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Outside and Inside
Norway's agreements with the European Union

Chapter 13 Other parties' views on Norway's agreements with the EU



Introduction

On 7 January 2010, the Norwegian Government appointed a broad-based independent committee to undertake a thorough, research-based review of the EEA Agreement.

The mandate of the Committee called for a comprehensive and thorough review of the political, legal, administrative, economic and other social consequences of the EEA Agreement. Moreover, the Committee was asked to review Norway's experience of the Schengen Agreement and other cooperation and association arrangements between Norway and the European Union.

The Committee's work was presented in an official report on 17 January 2012. The report will be subject to public consultation and will form part of the basis for a report (white paper) to the Norwegian parliament (Storting).

The 900-page report is extensive, and covers all aspects of Norway's relations with the EU. The complete report is available only in Norwegian. There are plans to translate additional excerpts of the report into English at a later stage.

The EEA Review Committee consisted of the following members:

- Fredrik Sejersted (Chair), Professor of Law, Head of the Centre for European Law, University of Oslo
- Liv Monica Bargem Stubholt (Deputy Chair), Investment Director, Aker ASA, Oslo
- Frank Aarebrot, Professor, Department of Comparative Politics, University of Bergen
- Lise Rye, Associate Professor, Department of History and Classical Studies, Norwegian University of Science and Technology (NTNU), Trondheim
- Dag Seierstad, expert on EU/EEA matters, Lillehammer
- Helene Sjørusen, Research Professor, Centre for European Studies (ARENA), University of Oslo
- Fredrik Bøckman Finstad, lawyer at the law firm Thommessen AS, Oslo
- Kate Hansen Bundt, Secretary General of the Norwegian Atlantic Committee, Akershus
- Karen Helene Ulltveit-Moe, Professor, Department of Economics, University of Oslo
- Jonas Tallberg, Professor, Department of Political Science, Stockholm University, Sweden
- Jon Erik Dølvik, head of research at the research foundation Fafo, Oslo
- Peter Arbo, Associate Professor, Norwegian College of Fishery Science, Tromsø

The secretariat of the Committee was chaired by Ulf Sverdrup, Professor at the Norwegian School of Management (BI) and Senior Researcher at ARENA, University of Oslo.

13.1 Outline

Of course, the European debate in Norway still focuses mainly on Norway and Norway's relations with the EU. The same rationale lies behind the mandate given to the Committee, which primarily calls for an explanation and analysis of the effects which the EEA, Schengen and the other agreements with the EU have had on Norway's economy, politics and society.

At the same time, however, those agreements also involve other parties. In the first place, the EU is involved in its capacity as an organisation, and within the EU institutions there are also views on the relationship under the agreements which do not necessarily chime with Norway's own outlook and self-understanding. Secondly, the agreements embrace many other countries which, like Norway, are members of organisations including the EEA and Schengen. The EEA Agreement currently covers a total of 30 countries, with the three EFTA countries and the 27 EU Member States formally constituting the "EEA States". Following its most recent enlargement, the Schengen Agreement now covers 26 countries (22 EU Member States plus Iceland, Liechtenstein, Norway and Switzerland). In addition, there are other European third countries which, over the years, have considered the EEA as a possible alternative form of association with the EU, and such processes continue to this day.

This is something which is rarely remarked upon in the European debate in Norway, where there is a tendency to regard the EEA Agreement as a "Norwegian" agreement developed through interaction between Norway and the EU, and which is discussed and evaluated from a Norwegian perspective.

Even from such a Norwegian viewpoint, however, it is important to know how the EEA and the other agreements are perceived by others. There are three main reasons for this. First, self-understanding. Seeing how Norway's agreements with the EU appear to others can open up new perspectives and permit a deeper understanding of the form of association which they actually represent. Secondly, identifying how cooperation with the other parties functions is directly and immediately relevant to the development of the EEA and the other agreements. Thirdly, it is not as if the future development of Norway's relations with the EU is a matter for Norway alone. Clearly, what the EU thinks is also important. Moreover, other countries would also like to have a direct or indirect say in Norway's form of association – most obviously in the case of changes to the EFTA pillar allowing other countries to leave or join, but in other respects too. In this chapter we will therefore look more closely at how Norway's agreements with the EU are viewed from outside its borders.

The first and most striking feature of Norway's form of association with the EU when viewed from an external perspective is how *singular and special* it is. As far as the Committee is aware, it is virtually unique in the world in terms of international cooperation. Normally, countries are members of international organisations and assume the ensuing rules and obligations. However, Norway's relations with the EU are based on association *without* membership, whereby it has undertaken to adopt and comply with a significant proportion of EU policies and rules without itself becoming a member.¹ Norway has not concluded any other agreements of this nature. Although the EU has concluded agreements with other third countries, none is as binding and as comprehensive as the EEA and Schengen, and none has incorporated the other parties into the internal market to quite such an extent.

¹ The only international example which perhaps comes closest at present is the form of association which Puerto Rico has with the USA, whereby it has adopted all federal legislation but is not formally part of the USA and has no voting rights.

Norway shares the main features of its form of association with the EU with two other countries. Iceland and Liechtenstein are both members of the EEA and Schengen, and Iceland is also a party to some of the other agreements which Norway has concluded with the EU. However, Norway has also entered into agreements and forms of cooperation with the EU to which the other two countries have not subscribed. From that point of view, Norway's form of association is unique.

The second striking feature of Norway's form of association is its *unpopularity with other countries*. Of the seven EFTA States which negotiated the EEA Agreement in 1990-1991, only the three smallest were still involved a short time later. Although Switzerland took an active part in the negotiations, it decided to withdraw following a referendum in December 1992. Finland, Sweden and Austria left EFTA at the end of 1994 in favour of EU membership. The Norwegian authorities also tried to abandon the EEA Agreement in 1992, but returned to it following a referendum held in 1994. In 2010 Iceland embarked on EU accession talks, which are still ongoing.

