

INTER-INSTITUTIONAL AND BUDGETARY INTERACTIONS BETWEEN THE EUROPEAN FREE TRADE ASSOCIATION AND THE EUROPEAN UNION – A SYNOPSIS

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ABSTRACT

This document offers an easily-accessible synopsis on the interactions between EFTA institutions and the European Union, with particular attention to budgetary matters. It is not addressed to political, economic or legal scholars specialized in EFTA, the EU or the EEA. For elaborated studies we refer to the relevant books and specialized journals. From a European perspective, the European Free Trade Association can only be compared with the European Union. This raises the research question how both European economic organizations interact. A summary of such interactions is presented in the format of a synopsis of relevant and available materials. The small EFTA has to deal pragmatically with the giant European Union, at the risk of being ignored or sidelined by it. Switzerland has carved out a unique position because it did not wish to be part of the European Economic Area and the extended internal market of the EU. This document explains the complex inter-institutional dialogue through all existing institutions on both sides as well as the budgetary price for maintaining such interactions. The European Economic Area (EEA) Agreement between the EU and three EFTA member states (Norway, Iceland and Liechtenstein) is the basic agreement for inter-institutional interaction. The EEA Agreement was signed in 1992, one year after an updated EFTA convention was signed. Today, the EEA Council is concerned that the real meaning and importance of the EEA – and by implication the interaction between EFTA and the EU – is not fully understood or brought to the attention of a wider public. The document features recent figures on the subject to help advance a concise and up-to-date knowledge of EFTA, the EU and the EEA.

KEYWORDS

EFTA, EU, institutions, European Economic Area (EEA), legal homogeneity, budgets, Switzerland, Norway, Iceland, Liechtenstein

1. How do EFTA institutions interact with the European Union?

The updated EFTA Convention of 1991

In Vaduz, on 21 June 2001, the four EFTA member states (Norway, Iceland, Switzerland and Liechtenstein) signed an amended EFTA convention which entered into force on 1 June 2002. It includes 21 annexes and one protocol on the free movement of persons between Switzerland and Liechtenstein. The main changes were the following: the scope of the previous convention was expanded to include new areas such as trade in services and investment, mutual recognition of conformity assessments, free movement of persons, social security and mutual recognition of diplomas, land and air transport, public procurement and intellectual property rights. EFTA is set up for the promotion of a continued and balanced strengthening of trade and economic relations between the member states with fair conditions of competition, the promotion of free trade in goods, the progressive liberalisation of the free movement of persons, trade in services and investments, the promotion of fair

conditions of competition, the opening up of the public procurement markets of its member states, and the appropriate protection of intellectual property rights. The four remaining EFTA member states have made important reservations to the EFTA convention by means of four annexes, the so-called 'negative list approach'. They should be read concurrently with the EFTA convention. The use of reservations has made the EFTA convention a far more complex treaty network in daily practice although it allows EFTA states a greater degree of autonomy in these matters. Practically all EFTA institutions and working groups maintain direct contact with their counterparts in the European Union and form a complex network at European level and at a national level. It involves politicians (both in government and in parliament), civil servants and judges. The updated EFTA convention coincided with the conclusion of the European Economic Area Agreement with the European Union. The effect is an intensive interaction between EFTA and the EU for 20 years.

The EFTA Council

The Council, the plenary organ at ministerial level, is responsible for the EFTA convention which is amended from time to time in order to reflect the legislative EU developments under the EEA agreement and the bilateral Swiss-EU agreements². It is the highest political institution in which the four member states consult, negotiate and act together. The Council is responsible for the policy and budgetary matters of EFTA. Not only the internal organization of EFTA is in the hands of the Council, but also the conduct of relations with the European Union, other international organizations (e.g. the WTO) and third states (e.g. free trade agreements). Each member state is represented in the Council - usually at ambassadorial level in Geneva - and has one vote, though decisions are taken by consensus. In the first half of 2011 Iceland's application to join the European Union and the Swiss-EU negotiations were among the chair's priorities. Norway held the chair in the second half of 2011 and focused the agenda on further liberalisation of trade in agricultural products and EFTA's free trade relations with countries outside the EU³. Several committees and expert groups are reporting to the Council, e.g. the third country relations committee, the customs committee and the budget committee. The EFTA Council is independent from the European Union and has no formalised meetings with the EU.

EFTA Consultative Committee

The EFTA Consultative Committee is composed of the representatives of trade unions, chambers of commerce and industries. It is a platform for dialogue and consultation between EFTA social partners and EFTA institutions. The committee adopts opinions as well as working papers⁴. It discusses economic and social issues related to the European Economic Area (EEA), taking into account the important impact of EU legislation. The EFTA Consultative Committee is in regular contact and dialogue with the EU's Economic and Social Committee and this dialogue is formalised by the European Economic Area (EEA) Agreement. Since Switzerland is not an EEA member, the committee receives updates on Swiss-EU bilateral relations and assesses the influence of EEA current developments on Switzerland. A key focus of the Consultative Committee in the period 2008-2011 became the global economic and financial crisis and its impact on economies and labour markets in the EEA⁵. At its meeting of 12 December 2011 the Consultative Committee issued an 'Opinion on the Citizen's Approach to the Single Market' which went further than the usual diplomatic

² In 2011 the EFTA Council amended the EFTA Convention four times, namely Appendix to Annex Q on Air Transport; Appendix I to Annex P on Land Transport, Annexes A and C on Rules of Origin/Agriculture, and Annex I on Mutual Recognition.

³ In 2011, EFTA had signed free trade agreements with 32 non-EU countries and territories

⁴ The number of opinions for the last 20 years is very limited. In 2011 only one opinion was adopted which is referred to in the our text.

⁵ EFTA (2011) EFTA Consultative Committee, Framework Programme 2011, Brussels, EFTA Publication.

remarks and expressed its deep concerns about the budgetary crisis in the Eurozone countries⁶.

Inter-parliamentary dialogue

The Parliamentary Committee is an assembly of members of the national parliaments of the four member states. Since the EEA Agreement of 1992 there is the Committee of Members of Parliament of the EFTA states (MPS) which deals with EEA-related matters and forms the EFTA side of the EEA Joint Parliamentary Committee (EEA JPC). Switzerland is an observer in the MPS with a delegation of five Swiss parliamentarians. MPS has six members from Norway, four from Iceland and two from Liechtenstein. The EEA JPC is composed of EEA representatives from the EFTA MPS and the European Parliament and it adopts reports and resolutions related to the EEA and the EU's internal market. A basic document is the annual EEA JPC report on the functioning of the EEA Agreement. In recent years the EEA JPC reports criticized the fact that the EE Joint Committee's annual reports on the EEA do not mention the content of the meetings and the resolutions adopted by the EEA JPC and how they contributed to the work of the EEA Joint Committee. It also called for a more elaborate description of the EEA Joint Committee and its relationship with the parliamentarians of the EEA JPC⁷.

EFTA Secretariat

The EFTA Secretariat is led by the Secretary-General, who in 2011 is Kare Bryn from Norway. Its several departments are located in Geneva, Brussels and Luxembourg. The Brussels part of the EFTA secretariat is supporting the member states in the preparation of new legislation under the EEA agreement and is helping EFTA countries in the elaboration of their input into EU decision-making. The EFTA Statistical Office in Luxembourg contributes to the development of a broad and integrated European Statistical System (ESS) in the EEA and the Swiss/EU agreements⁸. EFTA officers do not have a civil service status since they are employed on the basis of a three year contract, renewable once. While working for EFTA the officers are servants of the association and therefore they are not answerable to their national governments. EFTA counts slightly more than 100 civil servants while the EU employs over 30,000 civil servants. However, the national administrations of EFTA countries play a more important role for the implementation of the EFTA convention.

