

Is Brexit a deterrence or an encouragement to disintegration for the EEA EFTA States?*

[Christian Frommelt](#), Liechtenstein Institute

While much has been written about the European Economic Area (EEA) as a potential model for the United Kingdom (UK) after its withdrawal from the European Union (EU), the question of how Brexit will affect the European integration of Iceland, Liechtenstein and Norway as members of the [European Free Trade Association \(EFTA\)](#) and the EEA has rarely been debated.

The EEA EFTA States appear to be prepared for Brexit. In December 2018, an [agreement with the UK](#) was presented which deals with the EEA relevant parts of the withdrawal agreement between the UK and the EU. In this way, an orderly exit of the UK from the EEA shall be ensured. In February 2019, Iceland, Liechtenstein and Norway also concluded a [joint agreement with the UK to safeguard citizens' rights in the event of a No Deal Brexit](#). In addition, all three EEA EFTA States bilaterally agreed with the UK to maintain [free movement of goods in the event of a No Deal Brexit](#). Finally, each EEA EFTA State has established national contingency plans to prepare their businesses for Brexit.

These time-consuming preparations have focused on the immediate effects of Brexit. However, Brexit can also be seen as a [critical juncture](#) that shapes the future path of the EEA and its institutions. The following three statements shall reflect possible effects of Brexit on the EEA. First, however, I briefly describe the main patterns of differentiated integration in the EEA.

Differentiated integration in the EEA

[Differentiated integration](#) allows states to cooperate at different levels of integration based on their preferences and capabilities. The relations of the EEA EFTA States with the EU are determined by economic incentives for integration, which, however, are opposed by ideological reservations about political integration. As a result, the [functional scope of the EEA](#) consists mainly of highly interdependent but weakly politicised policy areas.

Nevertheless, in the negotiations on the EEA Agreement, the EEA EFTA States were unable to enforce many of their original preferences. This shows that the demand for differentiation can only be realised if there is also a supply for such differentiation. In the case of the EEA negotiations, the supply of differentiated integration was limited by the EU's institutionalized norms that are often referred to as the [Interlaken principles](#). These three principles are: i) Community integration comes

first, ii) Community's decision-making autonomy must be preserved, and iii) there has to be a balance between benefits and obligations.

As a result of the Interlaken principles we have to distinguish two main strands of EEA work: First, there is the EU policy shaping by the EEA EFTA States, which influences EEA relevant EU legislation before it is adopted by the EU, and second, EEA decision-making, which is the incorporation of an adopted EEA relevant EU act into the EEA Agreement. The main challenge of the EEA decision-making is the conflict between the requirement of a timely and complete incorporation and the need to take into consideration the specific institutional features of the EEA as well as the EEA EFTA States' regulatory preferences and capabilities. While the former should ensure the EEA's homogeneity, the latter should preserve the EEA EFTA States' legislative autonomy.

Statement 1: The processes and institutions of the EEA are highly complex and the EEA's institutional framework may therefore not be able to successfully cope with additional member states.

Due to its elaborate institutional framework the EEA is often seen as the benchmark for external differentiated integration. However, this institutional framework is highly complex bearing the risk of being opaque and inefficient if the contracting parties do not cooperate to the fullest possible extent. Moreover, institutions are a necessary but not a sufficient condition for effective external differentiated integration. The functioning of the EEA is therefore [not only the result of its institutional framework but also of the characteristics of its members](#), in particular the rather limited bargaining power of the EEA EFTA States, their high administrative capacity and their strong political commitment to the EEA.

To put it differently, due to their complexity the processes and institutions of the EEA are very fragile. [An EEA membership of the UK could therefore only work if the UK was able to replicate the political conditions that have enabled the EEA to function in the EEA EFTA States](#). Considering the UK's economic and political relevance as well as the high polarisation of its people towards European integration this is highly unlikely. An EEA membership of the UK would make the administration of the EEA more challenging and a level playing field for businesses in the EU and the EEA EFTA States less likely. The EEA EFTA States can therefore have no interest in the UK joining the EEA. This also applies to other states where European integration is highly salient such as Switzerland.

Statement 2: Brexit may trigger a competition between different models of external differentiated integration and therefore politicise the EEA Agreement within the EEA EFTA States.

Thus far, EEA membership has caused surprisingly little controversy in the EEA EFTA States. 25 years after the entry into force of the EEA Agreement there is much to suggest continuity. A [recent survey](#) conducted by [Sentio](#) and [NUPI](#) shows that the support for the EEA Agreement in Norway is higher than ever by stating that seven out of ten Norwegians believe that the EEA Agreement is a good agreement for Norway. However, the survey also shows that the level of knowledge on the EEA is low which means that the support for the EEA Agreement might be more related to vague sympathies rather than stable attitudes.