Moreover, no country has officially sought EEA membership through participation in EFTA. Although a few countries viewed the EEA as a possible model during the period from 1994 to 2011, most rejected it as an unattractive proposition. For its part, Norway has also expressed little or no interest in such expansions. On the few occasions that other countries have shown an interest, they have encountered little encouragement. The Norwegian authorities opposed a possible expansion of EFTA/EEA to Central and Eastern European countries in the 1990s, and have recently also rejected signs of interest from the European microstates.

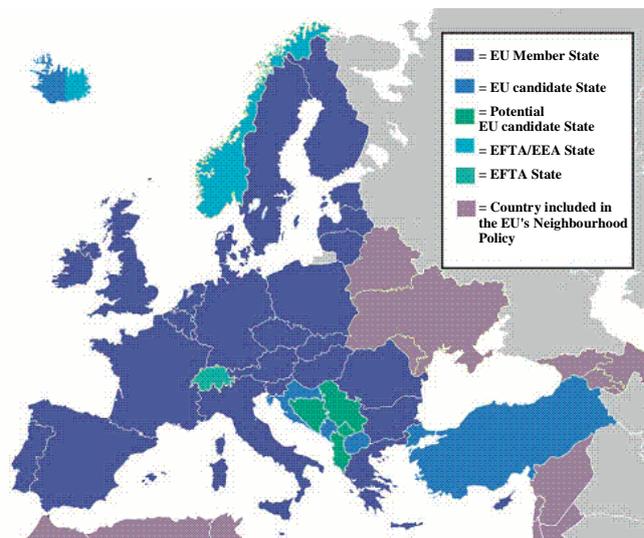


Fig.13.1: The EU and neighbouring countries
Most of the EU's neighbours have concluded a wide range of cooperation agreements with the EU. Few have sought EEA membership.

However, Norway has been receptive to the idea of the Faeroe Islands joining EFTA, and has also held the door open to possible Swiss membership. Despite the fact that expansion might in principle have strengthened EFTA, Norway has been concerned that it could at the same time change the dynamics of the agreement and encumber the organisation's ongoing cooperation with the EU.

The EU is Norway's most important partner in terms of agreements. Although Norway takes a keen interest in the EU, that interest is not fully reciprocated. As far as the EU is concerned, its relationship with the EEA represents a marginal area of activity which receives little attention. Since 1994, the EEA Agreement has never been high on the EU's agenda. In its December 2010 conclusions, the Council describes Norway as a privileged and constructive partner, and its ongoing

cooperation as efficient and relatively unproblematic. The Council is also pleased that cooperation between Norway and the EU is being strengthened and extended to new areas. The EU has never suggested revoking or renegotiating the EEA Agreement. Compared to the EU's agreements with other third countries, its agreements with Norway are felt to function well.

In the same Council conclusions adopted in December 2010, reference is made to the fact that Norway has launched a review of its experiences with the EEA, and it is announced that the EU wishes to do the same – from its own perspective. When one of the parties to an agreement takes stock of its position after twenty years, it is only natural that the other party should wish to examine its own experiences at the same time. Among other aspects, the EU's review will consider whether the EU's interests in respect of Norway are taken into account by the existing form of cooperation, or whether the latter should be replaced by a more comprehensive framework covering all aspects of cooperation.

The EFTA States in the EEA constitute another important partner for Norway. Norway, Iceland and Liechtenstein together make up an exotic club of small, wealthy countries. The island state of Iceland is a republic of 310 000 inhabitants lying far out to sea at the top of the northwest edge of Europe. Liechtenstein is a principality of 35 000 inhabitants sandwiched between Switzerland and Austria right in the geographical heart of Europe. They are not natural allies. While it is true that Norway's historical links with Iceland go back to the colonisation period, and there is also a more recent tradition of contact both at bilateral level and through Nordic cooperation, in other respects Iceland and Norway have few common interests in terms of the EU other than in the fisheries sector, and even there, their interests do not always coincide. Norway has no historical, political, economic or other ties with Liechtenstein; its partnership with that country is more of a curiosity.

Through the EEA, however, Norway, Iceland and Liechtenstein have shared the same destiny for almost two decades now. The three countries are engaged in comprehensive institutional cooperation and are together responsible for bodies including the EFTA Secretariat, the EFTA Surveillance Authority and the EFTA Court as well as a number of other liaison bodies for ongoing cooperation, such as the Standing Committee of the EFTA States, the EFTA Parliamentary Committee, etc. The most important point in practical terms is that, in order to be incorporated into the EEA Agreement, every new EU legal act must be adopted unanimously by all three countries, which consequently have a reciprocal right of veto and are required to reach agreement. Moreover, the three countries together constitute the critical mass necessary in order to ensure that the EEA structure can function as a multilateral body of agreements between EFTA and the EU. When Liechtenstein – after some hesitation (owing to its relationship with Switzerland) – decided to join the EEA in 1995, many people thought that such a move was essential in order to ensure the continued existence of the Agreement.

For Norwegian politicians and civil servants, who deal with the country's relations with the EU on a daily basis, cooperation with Iceland and Liechtenstein is part and parcel of the job, and the same applies to an even greater extent to the many Norwegians working within the EFTA system. Despite the strong bonds which have thereby been formed between those three countries over the past two decades, little attention has been paid to those relationships in Norway itself.

The experiences of Iceland and Liechtenstein with respect to the EEA Agreement have mostly been positive. The authorities in both countries single out the EEA Agreement as a key element in their prosperity, and emphasise its economic and social benefits. Since both countries are small and have limited resources, the EFTA institutions also help to take some of the burden off the national administrations and ensure continuity in the adaptation process.