EFTA Board of Auditors

The EFTA Board of Auditors meets three times a year and is assisted by an officer of the EFTA Secretariat. It makes a yearly budget audit of the EFTA Secretariat, the Surveillance Authority and the Court. It also functions as a contact point for the European Court of Auditors regarding the control and auditing of EEA/EFTA contributions to the EU budget. The annual Financial Reports are made public and are primary sources for EFTA contributions to the European Union⁹.

⁶ www.efta.int/~media/Documents/advisory-bodies/consultative-committee/cc-opinions/efta-cc-opinion-on-citizens-approach-to-the-single-market.pdf It stated that "... Europe is today facing a major economic and financial crisis which could have severe consequences for the economic and social models underpinning the Single Market and the European Economic Area (EEA). The future perspectives for the European economy and Euro cooperation are deeply worrying, and the danger of a recession is threatening not only Europe, but the whole world economy. In such a context, where catastrophic scenarios are outlined in the media and tumultuous changes felt in people's daily lives, citizens' main concerns and worries will inevitably concentrate on the risks and dangers for their jobs, personal debts and savings, the well-being of their family, and their children's future. Against this backdrop, with public finances under immense pressure, the major challenge is now to create new growth and jobs, but also renew people's confidence in the European project."

⁷ EEA Joint Parliamentary Committee Report on the Annual Report on the Functioning of the EEA Agreement in 2008, point 22.

⁸ EFTA (2011) *EFTA-EU Statistical Cooperation Handbook*, Brussels, European Statistical Office, 7.

⁹ www.efta.int/about-efta/efta-budget/efta-board-of-auditors.aspx

The EEA/EFTA Court

The EEA Agreement obliged the three EFTA states to establish a court of justice or an EEA/EFTA Court with regard to the implementation of the EEA Agreement by the participating EFTA states¹⁰. Switzerland is not under its jurisdiction. The EEA/EFTA Court fulfils the judicial function within the EEA Agreement with regard to Norway, Iceland and Liechtenstein only. The seat of the court is in Luxembourg, which is also the location of the European Court of Justice. Although modelled on the European Court of Justice, the EEA/EFTA Court has no Advocates General. The primary role of the court is to deal with infringement actions submitted by the EFTA Surveillance Authority against Norway, Iceland or Liechtenstein for failure to fulfil obligations under the EEA Agreement, settlement of disputes between EFTA member states, appeals against decisions of the Surveillance Authority, and rendering advisory opinions by means of a judgment to national courts of the EFTA states on the interpretation of the EEA law¹¹. The EEA/EFTA Court follows closely the case law of the European Court of Justice in order to guarantee homogeneity between the EFTA convention and the EEA Agreement. In the first 15 years of its existence, the EEA/EFTA Court rendered judgment in little more than 100 cases. Thus, the case law of the EEA/EFTA Court¹² is more limited than the case law of the European Court of Justice, although it contributed to further explaining the meaning of EEA law. During its 15 years of existence, the EEA/EFTA Court was careful to avoid EEA-specific case law that would give the EFTA states greater political leeway than the EU states.

The EEA/EFTA Surveillance Authority

The Surveillance Authority has been established by the 'Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice', signed on 2 May 1992. The Surveillance Authority is an EEA/EFTA institution concerning the interpretation and application of the EEA by the three participating EFTA states. It is the equivalent of the European Commission. In order to avoid different interpretations a system of consultation between the European Commission and EFTA's Surveillance Authority has been developed; the Surveillance Authority's seat is Brussels for close communication with the European Commission. The authority ensures that the three EEA/EFTA states respect their obligations under the EEA treaty. It seeks to protect the rights of individuals and companies and to enforce restrictions on state aid. The Surveillance Authority also ensures that companies

¹⁰ The Court has been formally established by the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice or ESA/Court Agreement, signed in Oporto on 2 May 1992 and amended occasionally. Amendments have been made by the 'Protocol Adjusting the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice' of 17 March 1993 and by the 'Protocol Regarding the Application to Liechtenstein of Decisions and Other Measures taken under Certain Agreements between the EFTA States' of 18 May 1995.

¹¹ Any natural or legal person may institute proceedings before the EEA/EFTA Court against a decision of the EFTA Surveillance Authority addressed to that person or against a decision addressed to another person, if it is of direct and individual concern to the former (called action for annulment of a decision of the EFTA Surveillance Authority). If the action is well founded the decision of the EFTA Surveillance Authority will be declared void. Also any natural or legal person may complain to the EEA/EFTA Court that the EFTA Surveillance Authority has failed to address to that person any decision. If the Surveillance Authority has failed to act, in infringement of the EEA Agreement, an EFTA state or a natural or legal person may bring an action before the EEA/EFTA Court to have the infringement established.

¹² Baudenbacher C and Tresselt P (eds.) (2005) *EFTA Court 10th Anniversary*, Oxford, Hart; Baudenbacher C (2009) *The EEA 15 Years On – The Role of the EFTA Court*, in: *European Economic Area 1994-2009*, Drifosett, Brussels, 42; Lazowski A, EEA Countries (2006) in: Blockmans S and Lazowski A (eds.), *The European Union and Its Neighbours: a Legal Appraisal of the EU's Policies of Stabilisation, Partnership and Integration*, The Hague, The Hague, T.M.C. Asser Press, 95-146; Vandamme T (2006) *Alternatives for EU Enlargement: Lessons to be Learned from the European Economic Area*, in: *Merkourios*, 27-36; Mendez-Pinedo E (2009) *EC and EEA Law: a Comparative Study of the Effectiveness of European Law*, Groningen, Europa Law Publishing.

operating in EFTA countries respect the competition rules¹³. As a general rule, the EEA/EFTA states notify the Supervisory Authority of their transposition of EEA provisions into national law¹⁴. According to the EEA Annual Report of 2009, the EC's Merger Implementation Regulation¹⁵ was incorporated in EEA Protocol 21 to the EEA Agreement. This necessitated the signing of the 'Agreement Amending Protocol 4 to the Surveillance and Court Agreement' on 18 November 2009 to update the powers of the Surveillance Authority regarding concentrations between undertakings. The new protocol provides that the EFTA Surveillance Authority shall have the same competences as the European Commission in the fields of merger cases and settlements in cartel cases¹⁶. However, the EEA Agreement is based on the principle that either the European Commission or the Surveillance Authority, but not both, is competent to handle a case of merger or cartel law enforcement. The EFTA Surveillance Authority has exclusive merger control jurisdiction only for concentrations with an EFTA dimension¹⁷.