If the UK and the EU agree on a sustainable model for their future relations, some parties in the EEA EFTA States could see such a model as an alternative to EEA membership, regardless of whether it would actually bring new benefits for the EEA EFTA States. The [institutional agreement](#) currently being negotiated between Switzerland and the EU is another example of a model that can be seen as an alternative to the EEA Agreement. The institutional agreement shall only apply to five of the more than 120 bilateral agreements between Switzerland and the EU. In this way, the EU and Switzerland would consolidate their policy-specific and bilateral way of integration. Moreover, the institutional agreement does not contain a surveillance mechanism comparable to the institutional arrangements of the EEA. This may bring up the question whether Switzerland gets the same integration as the EEA EFTA States but with less institutional constraints.

There is no simple answer to this. However, as new models may soon be on the table, the EEA would no longer be considered to be without alternatives. This may also increase the debate on the advantages and disadvantages of EEA membership in the EEA EFTA States.

It has to be seen how such competition between the different models for external differentiated integration affects the daily administration of the EEA. Due to the EEA's highly complex institutional framework, increased politicisation is likely to reduce the EEA's efficiency. Moreover, it may undermine the authority of the EEA EFTA institutions such as the [EFTA Surveillance Authority \(ESA\)](#) and the [EFTA Court](#). In the long run, a successful Brexit may therefore threaten the functioning of the EEA.

Statement 3: Brexit will increase the politicisation of external differentiated integration in the EU which is likely to increase the EEA EFTA States' room for manoeuvre for EEA EFTA specific arrangements.

By ratifying the EEA Agreement, the EEA EFTA States have committed themselves to the objective of a homogeneous and dynamic economic area. Nevertheless, they continue to try to avoid any form of political integration that would trigger a transfer of power from the nation state to the European level. Over the last 25 years, the EU has repeatedly insisted on its conditions for incorporating new EEA relevant EU legislation into the EEA Agreement. However, the EU has also accepted various EEA specific adaptations and has been unable to prevent the much-delayed incorporation of various EU acts. At the institutional level, too, the functioning of the EEA is determined more by pragmatism than by consistency.

[Empirical analyses](#) of the EEA show that the supply for opt-outs and tailor-made arrangement is higher in the EEA EFTA pillar of the EEA than in the EU pillar. Whether this actually allows cherry picking and free riding by the EEA EFTA States is doubtful. However, in view of the increased politicisation of external differentiation, the possibility of doing so might be enough that the EU will try to determine the speed and scope of incorporation of the new EEA-relevant EU law into the EEA Agreement more strictly. In other words, the EU is likely to increase the pressure on the EEA EFTA States and leave them less room for manoeuvre. The EEA EFTA States will then have to decide what

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is more important for them: the proper functioning of the EEA based on a high degree of homogeneity of EEA law or the demand for different integration based on their material and ideological preferences.

A critical juncture for the EEA?

Thus far, the EEA EFTA States have set the benchmark for external differentiated integration. The EEA Agreement is the most far-reaching association agreement that the EU has ever concluded with a non-member state and the EU has always highlighted the exceptionally [good long-term partnership](#) with the EEA EFTA States. It remains to be seen whether the EEA EFTA States can keep their good reputation under the conditions of increased politicisation of the EEA. If not, Brexit might be decisive for them to select new paths of European integration.

This may be the transformation of the scope of the EEA Agreement into bilateral agreements between each EEA EFTA State and the EU. Such agreements are likely to have a similar institutional framework than the one foreseen in the draft of the institutional agreement between Switzerland and the EU. Another option could be to maintain the EEA Agreement but to simplify its procedures and give more authority and resources to its institutions. In this way the EEA EFTA States could reduce the complexity of the EEA and make its administration more efficiently. While the first option is likely to lead to less integration, the second option will bring more integration.

It is currently very unlikely that the UK or any other state wants to join the EEA in the near future. Moreover, as long as neither the EU and the UK nor the EU and Switzerland have agreed on a sustainable model for their future partnership, the EEA EFTA States do not have to worry that the EEA will come under too much pressure by the EU or domestic politics in the EEA EFTA States. Considering the continuously increasing support for the EEA in Norway it is likely that Brexit prevent disintegration by the EEA EFTA States. However, this might change rapidly if the EU and Switzerland or the EU and UK find an agreement. Indeed, [recent research](#) shows that Brexit can be both an 'encouragement' and a 'deterrence' to disintegration in other European countries. Because public support to the EEA in the EEA EFTA States is often vague and due to the lack of alternative models, the EEA EFTA States may therefore soon face domestic demands for differentiated disintegration. This will not leave the functioning of the EEA unscarred.

* The two terms 'deterrence' and 'encouragement' were taken over from [Prof. Dr. Stefanie Walter](#).

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Liechtenstein-Institut | info@liechtenstein-institut.li | www.liechtenstein-institut.li