In general, all three countries stress that internal cooperation within the EFTA/EEA bloc has been good. However, it has not been without friction. In practice, internal EFTA negotiations can be just as demanding as negotiations with the EU. The period from 1994 to 2011 occasionally saw considerable discord between the three countries on several major issues, including as regards EEA funding and in connection with the EU/EEA enlargement in 2004. Opinions also differed regarding a number of new EU/EEA legal acts, and there was disagreement on certain internal EFTA relations such as the rules concerning public access and transparency. At times, Iceland and Liechtenstein have expressed frustration over the fact that Norway acts as a "superpower" and does not always pass information on to its partners, or prefers to take matters up directly with the EU rather than through EFTA. For its part, Norway has occasionally shown dissatisfaction over the considerable length of time it takes to reach agreement within EFTA, and over the fact that the other two parties do not have the administrative resources necessary to develop cooperation further.

Although Switzerland (an EFTA State) is not a member of the EEA, it has formalised its relations with the EU on the basis of a number of bilateral agreements which together create the framework for comprehensive sectoral cooperation. Switzerland has largely been satisfied with its form of association and has continually striven to extend it to new areas. However, the EU has increasingly expressed dissatisfaction about the way in which the agreements operate. In the 2010 Council conclusions, the EU noted that the form of cooperation with Switzerland is creating legal uncertainty, is unwieldy to manage and has "clearly reached its limits". As far as Norway is concerned, cooperation with Switzerland within EFTA is essentially linked to cooperation on free trade agreements with third countries.²

After a long period of stability, there has been a certain shift in the EFTA States' relations with the EU in recent years. Iceland applied for EU membership on 10 July 2009 and entered into accession negotiations on 27 June 2011. Switzerland embarked on discussions with the EU in 2010 with a view to undertaking a more detailed examination of its form of association. Several of Europe's smallest states (Andorra, San Marino and Monaco) have also recently sought closer ties with the EU. The EEA has been suggested as a possible framework for such integration, and in the spring of 2011 the EU conducted an initial review of the situation. While the ultimate outcome of those processes is uncertain, any change in EFTA and in relations between the EFTA States and the EU could raise questions which are of direct relevance to Norway's policy on Europe.

The EEA Agreement has never constituted a model for other third countries, nor has the EU ever made any systematic attempt to impose it as such. The EEA places heavy demands on administrative capacity and presupposes a strong desire for and ability to achieve continual adaptation with little assistance. At the same time, the EEA is seen by many as a club for countries which are *not* seeking EU membership. Few countries are keen to implement EU adaptations without the incentive of future membership. Moreover, the EEA Agreement is best suited to countries where agriculture plays a minor role in the economy and where there is little need or desire for EU funding and resources. Finally, the EEA is probably most appropriate for small countries with few aspirations or ambitions to shape their environment. Nevertheless, the EEA Agreement and Norway's form of association have occasionally been cited as an inspiration by the EU and third countries.

The EU has developed its relations with eastern parts of Europe, the Caucasus, the Middle East and North Africa in recent years. Various association agreements have been negotiated within the framework of the European Neighbourhood Policy (ENP). Morocco, for example, has concluded an "advanced status" agreement, which also means that it has adopted a significant proportion of

² EFTA cooperation as regards free trade agreements with third countries is described briefly in Chapter 23.7.2.

EU legislation and participates in several areas of cooperation. Although Ukraine has negotiated concerning a "deep free trade agreement", that process has now been brought to a halt by the EU as a result of the political situation in that country. European integration and adaptation to EU legislation are often seen by such countries as contributing to economic and political modernisation and development. In terms of their content, those agreements have several points in common with Norway's agreements, but they are not as comprehensive or binding, nor do they have the corresponding institutional superstructure.

As the EU has gradually stepped up, expanded and developed its cooperation with other third countries, the Norwegian arrangements have lost their uniqueness and have become less special. From the EU's viewpoint, it is also desirable to streamline its agreements with third countries, even if it is not possible to develop a standard model for all of them. In addition, as its ties with other third countries grow stronger, the EU sometimes finds it difficult to discriminate in favour of Norway and to give it special advantages which the other countries do not enjoy.

13.2 The views of the EU and the EU Member States on the EEA and Norway

13.2.1 The EU's views

The EU's views on the EEA and on Norway's agreements with the EU are not necessarily unified. The Council, the Commission, the Court of Justice and the European Parliament may have different opinions regarding some aspects of those agreements. Viewpoints may also vary within the individual institutions and over time. Moreover, the EU's 27 Member States have different points of view, and perspectives and evaluations vary among the different groups and parties in those countries.

Nevertheless, it would be true to say that the EU's views on the agreements have developed over time. During the early stages of the EEA (from 1989 to 1992), the EU regarded it as an important matter of top priority. It would help to amalgamate the EU's markets with those of the EFTA States, which together constituted the EU's main trading partner at the time. As far as the EU was concerned, the EEA provided a means of incorporating the EFTA States into the internal market, and the agreement would help to bring about mutual economic gains. From a political perspective, the EEA would also go some way towards strengthening and securing cooperation. However, at the time it was also important for the EU to maintain a certain distance from the EFTA States, at any rate until the plans to establish the internal market had been implemented. This became even more of an issue when Austria applied to join the EU in the summer of 1989. The EEA was therefore initially regarded by the EU as a waiting room.

During the period following the referendum in 1994, relations with the EEA, Norway, Iceland and Liechtenstein moved lower down the list of priorities. As the EU grew larger and EFTA smaller, the EEA became marginalised. In addition, the EU's attention was increasingly focused on Central and Eastern Europe and on preparations for its forthcoming enlargements in 2004 and 2007. However, the shift in emphasis was also the result of cooperation within the EU being enhanced in areas outside the scope of the EEA. While the EEA provided a link to the internal market, the EU was increasingly preoccupied with extending cooperation to other areas. This resulted in a widening functional gap between the EU and the EEA.