The international financial crisis, leading to the collapse of Icelandic banks in 2008/2009, led to seven complaints concerning the Icelandic Emergency Act (n°125/2008) with the EEA/EFTA Surveillance Authority. The Icelandic Act granted depositors priority ranking insolvency proceedings over that of other unsecured creditors. The Act also enabled the Icelandic Financial Supervisor to transfer assets and liabilities from the collapsed banks to new banks. Several foreign banks had provided loans to the Icelandic banks prior to the collapse. These banks launched complaints to the EFTA Surveillance Authority claiming that the Emergency Act and decisions of the Financial Supervisor discriminated against them as regards rights against the assets of the estates of the collapsed banks. On 15 December 2010 the Surveillance Authority concluded that depositors are in a different situation than general creditors and in a greater need of protection in the event of insolvency of a bank. The Icelandic Act and the decisions of the Financial Supervisor did not constitute discriminatory treatment of those creditors in conflict with the free movement of capital under the EEA Agreement. However, the decision to close these complaint cases does not resolve issues concerning the Deposit Guarantee Directive 94/19/EC and discrimination between depositors in Icelandic branches compared to depositors with accounts in branches of the Icelandic banks in other EEA states. In a subsequent decision of 10 June 2011, the Surveillance Authority declared that Iceland is obliged to ensure payment of the minimum compensation of 20,000 Euro to Icesave depositors in the United Kingdom and the Netherlands, according to the Deposit Guarantee Directive 94/19/EC. By leaving the depositors in Icesave's Dutch and UK branches without that minimum guarantee, Iceland acted in breach of the EC Directive¹⁸. In another case related to the collapse of the Icelandic banks Landsbanki's subsidiary on Guernsey and Kaupthing's subsidiary on the Isle of Man, the EFTA Surveillance decided on 22 December 2010 that the territories of Guernsey and Isle of Man are not part of the EEA and, consequently, the Supervisory Authority concluded that the complainants were not protected by the EEA Agreement¹⁹.

¹³ Van Bael I (2005) *Competition Law of the European Community*, The Hague, Kluwer Law International, 193-201.

¹⁴ Hannesson E. (2006) Implementation of Internal Market Legislation Relevant to the Information Society: A Snapshot of the Current Regime in the EFTA-EEA States, in: *Journal of International Commercial Law and Technology*, 11.

¹⁵ Council Regulation (EC) 139/2004 of 20 January 2004 on the control of concentrations, or the EC Merger Regulation, is worked out by Commission Regulation (EC) 802/2004 as amended by Commission Regulation (EC) 1033/2008.

¹⁶ Lason K (2009) Anti-cartel Enforcement in the Economic Area, in: M. Dabbah and B. Hwak (eds.), *Anti-cartel Enforcement Worldwide*, Cambridge, Cambridge UP, 356-365.

¹⁷ Article 57, 2(b), EEA Agreement: "... the EFTA Surveillance Authority in cases not falling under subparagraph (a) where the relevant thresholds set out in Annex XIV are fulfilled in the territory of the EFTA States in accordance with Protocols 21 and 24 and Annex XIV. This is without prejudice to the competence of EC Member States."

¹⁸ <http://www.eftasurv.int/press--publications/press-releases/internal-market/nr/1345>

¹⁹ <http://www.eftasurv.int/press--publications/press-releases/internal-market/nr/1355>

We may conclude that the institutional impact of the EEA on EFTA cannot be overestimated with regard to economic law and policy for the last 20 years. The EEA created EFTA institutions mirroring the EU institutional structure and it connected the relevant national administrations of Norway, Iceland and Liechtenstein to the European Union.

2. What is the effect of the internal market of the European Union on Norway, Iceland and Liechtenstein?

EEA: a two-pillars structure of 1992

The European Economic Area Agreement is characterised by common decision-making and based on two pillars, the European Union and EFTA pillars. It was signed on 2 May 1992 by the European Community, Norway, Liechtenstein and Iceland and entered into force on 1 January 1994, although Liechtenstein joined the EEA in 1995²⁰. Today the EEA comprises 30 European states (27 EU member states as well as the three EFTA states Norway, Iceland and Liechtenstein) and it is the most comprehensive treaty ever concluded by the European Union and EFTA²¹. Every membership expansion of the European Union has been followed by a parallel enlargement of the EEA. The EU enlargements have not fundamentally challenged the EEA Agreement nor its institutions²².

Switzerland's opt-out

Switzerland opted to stay out of the EEA after a negative result in a referendum which makes Switzerland a special case to deal with by the European Union²³. It is noteworthy that in terms of imports, Switzerland was the EU's fifth most important trading partner in 2008 after the US, China, Russia and Norway and regarding exports, Switzerland was the third after the US and Russia in the same year. Switzerland, being outside the EEA, has concluded circa 1,000 bilateral agreements with the European Union which are managed by 15 joint committees. Bilateral agreements in seven sectors were concluded in 1999 and ratified in 2002 which obliges Switzerland to take over relevant EU legislation in the covered sectors²⁴. The bilateral agreements give Switzerland the guarantee that, in the area of direct taxes, banking secrecy remains protected with regard to the application of the Schengen/Dublin arrangements. Services are a subject matter which is excluded from any bilateral agreement with the EU although commercial services are a substantial part of Swiss-EU trade. In 2008 the EU's export of services totalled 67 billion Euro and imports from Switzerland amounted to 47 million Euro.

EEA Council

The major political dialogue between the three EEA/EFTA states and the European Union takes place in the *EEA Council* composed of EEA/EFTA foreign ministers, with the European Union represented by the foreign ministers in the troika format, the EU Commissioner for

²⁰ Lazowski A (2006) EEA Countries (Iceland, Liechtenstein and Norway) in: Blockmans S and Lazowski (eds) *The European Union and Its Neighbours: a Legal Appraisal of the EU's Policies of Stabilisation, Partnership and Integration*, The Hague, T.M.C. Asser Press, 95-146; Vandamme T (2006) Alternatives for EU Enlargement: Lessons to be Learned from the European Economic Area? in: *Merkourios* 23(1): 27-36.

²¹ Blanchet T e. a. (eds) (1994) *The Agreement on the European Economic Area : A Guide to the Free Movement of Goods and Competition Rules*, London, Clarendon.

²² Sverdrup U (2006) The EU Enlargement: Challenges to the Institutions – or the Existence – of the European Economic Area, in: Müller-Graff PC and Selvig E (eds) *The European Economic Area Enlarge*, Berlin, Wissenschafts-Verlag, 11-32; Tatham A (2009) *Enlargement of the European Union*, Alphen aan den Rijn, Kluwer Law International, 173-192.

²³ Gstöhl S (2007) The EU Response to Switzerland: Still a “Special Case”? In: Clive H. Church (ed) *Switzerland and the European Union*, London, Routledge, 234-247.

²⁴ The seven sectors are free movement of persons; trade in agricultural products; public procurement; conformity assessments; air transport; transport by road and rail; Swiss participation in the 5th Framework Programme for Research.

External relations and the High Representative for the EU's Common Foreign and Security Policy. It meets twice a year. Also issues outside the EEA are discussed such as North Africa/Middle East, Afghanistan, international criminal justice²⁵. Thus the EEA Council is also a framework for the Political Dialogue, an aspect overlooked in publications so far. It is a concern of the EEA Council that the EEA Agreement should be made better known throughout the 30 EEA states and calls for more information on the EEA to be made available to the citizens²⁶. We agree that more can be done to highlight the economic dimension of the EEA which remains in the shadow of the EU.

