economic integration and the lowest possible political integration is typical of external differentiation. Ideally, non-member states should participate on an equal footing in shaping the legal provisions of the EU that are relevant to them and should have a right of veto based on their constitutional domestic decision-making procedures.

The EU perspective contrasts with that of the EEA/EFTA states. Accordingly, external differentiation should ensure a transfer of EU rules to the EEA EFTA states without compromising the integrity of

the EU legal order or the autonomy of the EU decision-making process. In other words, cooperation with the EEA EFTA states should not restrict the further development and interpretation of EU law even in areas relevant to the EEA Agreement. The EEA Agreement is also intended to ensure an overall balance of benefits, rights and obligations of the Contracting Parties. Looking beyond the EEA, the EU also endeavours to ensure that its external relations are as consistent as possible.

However, the assessment of the effectiveness of the EEA must also be based on the objectives defined in the EEA Agreement. The preamble and the first part of the main EEA Agreement should be emphasised here. The aim of the EEA is therefore "to strengthen trade and economic relations between the Contracting Parties in a stable and balanced manner". It follows that effectiveness correlates with the intensity of economic integration in the EEA. The focus is on the removal of barriers to trade and market entry and the creation of a level playing field. In addition, economic integration through the EEA should promote innovation, growth and competitiveness.

A second objective explicitly anchored in the EEA Agreement is the establishment of a dynamic and homogeneous economic area. This objective obliges the Contracting Parties to ensure harmonious development of the relevant legislation and adequate means of enforcing it. The EEA Agreement should therefore guarantee consistent selection, timely and complete incorporation and correct implementation, application and interpretation of EEA-relevant EU law by the EEA EFTA states.

Conflicting objectives

Given the different perspectives on the EEA, conflicting goals cannot be avoided. For example, when Norway and Iceland incorporated the European System of Financial Supervision into the EEA Agreement, they were prepared to forgo the economic benefits of a fast incorporation for an institutional solution compatible with their constitutional procedures and principles. At least temporarily, political goals were given preference over economic ones.

The delayed incorporation of EU law represents a particular challenge for the functioning of the EEA. It can jeopardise the integrity of EU law and lead to a surplus of rights for the EEA EFTA states compared with their obligations towards the EU. This is contrary to the basic principles of the EU and grants the EEA EFTA states special treatment. On the other hand, a certain delay in the incorporation in the EEA seems inevitable. This is the only way to compensate for the lack of involvement of the EEA EFTA states in the EU decision-making process and to avoid an automatic transfer of rules from the EU to the EEA EFTA states. This is indispensable for the legitimacy of the EEA in the EEA EFTA states.

Adaptability of the institutional structure of the EEA

The EEA is intended to provide a sound basis for relations between the EEA EFTA states and the EU. Given the highly dynamic nature of the European integration process, the EEA Agreement must constantly adapt to changing environmental conditions. The EEA's Contracting Parties and institutions must therefore be able to find flexible solutions to specific challenges in order to guarantee a

dynamic development of the common relationship. The EEA has undoubtedly succeeded in doing this.

However, this adaptability of the EEA's institutional structure triggers another conflict of the EEA's objectives: It may have ensured the EEA's functioning but the many additional institutional rules also meant that competences were transferred from the EEA EFTA states to the institutions of the EFTA pillar or even the EU. This contradicts the integration objective of the EEA EFTA states of the least possible political integration. Moreover, the various ad hoc rules for specific institutional challenges have further increased the complexity of the EEA's institutional framework making it less consistent and transparent.

Dialogue instead of red lines

These conflicts are an integral part of the integration reality of the EEA EFTA states. Their actual integration is therefore best described as a compromise between various interests. The paramount objective is the avoidance of EU membership while specific goals such as the rejection of any political integration are interpreted pragmatically.

Looking back over the past 25 years, the EEA is nevertheless viewed positively by the contracting parties. The EEA is convincing above all through its pragmatic and constructive approach to the various objectives and principles of the Contracting Parties. This was only possible thanks to the continuous and mostly very objective dialogue between the institutions and actors of the EFTA and EU pillars. The EEA EFTA states in particular have always used this dialogue to confirm their commitment to the objectives of the EEA Agreement despite the institutional issue at stake. Likewise, they have used this dialogue to show their efforts to improve the functioning of the EEA Agreement.

Indeed, I argue that in such a comprehensive and dynamic integration model as the EEA, it is not possible to achieve full consistency between the actual integration and the politically and legally targeted integration. When assessing the effectiveness of an association agreement, it is therefore not advisable to focus only on the actual integration. Instead, it is important to also consider the quality of the political dialogue between the EU and non-member states and in particular the non-member states' commitment to the agreed goals and principle of an agreement. Put simply: The assessments of the EU's relations with non-member states is not only about compliance but also credibility.

The functioning of the EEA may not be completely convincing in view of a partly inconsistent selection process and an often delayed and sometimes incomplete incorporation of EEA relevant EU law. Still, compared to other models and due to the continuous efforts of the EEA EFTA states to improve the functioning of the EEA, the generally very positive assessments of the EEA – as latest expressed by the Conclusions of the EU Council of December 2018 – are justified.

The success of the EEA is likely to continue but certainly not without challenges. The outcome of the Brexit negotiations and the negotiations between Switzerland and the EU on an institutional agreement represent a particular challenge for the future of the EEA. The same applies to domestic processes in the EEA EFTA states, such as the discussions on the necessity and appropriateness of the constitutional barriers to integration in Norway and Iceland. However, as long as the EEA EFTA states regularly renew their commitment to the EEA by trying to improve its functioning based on pragmatic institutional adaptations to development of the EU law and as long as the EU continues to show a certain amount of flexibility, the EEA will function relatively well and thus remain in place. It is therefore always better to cooperate on the basis of pragmatism and not have to stick to red lines.

Citation

Frommelt, Christian (2019); EU and EEA EFTA countries: Different principles, but joint efforts. Blog. EFTA-Studies.org

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