The EEA and Norway's relations with the EU have not been high on the EU's agenda since 1994. The EU has never shown any desire to renegotiate or revoke the EEA Agreement, nor has that subject ever been brought up at any of its treaty conferences. Only in 2008 did the Council take the initiative of examining and evaluating its relations with the EFTA States. So far this has led to the adoption of two sets of "Council conclusions" – one fairly concise, in December 2008, and one

slightly more comprehensive, in December 2010. The plan is for similar assessments to be carried out every other year.

Because the EU's attention is frequently focused on regions or areas suffering from unrest or conflict, EU/Norway relations are often overlooked. During the period from 1994 to 2011, Norway was mostly out of sight and out of mind. Several people have pointed out that the biggest problem facing Norway is the fact that there are no major problems. However, Norway and the EEA Agreement *per se* have recently attracted an increasing amount of interest within the EU.

The manner of operation of the EEA Agreement has been the subject of some uncertainty within the EU. Even when it was being negotiated in 1990 and 1991, concerns were expressed as to whether it really could function in such a way that the EFTA States would in practice be ready to comply with the obligations which they had assumed as full participants in the internal market. In 1991, the EC Court of Justice rejected the original proposal for an institutional solution and expressed doubts as to whether the Agreement could live up to the expectations of dynamic and uniform development. In the run-up to the referendum on Norwegian EU membership in the autumn of 1994, EU representatives also hinted that the future of the EEA Agreement could be in jeopardy if Iceland (or Iceland and Norway) were the only countries left in the EEA.

Such uncertainty surrounding the EEA has gradually diminished. The EU has noted that the EFTA States have shown themselves to be flexible and have loyally complied with the obligations ensuing from the body of agreements; moreover, they have readily adopted large parts of the *acquis*, their level of implementation is high and they are engaged in only a small number of disputes. The prevailing view in the EU is therefore that cooperation within the framework of the EEA is good, and indeed better than many initially believed it would be. Norway stands out as a constructive EU cooperation partner, and cooperation is regarded as mutually beneficial.

The EU has had to invest only a small proportion of its resources in ensuring the continued development of the EEA Agreement and other forms of cooperation with Norway. The ongoing task of deciding which legal acts are relevant to the EEA, and of adapting them and incorporating them into the EEA Agreement, is generally handled by the EFTA Secretariat and by the EFTA States themselves. Through the EFTA Surveillance Authority and the EFTA Court, EFTA monitors itself without the EU needing to involve itself to any particular extent. And whenever Norway gains access to new EU agencies and programmes, etc., it always pays its share of the expenses incurred. In total, only a few people in the Commission work on relations with Norway and the other EFTA States on a daily basis. They used to form part of the Commission's DG Relex, but in 2010 moved to the EU's new foreign service (the EEAS).

Thus far, the EU has relied heavily on the EFTA Secretariat fulfilling its obligations, and no independent surveillance systems have been set up to monitor EFTA's timetable and relevance assessments, etc. The EU still occasionally regards the EEA's procedures as somewhat clumsy, slow and over-formalised. Over time, the EU has also reduced its level of activity and meets less frequently, with fewer representatives and often at a lower level than was originally foreseen.

The Commission has also expressed satisfaction with the way in which the EFTA Surveillance Authority (ESA) has carried out its supervisory role. Cooperation between the ESA and the Commission is described as good and useful. During the past few years questions have been raised on one or two occasions in the European Parliament regarding the ESA's role and whether it is a sufficiently independent and trustworthy supervisory body. In its replies, the Commission has stressed that "[it] does not have concerns about the level of enforcement of competition rules by the

EFTA Surveillance Authority, with which it has excellent and regular contacts".³ In another question concerning competition-related matters, the Commission stated that "[it] is not aware of any grounds nor any concrete case that would lead it to conclude that the Authority (ESA) does not effectively apply the EEA competition rules in cases falling under its competence".⁴

In the European Parliament too, opinions regarding the way in which the EEA Agreement operates are generally positive. In January 2010 it published a report on the internal market beyond the EU, and in that connection also held a hearing on the EFTA States' relations with the EU. The report generally gives a positive assessment of the EEA and concludes that "in general, [...] the EEA agreement works well."⁵ The European Parliament's positive evaluation of the EEA Agreement came in sharp contrast to its critical assessment of relations with Switzerland.

In the run-up to the major eastward expansion of the EU in 2004, UK national Diana Wallis, a long-time member of the European Parliament's delegation to EFTA and one of the Parliament's Vice-Presidents, co-authored a book (entitled "*Forgotten Enlargement*") concerning Iceland, Norway and Switzerland. She says that, as a result of the EEA Agreement, Norway suffers from a large democratic deficit, resulting in it being a "policy taker" and the EU a "policy maker". The book claims that, because of the current circumstances, Norway will continue to be marginalised with limited control over its own political and economic future.⁶



Fig.13.2: The EU and Norway
The EU and its Member States regularly conduct assessments of relations between Norway and the EU and EEA. Those assessments have generally been positive. Here, the Norwegian flag flies in front of the Commission's headquarters.
Photo: The Norwegian EU delegation

The EU Court of Justice has recognised the role played by the EFTA Court. The Court of Justice has referred to the EFTA Court's judgments in several individual cases, and both its judges and its advocates-general have acknowledged the EFTA Court in various different ways. In addition, the President of the EU Court of Justice, Vassilios Skouris, has referred to the cooperation between the EU Court of Justice and the EFTA Court as a "model for cooperation" and as something which can "serve as a general paradigm of institutional dialogue between judicial institutions".⁷

³ Reply by the Commission to the European Parliament on 12 January 2010. Question put by Herbert Reul.

⁴ Reply by the Commission to the European Parliament on 14 July 2010. Question put by Herbert Reul.