EEA Joint Committee and incorporation of EU/EEA law

The EEA Agreement extends the internal market of the EU and all its related 'acquis communautaire' to the EFTA states Iceland, Liechtenstein and Norway²⁷. In order to incorporate EU secondary legislation (regulations, directives, and decisions) in the EEA, use has been made of the 'reference technique': the relevant EU secondary acts are listed in 22 annexes to the EEA Agreement. Whenever a legal act of the secondary EU legislation is amended or a new one is adopted, a corresponding amendment is made to the relevant Annex of the EEA Agreement by a decision of the EEA Joint Committee²⁸. Such updating is on a monthly basis. Over 80 per cent of the EU single market legislation (approximately 1,500 regulations, directives, decisions) applies within the EEA. Some EU legislative acts made part of the EEA relate to security issues. One example is Decision n°103/2005 of the EEA Joint Committee of 8 July 2005 amending Annex XI (Telecommunication services) to the EEA Agreement in order to incorporate Regulation EC 460/2004 establishing a European Network and Information Agency²⁹. In 2010, the EEA Joint Committee met eight times and adopted 139 decisions incorporating 346 legal acts. The EEA Joint Committee is made up of ambassadors of the EEA/EFTA states and representatives of the European Commission and EU member states. The EEA Joint Committee is consulted after the European Commission has transmitted its legislative proposals to the EU Council and to the EFTA states³⁰. It publishes an annual report on EEA activities which is a very useful source of information on the EEA. Finally, the EEA Joint Committee also serves as a forum for dispute settlement by means of a political process. It prevents the use of lengthy judicial proceedings afterwards³¹.

The Standing Committee

The Standing Committee of the EFTA states - the ambassadors of Norway, Iceland and Liechtenstein to the EU and an observer from Switzerland meet in Brussels - serves as a forum in which EEA/EFTA states consult one another and arrive at a common position

²⁵ Conclusions of the 36th meeting of the EEA Council, Brussels, 15 November 2011: www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/126079.pdf

²⁶ Conclusions of the 36th meeting of the EEA Council, Brussels, 15 November 2011, point 25.

²⁷ The EC's internal market had already a profound impact on EFTA before the signing of the EEA in 1992; see Abrams R e.a. (1990) *The Impact of the European Community's Internal Market on the EFTA*, Washington DC, IMF Occasional Paper 74.

²⁸ The EEA Joint Committee is responsible for the day-to-day management of the EEA agreement and meets once a month. The committee presents an Annual Report on the functioning of the EEA Agreement. Decisions of the EEA Joint Committee, the annual reports and other legal documents are available at www.efta.int/eea/eea-institutions/eea-joint-committee.aspx

²⁹ The objective of Regulation EC 460/2004 is to enhance the capability of the EU, the member states and, as a consequence the business community to prevent, address and to respond to network and information security problems. Via the EEA it also applies to Norway, Iceland and Liechtenstein.

³⁰ Gstöhl S (2002) *Reluctant Europeans: Norway, Sweden, and Switzerland*, London, Lynne Rienner, 170.

³¹ Sevan L (1992) The EEA Judicial System and the Supreme Courts of the EFTA States, in: *European Journal of International Law*, 335.

before meeting with the European Union in the EEA Joint Committee³². It has been observed that EFTA states have exercised very limited influence on EU decision-making so far and that the meetings in the EEA structure have become gradually shorter in duration, and they are gradually being attended by EU officials from lower ranking positions in the European Commission³³. But it is acknowledged that EFTA states have so far an excellent record of proper and regular incorporation of the internal market law of the EU into their own legislation³⁴. One of the main reasons is the fact that Articles 99 to 101 of the EEA Agreement provide the EEA/EFTA countries with the opportunity of contributing to the shaping of the EU legislation at the preparatory stage by participating in the European Commission's expert groups and committees. In 2010, EEA/EFTA states submitted eight comments to the European Union regarding EU draft legislative acts and policy papers³⁵.

EEA as a complex 'mixed agreement'

The general economic objectives of the EEA resemble the classical free trade approach, whereas the adoption of the EU 'acquis communautaire' and its monitoring system within the EEA reflects a novelty in economic treaty law. The EEA Agreement is also a complex 'mixed agreement' because on the EU part some matters fall under exclusive EU competences while others remain under national competences³⁶. The EEA Agreement contains 129 articles, 22 accompanying annexes and 49 protocols which are constantly amended. Contrary to EU law, the principle of direct effect of the EEA Agreement is not applicable in EEA law³⁷. The rejection of direct effect follows from the legal rationale that the EEA is based on national sovereignty and intergovernmental cooperation. Consequently, Norway, Iceland and Liechtenstein have to adopt national legal acts to incorporate new EEA rules. The EEA Agreement provides for the possibility of safeguard measures, restricted with regard to their scope and duration. In 2009 the European Commission imposed safeguard measures against the import of Norwegian salmon at the meeting of the EEA Joint Committee on 4 February 2005. Norway and Iceland expressed strong opposition while Norway reserved its rights under applicable WTO provisions³⁸. Liechtenstein still retains safeguard measures to restrict EEA nationals' right to take up residence in the country³⁹.

Excluded matters

The EEA does not include matters relating to the common agricultural and fisheries policy, the common commercial policy, fiscal harmonization, monetary union, foreign and security policy, and justice and home affairs. Regarding the EU's external commercial policy it should be noted that it is to a large extent shaped by the internal 'acquis'. It inevitably also influences the EEA/EFTA states' external trade options in everything covered by the internal 'acquis'⁴⁰.

³² The Standing Committee of the EFTA States has five subcommittees concerning the four freedoms of the EU's internal market. See Standing Committee of the EFTA States, available at www.efta.int/eea/eea-institutions/standing-committee.aspx

³³ Sverdrup U (2006) The EU Enlargement Challenges to the Institutions – or the Existence – of the European Economic Area. In: Müller-Graf P and Selvig E (eds) *The European Economic Area Enlarged*, Berlin, Berliner Wissenschaftsverlag, 21.

³⁴ European Union Council Conclusions on EU Relations with EFTA Countries, 3060th General Affairs Council Meeting, 30 December 2010, 1.

³⁵ Annual Report of the EEA Joint Committee 2010 on the Functioning of the EEA Agreement, point 23.

³⁶ Blanchet T (1994) *The Agreement on the European Economic Area (EEA)*, Oxford, Oxford University Press, 13 and 20.

³⁷ Harbo T (2009) The European Economic Area Agreement: a Case of Legal Pluralism, in: *Nordic Journal of International Law* 78(2), 201-223.

³⁸ www.norway.org/ARKIV/newsarchives/salmon_issue/

³⁹ www.europarl.europa.eu/factsheets/6_3_2_en.htm

⁴⁰ Emerson M e.a. (2002), *Navigating by the Stars: Norway, the European Economic Area and the European Union*, Brussels, Center for European Policy Studies, 26-27.

The EEA does not provide for a customs union⁴¹ which made it necessary to provide detailed rules concerning the origin of products in Protocol 4. The EEA rules of origin also determine the qualification for the preferential treatment granted under the EEA Agreement. The EEA is now treated as a single block with an 'EEA origin' mark.

A unified procurement market

One of the important EEA provisions is the opening up of the procurement market which is based on the rules of the EU 'acquis', including directives related to supplies, works, utilities, and legal remedies⁴². The EEA market in public procurement was worth over 2,15 billion Euro in 2008 or around 16 per cent of the EU's total GDP. The single public procurement market creates opportunities for companies and delivers benefits for taxpayers. The procurement rules aim to secure equal treatment and fair competition⁴³. Of great importance for companies are the EEA competition rules, including rules regarding state aid, which are formulated according to the EU rules. The EFTA Surveillance Authority and the EEA Joint Committee keep under constant review the development of the case law of the European Court of Justice and the EFTA Court in order to preserve the homogenous interpretation⁴⁴.

