



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

- **Editor**
Tore Grønningsæter
- **EFTA Secretariat contributors**
Trine Berggren
Anders Kjellevoid
Michelle Kruger
Patrick Lemp
David Sidler
Marius Vahl
Ghislaine Weder
- **Copy Editor**
KHinze Ltd
- Printed by Drifosett, Brussels
Layout by Orangemetalic
- Printed September 2012

Photos by EFTA if not otherwise indicated.

Cover picture: iStockphoto

Further copies of this issue are available free of charge by contacting webmaster@efta.int

Editor's note:

The EFTA Secretariat would like to thank all external authors for their invaluable contributions to this issue of the Bulletin. The views expressed are not necessarily those of the Secretariat.

TABLE OF CONTENTS

FROM THE COMMON MARKET TO THE SINGLE MARKET ACT	6	EEA IN FIGURES	38
Constructing the Single Market	6	Merchandise Trade: Iceland, Liechtenstein and Norway	38
THE EEA: STRENGTHS, WEAKNESSES AND CHALLENGES	13	Migration Figures for Iceland and Norway	41
Iceland's Position in the EEA		Incorporation of Legal Acts into the EEA Agreement	42
Eiríkur Bergmann	13	Breakdown of Legal Acts into Policy Areas	43
An Assessment of the Functioning of the EEA		Participation in EU Programmes and Agencies	44
Christian Frommelt	18	Reduction of Economic and Social Disparities	45
"The EEA is Functioning Well." True or False?		Erasmus Student Mobility: Iceland, Liechtenstein and Norway	46
Ulf Sverdrup	22		
Towards a More Strategically Focused EEA?			
Jacques Pelkmans and Philipp Böhler	26		
THE EFTA ADVISORY BODIES AND EUROPEAN INTEGRATION	32		
New Opportunities to Study and Work			
Svein Roald Hansen	33		
A Driving Force for Decades			
Halldór Grönvold	35		
Selected Reports and Opinions	37		



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



Christian Frommelt
Researcher
Liechtenstein Institute
Liechtenstein

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.