⁵ See C. Tobler, J. Hardenbol and M. Balázs (2010) *Internal Market beyond the EU: EEA and Switzerland*, Briefing Paper. Directorate General for Internal Policies, European Parliament.

⁶ D. Wallis, A. Stewart and B.I. Jones (2002) *Forgotten Enlargement – Future EU Relations with Iceland, Norway and Switzerland*, Centre for Reform.

⁷ C. Baudenbacher, P. Tresselt and T. Orlygsson (ed.) (2005) *The EFTA Court – Ten years on*, Hart Publishing.

While the EU's assessment of the EEA Agreement has generally been positive, it must be added that within the EU there is little knowledge and only limited awareness of the EEA Agreement and Norway's agreements with the EU. Those who were originally involved in negotiating the Agreement and who spent considerable periods of time working on those matters have either moved on to other things or retired. The EU's institutional memory of EFTA/the EEA and the member states of those organisations has therefore diminished. In addition, many express some astonishment at the scope and nature of the form of association.

The most up-to-date and unified depiction of the views of the EU Member States and the EU itself regarding Norway and the EEA may be found in the December 2010 Council conclusions. Here, cooperation between Norway and the EU is referred to as a "privileged partnership", and the EU appreciates the fact that such cooperation continues to intensify and strengthen. The Council also stresses that Norway is both entitled and free to use various formal and informal channels in order to raise and discuss differing points of view with the EU.

The Council's analysis of such cooperation highlights a number of positive points. It appreciates the economic contributions which the EFTA States make to reducing economic and social disparities in Europe. With regard to the EEA Agreement, the EU stresses the importance of relevant EU legislation being regularly incorporated into that Agreement and into national legislation, and notes that Iceland, Norway and Liechtenstein have thus far worked exceptionally hard at incorporating and implementing the *acquis*. The Council also highlights the need for cooperation in areas outside the EEA. Cooperation in the area of the Common Foreign and Security Policy (CFSP) is particularly desirable, and the Council underlines the values and viewpoints shared by Norway and the EU in that respect. Norway's contributions to various aspects of foreign and security policy are regarded as a useful supplement to the EU's activities. The EU also states that it is ready to further deepen this cooperation with Norway.

The Council would like to step up cooperation with Norway on various energy-related issues. Similarly, it stresses the importance of cooperation between the EU and Norway on environmental and climate change matters. The Council underlines the increasing need for international cooperation in the northern regions and acknowledges Norway's support for a permanent observer status of the Commission in the Arctic Council.

In one area the EU is more critical of cooperation with Norway, and that is the issue of the further liberalisation of trade in agricultural products under Article 19 of the EEA Agreement. It also regrets the fact that there has been little progress in the negotiations on trade in processed agricultural products, and calls on Norway to speed up those negotiations.

In addition, the Council refers to the Norwegian government's decision in January 2010 to establish a committee with the mandate to undertake a thorough review of experiences of the EEA, and notes that it would be desirable to carry out a parallel review of the EU's experiences. It states in that connection that it should be examined "whether the EU interest is properly served by the existing framework of relations or alternatively by a more comprehensive approach, encompassing all fields of cooperation and ensuring a horizontal coherence."

In that connection, the Council raises the possibility of combining the agreements which currently exist between Norway and the EU within a joint institutional framework in order to ensure a more unified and consistent policy. This is a proposal to which the Norwegian authorities have yet to respond, but which ought to be examined in detail, and which is discussed in Chapter 27 below.

According to the Council, the EU's review of the EEA Agreement should also look more closely at how to avoid discrepancies or "gaps" in the *acquis* across the EEA. This may be interpreted as a warning to the EFTA States against any attempt to make use of their "right of reservation", which none of them have invoked thus far.⁸ The Council is also keen to explore how the EEA functions in practice with a view to updating and simplifying some of the procedures, including as regards the use of electronic procedures.

The Council is also concerned that any review should take account of developments in the composition of the EFTA side. Officially, the EU has given no hint of there being any formal obstacles to the continued existence of the EEA Agreement even if just two countries remain. However, there have been unofficial indications that such a change would lead to far-reaching practical and political alterations. If Iceland joins the EU, the latter will probably regard it as only natural for there to be a discussion about the future of the EEA Agreement, and whether it will be repealed, amended or extended.

As part of its review, the Committee obtained a report by Professor Christophe Hillion on the EU's view of the EEA.⁹ In his report, Hillion stresses that the EEA model and Norway's relations with the EU are regarded as successful and useful. Norway is "the most integrated outsider" and also a welcome contributor to the EU's internal policy through EEA funding and its contribution to EU programmes. Similarly, Norway contributes to the EU's external policy, and in particular the common foreign, security and defence policy. The fact that the EEA provides an opportunity to extend the scope of the internal market outside the EU's borders at little institutional cost to the EU is also regarded as positive.

In his report, Hillion draws particular attention to two factors which may call for adjustments of relations between the EU and the EEA States. First, the EU Treaty reforms may have negative implications for legal homogeneity in the EEA. For example, changes on the EU side have made it more difficult to assess what is and what is not EEA-relevant. This is due not least to the disappearance of the pillar structure and the EU's amalgamation into a single legal entity. The EU's desire to continually streamline internal market policy is leading to growing tensions between it and the EFTA States. The second factor to which Hillion refers concerns changes in the membership of the EFTA side of the EEA. He stresses that Iceland's possible accession to the EU, the call for a revision in the EU's relations with Switzerland, the EU's relations with the European microstates and the evolving EU relations with other European neighbours are all factors which may raise doubts as to whether the EEA Agreement can and should be developed further.

⁸ See Chapter 6.4.6 concerning the "right of reservation" in the EEA and the EU's views in that regard.

⁹ C. Hillion (2011) Integrating an Outsider – an EU perspective on relations with Norway. European reports, report no. 16.