Closer cooperation in other fields

The EEA Agreement allows all participating states to start closer cooperation in other fields, such as research and development, the environment, education and social policy⁴⁵. These are called 'flanking and horizontal policies' and include a financial contribution to the EU budget by the participating EFTA states. Every year, more than 1,500 organizations, public bodies and entities in the EEA/EFTA countries participate in the numerous EU programs open to them⁴⁶. One example of closer cooperation outside the internal market is the accession of Iceland and Norway as associate members to the Schengen zone on 19 December 1996 and Switzerland on 12 December 2008; negotiations regarding Liechtenstein's association with the Schengen zone are in process⁴⁷. In 2009, EFTA states participated in 19 EU programs, such as the Seventh Framework Program, Health 2008-2013, EU Statistical Program, Marco Polo (transport), Galileo and Erasmus Mundus for the period 2009-2013. Each EEA member state keeps its full freedom with regard to third countries but is obliged to respect the primacy of EEA law. The EEA agreement provides for non-discrimination on the grounds of nationality, unless special and specific provisions exist to the contrary. The extensive case law of the European Court of Justice concerning non-discrimination is a binding and essential guideline for implementing the EEA Agreement. Finally, the EEA Agreement agrees on the need to reduce the economic and social disparities between their regions which is the reason for EFTA contributions to the EU budget and programs as explained hereunder.

⁴¹ Provisions and arrangements that apply to fish and other marine products are set out in Protocol 9. Annex 1 on veterinary and phytosanitary matters – better known as the 'Veterinary Agreement' – abolished border controls on agricultural products among the EEA member states, and the three participating EFTA states are obliged to introduce EU veterinary standards.

⁴² Blanchet T (1994) *The Agreement on the European Economic Area (EEA)*, Oxford, Oxford University Press, 139-149.

⁴³ Article 65(1) and Annex VI of the EEA Agreement

⁴⁴ Fredriksen H (2010) One Market, Two Courts: Legal Pluralism vs. Homogeneity in the European Economic Area, in: *Nordic Journal of International Law* 79(4): 481-499; Buschle D (2006) The Case Law of the EFTA Court in the Field of State Aid, in: Sanchez Rydelski M (ed), *The EC State Aid Regime: Distortion Effects of State Aid on Competitive Trade*, London, Cameron May, 757-788.

⁴⁵ On social cooperation, see Zaglmayer B (2009) The Social Security Relations between the EU and EFTA state, in: Pieters D and Schoukens P (eds) *The Social Security Co-ordination between the EU and non-EU Countries*, Brussels, Intersentia, 57-84.

⁴⁶ Gronningsaeter T (2011) *This is EFTA 2011*, Brussels, EFTA Publication, 18.

⁴⁷ The Schengen zone represents the European countries where the free movement of persons is guaranteed and where all internal borders are abolished. Within the Schengen area common rules and procedures are applied to visas for short stays, asylum requests and border controls. Coordination between police services and judicial authorities is also part of the area. The United Kingdom and Ireland are not part of the Schengen zone.

3. What are the EFTA budgetary contributions to the European Union?

In the field of budgets, there could be no greater difference between EFTA and the EU. Some financial connections between EFTA and the EU general budget exist. We start our analysis with the EFTA budget.

EFTA budget (in CHF).

The EFTA secretariat prepares the annual budget of this organization while the Council takes the final decision. The Council's budgetary powers are laid down in Article 44-C of the EFTA convention: "... to establish the financial arrangements necessary for the administrative expenses of the association, the procedure for establishing a budget and the apportionment of those expenses between the member states." The current currency used by the EFTA budget is the 'Franc Suisse' (CHF), the official currency in Switzerland and Liechtenstein. The most important budget posts in the EFTA budget are the following ones expressed in CHF for the years 2009, 2010 and 2011.

TABLE 1: Most important budget posts of the EFTA budget for the years 2009, 2010 and 2011, expressed in CHF.

| | |
|-----------------------------------|---------------------------------------|
| - managing the EEA Agreement: | 2009: 5,756,000 |
| | 2010: 9,624,000 |
| | 2011: 8,824,000 |
| - trade relations: | 2009: 2,998,000 |
| | 2010: 4,540,000 |
| | 2011: 4,682,000 |
| - internal activities: | 2009 : 10,614,000 |
| | 2010: 4,330,000 |
| | 2011 : 4,192,000 |
| - EU/EFTA cooperation programs: | 2009: 3,323,000 |
| | 2010: 3,471,000 |
| | 2011: 3,245,000 |
| - secretary general services: | 2009: 1,220,000 |
| | 2010: 2,160,000 |
| | 2011: 1,964,000 |
| - EFTA/EU statistical cooperation | 2009: 526,000 |
| | 2010: 885,000 |
| | 2011: 747,000 |
| - Total EFTA budget in CHF | 2009: 24,437,000 (or 18,612,994 Euro) |
| | 2010: 25,010,000 (or 19,049,432 Euro) |
| | 2011: 23,654,000 (or 18,016,604 Euro) |

Source: EFTA budgets 2009- 2010-2011 (Euro exchange rate as at 12 April 2011)

The EFTA budget is only a fraction of the general budget of the European Union, in 2011 126,527 million Euro and in 2010 122,955 million Euro. The fact that Switzerland is not a member of the EEA has an impact on the contributions of the states regarding this budget. The yearly budget contributions of the four EFTA member states are determined by the Council – the figures are expressed in CHF.

TABLE 2: Yearly membership contributions to EFTA for the years 2009, 2010, and 2011 expressed in CHF

| | | | |
|------------------|--------|----|------------|
| - Budget 2009 | | | |
| o Norway | 53% | or | 13,382,000 |
| o Switzerland | 41.44% | or | 9,679,000 |
| o Iceland | 4.59% | or | 1,151,000 |
| o Liechtenstein | 0.97% | or | 225,000 |
| - Budget 2010 | | | |
| o Norway: | 56.29% | or | 14,079,000 |
| o Switzerland: | 38.02% | or | 9,508,000 |
| o Iceland: | 4.81% | or | 1,204,000 |
| o Liechtenstein: | 0.88% | or | 219,000 |
| - Budget 2011 | | | |
| o Norway | 57.12% | or | 13,510,000 |
| o Switzerland | 37.68% | or | 8,914,000 |
| o Iceland | 4.33% | or | 1,025,000 |
| o Liechtenstein | 0.87% | or | 205,000 |

The EFTA Surveillance Authority (in Euro).

The EFTA Surveillance Authority (ESA) is a collegial body of three persons and its administrative organization has four departments: the administration, the internal market, competition and state aid, and legal affairs. The Surveillance Authority has nearly 60 people in service with a fixed term contract of three years. In general these individuals are national experts from the public administrations of the EFTA states. The headlines of the Surveillance Authority budget for 2010 and 2011 (expressed in Euro) are as follows:

TABLE 3: Budget of EFTA's Surveillance Authority for 2010 and 2011, expressed in Euro

| | 2011 | 2010 |
|----------------------|------------|------------|
| Salaries, allowances | 9,318,290 | 9,311,645 |
| Travel and training | 739,000 | 710,300 |
| Office accommodation | 1,142,000 | 1,107,000 |
| Supplies | 996,199 | 1,064,905 |
| Total expenditures | 12,195,489 | 12,193,851 |
| Other income | 46,000 | 44,818 |
| EFTA contribution | 12,149,489 | 12,149,033 |

Source: European Surveillance Authority Annual Report 2010.