13.2.2 The views of selected EU Member States

There have been no systematic studies of how the authorities in different EU Member States regard the EEA Agreement and Norway's form of association. While the Committee has not had the capacity to undertake a full review in that regard, it has looked in detail at assessments which have been conducted in other Nordic countries and in the United Kingdom.

Member States' views on Norway's relations with the EU probably differ, and few have any opinion in that regard. Generally speaking, the level of awareness is low. To the extent that Norway even registers on the radar in other countries, the primary impression seems to be positive. Norway is regarded as a good, loyal EU cooperation partner, and shares the same values in a number of areas. In addition, studies carried out by Eurobarometer indicate that Norway and Switzerland are among those countries which the EU's citizens would most like to join the EU.

A survey of perceptions of Norway conducted in 2009 by Synovate on behalf of the Ministry of Foreign Affairs depicted it as a friendly, rich little country on the periphery; however, it is regarded as more remote and provincial than the rest of Scandinavia, and perhaps also as somewhat more complacent and isolationist.¹⁰ The survey revealed a certain disparity in the way in which Norway was perceived by the world in general and how it was viewed by opinion formers in the EU Member States. Among the latter, it was suggested that Norway's decision to remain outside the EU was understandable in view of its natural resources and economic wealth. Its form of association was considered to reflect a certain introspectiveness and lack of interest in or need for cooperation with other countries in Europe. The report concluded that the form of association helped to create a picture of Norway as a self-reliant nation unwilling to share its resources.

The report provides only a cursory analysis of how Norway is perceived within the EU. Such perceptions vary widely. Official sources generally stress that Norway is an important partner and makes a significant contribution to European cooperation in both political and economic terms. Some see Norway as a wealthy country with considerable resources which is reluctant to contribute, while expressing a certain degree of envy at Norway's position outside the EU.

In the period since 1990, Norway has developed close links with a number of EU Member States. Bilateral cooperation forms an important part of Norway's European policy, and the country also has an extensive network of embassies and representations in various EU Member States.

Many people are probably unaware of the fact that one of the countries with which Norway has the closest links in terms of its European policy is Germany. Relations between the Norwegian and German authorities have been close and productive for many years now. Germany provided Norway with substantial support during the EU negotiations in 1993/1994 and was strongly in favour of Norwegian membership. Since 1994 the close relationship has continued, and for Norway too it has been important to maintain harmonious ties with what is now the most influential country in the EU. Cooperation is regarded by both sides as good, and Germany will often be the country to which Norwegian diplomats will turn first if there is a special need to do so with regard to the EU. Moreover, in terms of its European policy Norway naturally also maintains close links with the three Nordic states (Denmark, Finland and Sweden), which provide it with substantial information regarding EU issues relevant to Norwegian interests. In recent years, Norway has also established relations with a number of the new Member States through the EEA funds.

¹⁰ Synovate (2009) *Improving Norway's reputation*, report on behalf of the Ministry of Foreign Affairs and Innovation Norway.

Discussions and evaluations of the EEA have played a part in public and political debate in Sweden, primarily during the period from 1990 to 1994, but also more recently. The prevailing Swedish view of the EEA Agreement dates back to the negotiations conducted in the early 1990s and the decision to opt for full EU membership instead. At the time, Sweden was largely satisfied with the substantive content of the EEA Agreement, but regarded the institutional arrangements as disappointing and unattractive. The perceived deficiencies in the EEA Agreement represented an important argument in favour of Swedish EU membership in the run-up to the referendum in 1994.¹¹

Since 1994 little attention has been paid to the EEA in Sweden. The Agreement seldom – if ever – forms the subject of public discussion in Sweden, although it has been raised by Swedish politicians on a few occasions. Such has been the case *inter alia* in connection with Sweden's commitment to Norway and Iceland regarding European issues, within the framework of Nordic cooperation or in relation to other third countries. In May 2007, for example, the then EU Minister, Cecilia Malmström, stated in a speech to the Nordic Association that she regarded the EEA Agreement as economically beneficial to all parties, but also hoped that Norway and Iceland would join the EU at some point in the future. In September 2009 Malmström said she understood that it was becoming increasingly difficult for Norway to exert any influence over the EU.¹²

The EEA Agreement has also been discussed by members of the Swedish Parliament. In a discussion item raised in October 2009, MP Carl Hamilton of the Liberal People's Party proposed disbanding the Nordic Council, repealing the EEA Agreement and transferring Nordic cooperation to the EU. "Under the terms of their EEA Agreement, Norway and Iceland must adopt EU decisions by means of unilateral adaptations, with their sovereignty diminishing all the while as a result of their non-member status."¹³ Hamilton also thought that the EEA should not be offered as an alternative to countries knocking at the EU's door.

The Left Party and the Swedish Democrats are the only political parties in the Swedish Parliament to oppose Swedish EU membership. For the Left Party, the EEA Agreement does not represent an alternative for Sweden, *inter alia* because the EEA encompasses the EU's underlying economic system, which the party opposes. The only Swedish party in favour of the EEA Agreement is the Swedish Democrats, who "would like Sweden to renegotiate its membership while maintaining cooperation within the EEA framework".¹⁴ Some similar points of view are found in the right wing of the Danish political spectrum. A representative of the Danish People's Party who is a Member of the European Parliament stated recently that Denmark should leave the EU and that the country's relations with the EU should perhaps be based on the Norwegian model.¹⁵

Little attention has been paid to the EEA Agreement in Finland. One important exception occurred in 2009 with the publication by the Prime Minister's Office of its "EU policy report", in which the Finnish authorities stated that EU membership for all the Nordic countries by 2020 ought to be a foreign policy objective.¹⁶

¹¹ J. Gustavsson (1998) *The Politics of Foreign Policy Change. Explaining the Swedish Reorientation on EC Membership*, Lund University Press.