The Surveillance Authority's budget is strictly internal and for administrative expenditure. The following figures confirm the importance of Norway in the budget which is financed by contributions of the three EFTA-EEA states:

TABLE 4: Contributions of the three EEA/EFTA states in 2001 expressed in Euro

| | | | | |
|-----------------|-----|----|------------|----------|
| - Norway: | 89% | or | 10,813,047 | for 2011 |
| - Iceland: | 9% | or | 1,093,453 | for 2011 |
| - Liechtenstein | 2% | or | 242,989 | for 2011 |

The EFTA Board of Auditors is in charge of the financial statements of the preceding budgetary year. Their financial audits need the approval of the member states and thereafter the Surveillance Authority is discharged of its accounting responsibility for that year.

The EEA financial mechanism.

The EEA Agreement established a financial mechanism according to which EEA/EFTA states contribute financially to the reduction of disparities between the regions of the European Economic Area. EFTA accepted to contribute funds to the EU for the benefit of the poorer EU regions and states, a great exception in EFTA's philosophy of limiting budgetary resources to a minimum. The mechanism is worked out by Protocol 38 to the EEA Agreement which provides for interest subsidies and gifts as the two support facilities for poorer regions. The financial mechanism system allocates resources to the 10 new South and Eastern European states EU member states since their admission in 2004, and to Romania and Bulgaria since 2007. Pursuant to Protocol 38 EEA other poorer member states or regions can also enjoy financial support, namely Portugal, Ireland, Greece and some Spanish regions. Consequently, the three EEA/EFTA states have to contribute to the financial mechanism for reducing the economic and social disparities between the EEA states. The financial flows are managed by the 'EFTA Financial Mechanism Office' (FMO), located in Brussels, which is administratively linked to the EFTA secretariat. The budget of the 'FMO' is not part of the EFTA budget.

Pursuant to the EEA Agreement, Norway, Iceland and Liechtenstein contribute to the social and economic progress in the least developed EU member states because EFTA states have a higher standard of living compared to the poorest EU member states. In 2004, Norway declared that it would contribute more financial grants to the poorer EU member states. That year was also the time of a very great EU expansion with 10 new states to the EU and the EU wanted a greater contribution from the EFTA states in the financial mechanism. However, the smaller countries Liechtenstein and Iceland were not convinced. Therefore Norway decided unilaterally to create the Norwegian grants which are thus separated from the EEA grants.

The 'First Financial Mechanism' was established on 1 January 2004 and covered support for Greece, Portugal, Ireland, Northern Ireland and some Spanish regions for an amount of two billion Euro. Spain got the greatest part with a share of 45.4%, followed by Greece: 24.3%, Portugal: 21 %, Ireland: 7.1% and Northern Ireland: 2.2%. By the admission of Sweden, Austria and Finland to the EU on 1 January 1995 the European Commission took over responsibilities for the contributions of the three EFTA member states.

The 'Second Financial Mechanism' was for the period 1999-2003 and amounted to 119,6 million Euro for the same countries or regions as in the first mechanism. The greatest part of this support went again to the Spanish regions and about 93% of the funding was spent on projects related to environmental protection.

In 2004, the European Union was enlarged with 10 new member states. On 1 May 2004, the 'Third Financial Mechanism' became operational consisting of the old one with the EEA/EFTA members and the new Norwegian grants. The enlargements of the European Union and the EEA in 2004 with 10 countries and in 2007 with Romania and Bulgaria were seen as a justification for a substantial increase in the resources earmarked for European cohesion. Indeed nearly all new member states had a level of welfare below the EU average. The 10 new states of 2004, with 75 million inhabitants, have a joint GDP below the joint GDP of the four EFTA states at nearly 13 million. In the period of the 'Third Financial Mechanism' (2004-2009) contributions were distributed as follows.

TABLE 5: Share of EFTA and Norwegian contributions under the 'Third Financial Mechanism' (2004-2009) in million Euro

- EFTA contribution: 672 with a share of 95% by Norway
- Norwegian grants for the 10 new EU members: 567

- Norwegian grants for the two new EU states from 2007: 68
- Total of grants in this period: 1,307

TABLE 6: Allocation of the three EEA/EFTA states contributions to the recipient EU states expressed in million Euro⁴⁸

| | |
|--------------------|--------|
| 1. Poland : | 558,63 |
| 2. Hungary: | 135,06 |
| 3. Czech Republic: | 110,91 |
| 4. Romania: | 98,50 |
| 5. Slovakia: | 70,33 |
| 6. Lithuania: | 67,26 |
| 7. Latvia: | 53,76 |
| 8. Spain: | 45,84 |
| 9. Bulgaria: | 41,5 |
| 10. Greece: | 34,26 |
| 11. Estonia: | 32,76 |
| 12. Portugal: | 31,32 |
| 13. Slovenia: | 18,59 |
| 14. Cyprus: | 4,66 |
| 15. Malta: | 3,62 |

The 'Fourth Financial Mechanism' runs for the period 2009-2014 with a split system between the EFTA grants and the Norwegian grants.

TABLE 7: EFTA grants and Norwegian grants under the 'Fourth Financial Mechanism' (2009-2014) expressed in million Euro

- EFTA grants : 988,5 with a share of 95% by Norway
- Norwegian grants: 800

The total sum of these grants in the fourth period is 1.78 billion Euro.

The grants are divided over the 12 new members and the three old states.

TABLE 8: Allocation of EFTA and Norwegian contribution to EU recipients under the 'Fourth Financial Mechanism' (2009-2014) expressed in million Euro⁴⁹

| | |
|--------------------|-------|
| 1. Poland: | 578,1 |
| 2. Romania : | 306 |
| 3. Hungary: | 153,3 |
| 4. Czech Republic: | 131,8 |
| 5. Bulgaria: | 126,6 |
| 6. Lithuania: | 84 |
| 7. Slovakia: | 80,8 |
| 8. Latvia: | 73 |
| 9. Greece: | 63,4 |
| 10. Portugal: | 58 |
| 11. Estonia: | 48,6 |
| 12. Spain: | 45,9 |
| 13. Slovenia: | 26,9 |
| 14. Cyprus: | 7,9 |
| 15. Malta: | 4,5 |

⁴⁸ EFTA (2010) *EFTA Status Report 2010*, EFTA Secretariat, Geneva.

⁴⁹ EEA and Norway Grants, Program 2009-2014, available at www.eeagrants.org/id/1941.0

These grants are divided among the EU states on the basis of parameters such as population, GDP etc. The financial grants are related to completed programs in areas such as the environment, cultural heritage, academic research, the 'Schengen acquis', cross-border activities, regional policy and other matters in the 15 beneficiary states.

The EEA budget.

Article 82 and protocol 32 of the EFTA agreement are setting the budget rules concerning EFTA contributions to the EU general budget. Inside the EFTA Standing Committee the working group on budgetary matters is responsible for the coordination concerning the procedure establishing the budget in cooperation with the European Commission. The EEA Joint Committee, in which the budgetary decisions are taken, holds a central position. The representatives of Norway, Iceland, Liechtenstein and the European Commission are the members of this joint committee. Concerning the EEA budget only Norway, Iceland and Liechtenstein are contributing EFTA states. The EEA budget is an annex of the general EU budget. There are two kinds of EU expenditures in which the three EFTA members are contributing to, namely the operational and the administrative expenditures. The contributions of the Norway, Iceland and Liechtenstein are paid directly by the national budgets through their treasuries. In practice, every year these three countries receive a bill from the European Commission during the summer period.

- The operational budget.

The EEA/EFTA contributions are calculated in accordance with the rules of Article 82 of the EEA agreement which stipulate that the GDP of each EEA/EFTA state will be divided by the sum of all the GDP's of the 27 EU member states plus the GDP of the EFTA state. For example, the GDP of an EFTA state is 450 million Euro and the GDP of all EU member states is equal to 13,050 million Euro. The proportionality factor of this country is: $450 / 13.050 + 450$ or 3.33% share. Another way of calculating is to take the amount of all GDP's of the three EFTA states and divide it by the sum of the global GDP of the EU plus the global GDP of these three EFTA states. The proportionality factor is the following percentage as a share in the contribution for all the three EFTA states in the EU/EEA budget⁵⁰, namely:

TABLE 9: Percentage share of EEA/EFTA states in the EU/EFTA budget of 2004 and 2001

- 2004 : 2.29% (Norway: 2.18%; Iceland: 0.10% and Liechtenstein: 0.01%)
- 2011: 2.38% (Norway: 2.28%; Iceland: 0.07% and Liechtenstein: 0.03%)

The share of Norway in the 'Fourth Financial Mechanism' continues to rise in accordance with the banking problems of Iceland. But also the share of the three EFTA countries is going up compared with the EU states in the EEA financial mechanism. The reason here is the financial problems and the difficult situation of the public finances in a lot of EU member states, which lead to a reduction of the GDP in several countries, for example in Spain, Portugal, Greece, Ireland and East European countries.

- The administrative budget.

The EEA/EFTA states contribute to the administrative costs of the European Commission. Their contribution is negotiated every year with each EEA/EFTA state. It regards the rental of offices, meetings, publications etc. The contribution is financial. This kind of contribution is related to the EEA/EFTA supply of human experts to the European Commission in order to manage the programs with EEA/EFTA participation.

- Summary of the general EU budget.

⁵⁰ Matthijs H and Kerremans B (2004) *De begroting en de openbare financiën van de Europese Unie*, Brussels, Intersentia, 217.

In the EU-27 budget of 2011 the first annex to the European Commission outlines the budget concerning the EEA. The contributions for the commitments and the payments from the EU budget and the EFTA are the following.

TABLE 10: Commitments and payments in EU budget and its EFTA part in 2011 expressed in Euro

| | |
|---|----------------|
| - EU budget administrative costs in payments: | 674,948,000 |
| - EFTA part: | 2,266,332 |
| - EU operational budget commitments: | 11,090,641,597 |
| - EFTA part: | 261,541,578 |
| - EU operational budget payments: | 9,133,641,263 |
| - EFTA part: | 215,160,209 |

The contributions of EFTA states are related to programs, such as Galileo, and/or agencies such as the European Environment Agency. Some contributions are based on the proportionality factor: 2.38% (all three), 2.35% (Norway and Iceland) or 2.28% (only Norway).

- Commitments/payments.

The EU budget contains two kinds of appropriations, namely: commitments and payments. The commitment amount of an EU program is the ceiling decided by the EU budgetary authorities, namely the European Parliament and the Council. The total commitment amount is decided for a multiannual period and is broken down into yearly commitments amounts. As the implementation period of each project is multiannual, the committed funds are not paid out in full the year of signature but are spread over several years. The EU general budget is an estimation of expected payments. The differences between the budgeted payments and the actual payments is the final result. Since 1995 the summary of commitments and payments is as follows expressed in millions of Euro and mentioning the shares over the three members states (ISL = Iceland, LCH = Liechtenstein, NOR= Norway).

TABLE 11: Commitments and payments of Iceland, Liechtenstein and Norway in EU budget for the period 1995-2010 expressed in millions of Euro

| | Commitments | payments | ISL | LCH | NOR |
|-------|-------------|----------|--------|-------|--------|
| 1995 | 50 | 31 | 5.69% | 0.64% | 93.67% |
| 1996 | 57 | 45 | 4.93% | 0.86% | 94.21% |
| 1997 | 69 | 57 | 4.73% | 0.90% | 94.37% |
| 1998 | 75 | 66 | 4.45% | 0.82% | 94.73% |
| 1999 | 79 | 65 | 4.45% | 0.82% | 94.73% |
| 2000 | 78 | 75 | 4.74% | 0.77% | 94.49% |
| 2001 | 86 | 78 | 4.74% | 0.77% | 94.49% |
| 2002 | 102 | 94 | 5.156% | 0.70% | 94.13% |
| 2003 | 130 | 108 | 4.43% | 0.63% | 94.94% |
| 2004 | 106 | 94 | 4.69% | 0.66% | 94.65% |
| 2005 | 132 | 108 | 4.36% | 0.64% | 95% |
| 2006 | 136 | 127 | 4.36% | 0.64% | 95% |
| 2007 | 166 | 137 | 4.84% | 1.01% | 94.15% |
| 2008 | 196 | 199 | 4.84% | 0.97% | 94.19% |
| 2009 | 228 | 236 | 4.84% | 0.97% | 94.19% |
| 2010 | 265 | 229 | 3.16% | 1.07% | 95.77% |
| Total | 1,955 | 1,749 | | | |

Source: EFTA Secretariat, Financial Reports (1995 to 2010).

These figures confirm the importance of Norway in the EEA/EFTA financial system. The Icelandic reduction in the system is due to the serious problems in this country concerning the national public finances. The most important sectors for the EEA/EFTA contributions are as follows, expressed in millions of Euro.

TABLE 12: Most important sectors financed by the EEA/EFTA contributions in 2009 and 2010 expressed in millions of Euro

| | |
|------------------|-------------------------------|
| - research: | 155,1 (2009) and 150,2 (2010) |
| - education: | 28,5 (2009) and 30,8 (2010) |
| - transport: | 5,8 (2009) and 19,5 (2010) |
| - enterprise: | 8,4 (2009) and 5,8 (2010) |
| - information: | 2,2 (2009) and 4,3 (2010) |
| - social policy: | 2,9 (2009) and 3,7 (2010) |

The Swiss contributions to the EU.

Switzerland is not a member of the EEA although it contributes in a bilateral way to some EU budget lines, *e.g.* to the 'Schengen acquis'. The Swiss financial contributions are the result of bilateral agreements between the European Commission and Switzerland. After Swiss voters had rejected participation in the EEA in December 1992, an amendment to the original formula of the financial mechanism became necessary. The cancellation of the Swiss contribution was compensated by higher interest subsidies on loans⁵¹.

Switzerland participates in several projects and agencies of the European Union. Examples are research projects, the Schengen area, space projects, media, the environmental agency and Eurostat. Swiss participation is the result of direct bilateral talks between the EU and Switzerland. The following contribution amounts were fixed by Switzerland for the years 2010 and 2011, expressed in CHF.