¹² C. Malmström, *Sverige-Norden-EU-ett framtidsperspektiv*, speech to the Nordic Association, Göteborg, 10.05.09 and C. Malmström, *Norges EU-röst allt svagare*, blog entry, 07.09.09.

¹³ C.B. Hamilton, *Lägg ner Nordiska rådet! Riv upp EESavtalet!* *Newsmill*, 28.10.09.

¹⁴ Swedish Democrats (2011) *Vår politik A till Ö*. Website: www.sverigedemokraterna.se

¹⁵ M. Skærbæk, *Messerschmidt vil gøre op med DF's EUpolitik*. *Politiken.dk*, 18.10.11.

¹⁶ Prime Minister's Office (2009) *Statsrådets redogørelse for EU-politiken*, Prime Minister's Office publication series no. 17, p. 12.

In the United Kingdom the EEA Agreement has also attracted a certain degree of attention at times. Interest has been greatest among EU sceptics in the right wing of the Conservative Party, who regard the Agreement as an attractive alternative to EU membership. However, the EEA has not been subjected to a systematic analysis, and it is unclear whether it is seen as a realistic alternative. In the autumn of 2011 a proposal was put forward to hold a referendum on whether the UK should remain in the EU or seek another form of association, but Norway and the EEA were barely mentioned in the debate. In a foreign policy speech made in the autumn of 2011, Prime Minister David Cameron said that "leaving the EU is not in our national interest", adding that "outside, we would end up like Norway, subject to every rule for the single market made in Brussels but unable to shape those rules".¹⁷ In Scotland the EEA Agreement has also been discussed in connection with the debate on Scottish independence, but such an alternative has never been subjected to a more detailed examination.

13.3 Experiences of the other EFTA/EEA States

13.3.1 Iceland

Of all the countries of Europe, Norway's form of association with the EU most closely resembles that of Iceland. The latter is not only an EFTA partner in the EEA, but also a party to the Schengen Agreement and a signatory to several of the same agreements with the EU as have been concluded by Norway.¹⁸

Iceland's accession to the EEA in 1992 represented a crossroads and an important step towards further European integration. When the EEA Agreement was signed, its supporters believed it would provide Iceland with a passport to the future and help to bring about modernisation and economic prosperity, while its opponents pointed out that it could undermine national sovereignty and independence. Sovereignty has proved to be the dominant issue in Iceland's European debate, together with fisheries policy and the euro.



Fig.13.3 Close ties

Iceland and Norway have been brought close together by the EEA Agreement. Here, the then Minister for Trade, Grete Knudsen, talks to the President of the EEA Council, Jon Baldvin Hannibalson, Iceland's Minister for Foreign Affairs (on the right). Ambassador Einar Bull from the Norwegian delegation is also present.

Photo: Erik Luntang / Scanpix

In the wake of the financial crisis which shook Iceland in 2008 and the ensuing political and social breakdown in confidence, the issue of EU membership was revived. The country applied for membership in 2009 and negotiations were launched in the summer of 2011. They are expected to

¹⁷ V. Pop, Cameron: "We sceptics" want a flexible Europe, *EU observer*, 15.11.11.

¹⁸ For more on Iceland, see E. Bergmann (2011) *Iceland and the EEA, 1994-2011*, European reports, report no. 7.

be completed in 2013. The issue of EU membership is disputed. Opinion is split, and there is also significant disagreement both between the political parties and within the government itself. There is therefore some uncertainty as regards the future direction to be taken by the negotiations, how they will ultimately turn out and what the result could be of a possible referendum. The Icelandic debate on EU membership could also revive discussion of the EEA Agreement, since it must be assumed that much of the European debate will focus on issues already covered by that Agreement.

Iceland's experiences of the EEA have been described and evaluated in several different contexts. The most comprehensive analysis may be found in a report commissioned by the government in 2007.¹⁹ It describes how the EEA Agreement has helped Iceland's economy and society to become more closely integrated into the EU. The experiences are assessed as being mainly positive, and the report includes an explanation of how the EEA has helped to restructure the Icelandic economy.

Like the Norwegian authorities, the Icelandic authorities have also loyally upheld the EEA Agreement and have ensured the proper implementation of the EU/EEA rules. Iceland has never made use of the possibility of entering a reservation on new legal acts, and the threshold beyond which it would take up such an option seems to be set very high. It has been granted a number of exemptions from the *acquis* on the grounds of its size and particular geographical circumstances. In addition, it has been allowed to make special adaptations and granted exemptions in areas including renewable energy, electricity, provisions concerning fishing boats and airport safety.

As in Norway, the scope of the EEA Agreement and its significance for Iceland are interpreted in a way which bears witness to a certain degree of underlying disagreement as to the desirability of EU membership. In 2003 the Minister for Foreign Affairs, Halldór Ásgrímsson, said that Iceland had to adopt 80 % of EU legislation via its agreements. Two years later the new Minister for Foreign Affairs, Davíð Oddsson, indicated that the percentage was just 6.5 %. While Ásgrímsson supports EU membership, Oddsson opposes it. Similar patterns of arguments also characterise the European debate in Finland and Norway.²⁰

Of course, compared to Norway, fewer people in the Icelandic administration deal with EU/EEA issues on a daily basis, even though the percentage may be equally high. In the central administration, around 50 people are involved in such work. The team normally consists of four diplomats together with one representative from each of Iceland's ten main political districts. Each of those representatives has an EEA coordinator in his or her home ministry who is in turn assisted by two or three civil servants working on EEA-relevant issues. Around 35 Icelanders are employed by the various EFTA bodies. As far as Iceland is concerned, the EFTA Secretariat is an important resource which provides the necessary administrative capacity for the EEA's ongoing work.