TABLE 13: Swiss contributions to the EU programs and agencies in 2010 and 2011 expressed in million CHF

| |
|--|
| - 2010: 372,78 CHF (or 303 Euro) for |
| Research: 327; Schengen: 24,3; Eurostat: 8,3, etc. |
| - 2011: 411,19 (or 334 Euro) for |
| Research: 370,5; Schengen: 20,11; Media: 9,2, etc. |

Switzerland also contributes financially to the new EU member states, which is resembling the EEA/EFTA Norwegian grants system. In a referendum on 26 November 2006 Swiss voters supported with 53.4% a federal law for financial assistance to Eastern European states⁵². Since 2007 Switzerland effectively paid this contribution for the benefit of new EU member states. The Swiss government negotiates directly with the beneficiaries and splits its total contribution in a first basket for 10 new EU member states and a second basket for Romania and Bulgaria. The 10 new EU member states. The basket for the 10 new EU member states amounts to 1 billion CHF or 815 million Euro for the period June 2007 – June 2017, of which 464,5 CHF is earmarked for Poland and 124,2 million CHF for Hungary. Of the 1 billion CHF only 50 million CHF is earmarked as administrative costs for Switzerland. Financed projects are supervised and audited by the local offices of the Swiss Agency for

⁵¹ Matthijs H (1993) De Europese Economische Ruimte. *Rechtskundig Weekblad*, 41(8): 1389.

⁵² The question put forward: 'Should Switzerland the new EU member states support with 1 billion CHF over 10 years?' It was a so-called optional referendum which can be tabled by 50,000 voters or by eight cantons.

Development and Cooperation. Financing is distributed according to sectors and expressed in millions CHF:

TABLE 14: Swiss sectoral financing of Central and Eastern European members of the EU expressed in millions of CHF

| | |
|-----------------------------------|-----|
| - Environment and infrastructure: | 346 |
| - Security and immigration: | 216 |
| - Social development: | 242 |
| - Promoting the private sector: | 119 |
| - Miscellaneous: | 27 |
| - Administrative expenses: | 50 |

Bilateral cooperation agreements with Romania and Bulgaria were signed in Bern at 7 September 2010. Their financial support covers the period until end 2019 and contains the same sectors as mentioned above for an amount of 257 million CHF or 209 million Euro, with 76 million CHF for Romania and 181 million CHF for Bulgaria.

All together, the Swiss support to the 12 new EU member states amounts to 1,257 million CHF or 1,025 million Euro.

Total EFTA contribution to the EU

TABLE 15: Total financial support of the four EFTA states to the EU programs in the EEA expressed in million Euro

| | |
|----------------|-----|
| Switzerland: | 334 |
| Norway: | 207 |
| Iceland: | 7 |
| Liechtenstein: | 3 |

Thus, Switzerland is the greatest contributor to EU programs, which can be explained by its considerable GDP. Support to the new EU member states comes from Norway (1,747 million Euro), Switzerland (1,025 million Euro) and Iceland and Liechtenstein (41,5 million Euro). Taking into account that Norway is also the most important contributor to the EFTA grants, this country is the greatest contributor to the programs in favour of the new EU member states.

CONCLUSION

After 50 years of existence, the European Free Trade Association is still a viable economic alternative for European countries wishing to remain outside the European Union while being able to benefit from participating in the European Union's enlarged internal market. The reasons for being a member state of EFTA are today exactly the same as they were 50 years ago: EFTA states can maintain their independent monetary policy, foreign affairs, defence and agriculture and fisheries policies. Arguably, Iceland is economically the weakest EFTA state with 28,300 Euro GDP per capita (with Norway having 41,500 Euro GDP per capita and Switzerland 33,900 Euro GDP per capita), with a higher unemployment rate (7% compared with 4.3% for Switzerland and 3.1% for Norway) and the only EFTA state with a negative trade balance. Iceland is also the only EFTA state with a negative budget deficit (-9.1% of GDP) and the highest debt (57.5% of GDP). These may be compelling reasons why Iceland applied for EU membership on 17 July 2009 in the hope of getting more financial EU support by the structural funds and even long-term monetary support if the Euro would be introduced in Iceland. Iceland's banking system collapsed in October 2008 with severe economic impact and social consequences. Some Icelandic political voices pointed out that if the Euro were the official Icelandic currency, the burden of paying back Euro denominated

debt would not have skyrocketed⁵³. The European Commission recommended that negotiations for accession to the EU be opened with Iceland – see COM(2010)62. One may conclude that EFTA offers the best opportunities for the best performing European states which are able to maintain positive economic growth, low unemployment and low budget deficits. Norway has the economic advantage of oil and rich fishing grounds in its adjacent sea waters while Switzerland and Liechtenstein profit from their position as tax haven. Another advantage is the small population size of EFTA states.

Norway, Iceland and Liechtenstein are the three EFTA states that signed the EEA Agreement of 1992 with the European Community whereby they accepted the four freedoms of the internal market ‘acquis’ as well as any future secondary legislation but with the exception of the European Union’s customs union and other flanking policies. The EEA Council does not deal only with economic issues but also with foreign policy and security issues, an often neglected aspect. A diplomatic exchange of views in the EEA Joint Committee facilitates the adoption of EU legislation by the EFTA states. Since the signing of the EEA, the EU became the unchallenged and most important trade partner of EFTA, representing 70.8% of external EFTA trade. Norway, Iceland and Liechtenstein have to transform the EEA Council decisions into their domestic legal systems according to their constitutional requirements. This reveals the intergovernmental character of EFTA as opposed to supranational decision-making of the EU based on qualified majority voting (QMV), transfer of powers to the European Union level and direct effect of important decisions. On the contrary, EFTA remained a symbol of national sovereignty with the absence of powers transferred to any European institution. Consensus is still the cornerstone of EFTA. Switzerland wanted to protect its national sovereignty even further by not acceding to the EEA agreement, with special consideration for maintaining banking secrecy and national control over its financial services industry. It underlines the special position of Switzerland in Europe.

As an organization, EFTA maintained a minimal structure and a minimum of personnel. It proves that a light-footed organization can perform efficiently if supported by national administrations. This is one of the major lessons of the EFTA experience. It also guarantees that operational costs are kept at a very low level and therefore the organization is cost-efficient. The EFTA budget is limited to administrative expenditure. Three EFTA states (Norway, Iceland and Liechtenstein) are financial contributors to the social and economic development of the EU via the EEA budget as part of the general budget of the EU and its financial mechanism. These three EFTA states became important financiers of the EU programs, especially with regard to the poorer EU regions and states, which became more prominent after the EU’s enlargement with Central and Eastern European states. At the same time the three EFTA states are the most important external sponsors of the European Union. Switzerland has its own independent position by making bilateral contributions to the EU programs related to the EU’s internal market. The two most important financial contributors to the EU are Norway and Switzerland which have sufficient budgetary means at their disposal. A recent illustration is the unfolding Eurozone crisis. Norway decided on 21 December 2011 to offer the International Monetary Fund a loan of 55 billion kroner (or 7 billion Euro) to help stabilize the Eurozone debt countries. Norway is concerned about an economic slowdown in the Eurozone countries which would lead to a reduction of its (oil) exports. The Norwegian loan to the IMF is not part of the EEA but shows how the EFTA

⁵³ Bjarnason M (2010) *The Political Economy of Joining the European Union : Iceland’s Position at the Beginning of the 21st Century*. Amsterdam: University of Amsterdam Press, 5. But others question the desirability of Iceland’s membership in the European Union, see Street E (2004) An Argument Against Iceland’s Ascension Into the European Union. *Wisconsin International Law Journal* 22(2): 417-440; about the Icelandic reservations concerning the current EU fisheries policy, see Agust Thor Arnason (2006) The European Union Seen From the Top – the View of an Inside-Outsider. In: Nergelius J (ed) *Nordic and Other European Constitutional Traditions*. Leiden: Koninklijke Brill, 36 and 40.

economies, which are heavily influenced by EU events, fear the negative economic fall-out of the developing debt crisis within the Eurozone.

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