One of the main sources of conflict in Iceland's relations with the EU/EEA has been the Icesave dispute, which began in 2008 and has yet to be resolved. Icesave was an Internet bank owned by Landsbanki which operated in the United Kingdom and the Netherlands. The main issue arising from the case is linked to the coverage of the losses incurred by Icesave depositors when the bank collapsed and the Icelandic authorities took over Landsbanki. The UK and Netherlands authorities maintained that, under the EEA rules, the Icelandic authorities were obliged to guarantee a proportion of the deposits held by customers in Icesave. They also accused the Icelandic authorities of discriminating between Icelandic and other European depositors by covering deposits in Iceland but not overseas. Several attempts have been made to resolve the issue through negotiations

¹⁹ See *Tengsl Íslands og Evrópusambandsins*, Report of the European Committee appointed by the Prime Minister, 2007.

²⁰ For an assessment of the correct figures, see Chapter 25.

between Iceland, the UK and the Netherlands, but Iceland has rejected all the solutions proposed thus far. While the resolution of the Icesave dispute is not in principle linked to progress in Iceland's accession negotiations, it is possible that the Netherlands or the UK will oppose Iceland's accession if a satisfactory solution is not found.

The Icesave dispute has been under examination by the ESA since 2009, and in June 2011 it issued a final reasoned judgment ruling that the Icelandic authorities had infringed the EEA Agreement. Iceland responded in October 2011, but the parties did not come any closer to a solution. In the late autumn of 2011 the ESA decided to refer Iceland to the EFTA Court. The Icesave dispute is highly politically sensitive for Iceland, and it remains to be seen whether the legal proceedings in the EFTA Court will affect the continued legitimacy and trustworthiness of the EEA Agreement and the EEA institutions in terms of Icelandic public opinion.

For its part, the EU is generally very satisfied with its relations with Iceland. In its 2010 conclusions, the Council identified energy and climate change as two sectors in which cooperation has been particularly good. It is keen to strengthen cooperation with Iceland on the Northern Dimension, fisheries, renewable energy and climate change. At the same time, the EU is unhappy about the management of mackerel, which was the subject of a bitter dispute between Iceland and the EU in 2011 (in which Norway primarily took the EU's side). The EU also stresses that Iceland should address the financial obligations identified by the ESA in relation to the Icesave dispute.

In the late 1990s, Iceland took the initiative of reviewing the main body of the EEA Agreement. The Icelandic government wanted to update it in order to bring it into line with the EU Treaties, and was also keen to facilitate access by the EFTA/EEA States to the Commission's committees of experts and to the Council and European Parliament, given that those institutions have become more influential since the EEA Agreement was concluded. Finally, Iceland wanted to introduce agreements reducing customs duties on its fish exports. The proposed revision received little support from Norway and has never materialised.



Fig. 13.4 In Iceland's wake Iceland is negotiating for EU membership. If it accedes to the EU, this will also have repercussions for the other EFTA States and the way in which the EEA Agreement operates. Illustration: Roar Hagen/VG [Caption: "If Iceland joins the EU, it won't really rock the boat."]

Iceland's experiences of cooperation with Norway within EFTA seem to have been generally positive. However, according to a report obtained by the Committee on Iceland's EEA experiences during the period from 1994 to 2010, Norway's perceived "go-it-alone" policy has given rise to a

certain degree of frustration on one or two occasions.²¹ Iceland regrets the fact that Norway consults the two smaller EFTA/EEA partners more frequently and feels that there is a certain tendency on Norway's part to bypass the EFTA Secretariat. Furthermore, Iceland sometimes regards Norway as being too compliant in its negotiations with the EU, e.g. with regard to EEA funding for the period from 2004 to 2009. On certain occasions Norway has accepted the EU's positions without consulting Iceland first.

From Norway's perspective, concerns have occasionally been raised that Iceland does not have either the resources or the capacity to comply with the obligations imposed on it by EEA cooperation. The clean-up operation necessitated by the financial crisis has consumed considerable administrative resources in recent years, and the same may be said of proceedings in connection with the country's application for EU membership. For its part, Iceland has sought to reassure its EFTA/EEA partners by maintaining that the country will meet its EEA obligations despite the ongoing procedures.

13.3.2 Liechtenstein

Liechtenstein is Norway's other partner country in EFTA and the EEA. With a population of 35 000 and an area of 160 square kilometres, it is one of the smallest states in Europe. Switzerland's rejection of the EEA Agreement in 1992 resulted in a feeling of uncertainty in Liechtenstein as well, but after a referendum the country joined the EEA in the spring of 1995. The Principality has had a long-standing customs union with Switzerland. Liechtenstein became a member of Schengen Cooperation by dint of Switzerland's accession in 2008, but only joined fully in 2011. Liechtenstein has been criticised for democratic shortcomings by, for instance, the Council of Europe's Venice Commission in 2002²². It was also on the OECD list of un-cooperative tax havens, but was removed from the list in 2009.

The Committee commissioned a comprehensive report on Liechtenstein's experience of the EEA Agreement, showing that this has, overall, been positive²³. The EEA Agreement is officially regarded as an ideal solution involving an optimum level of European political and economic integration²⁴. Liechtenstein's prime minister Klaus Tschüscher stated in 2010 that EEA membership had been "an extremely positive success story"²⁵. Prince Nikolaus of Liechtenstein has described the EEA Agreement as being tailor-made for Liechtenstein.

Whilst the Liechtenstein government has traditionally regarded the EEA Agreement as a permanent solution needing no further development, there has been a more flexible and pragmatic approach in recent years together with a greater willingness to extend cooperation to other areas. From Liechtenstein's viewpoint the EEA Agreement has contributed to international recognition and political autonomy. The EEA has played a part in making the Principality's economy, society, legal and parliamentary systems and national administration more European. The EEA has also helped to enhance legal certainty, transparency and openness, whilst the Principality has been able to benefit from the latitude afforded by the Agreement.

²¹ E. Bergmann (2011)

²² See Venice Commission, Opinion on the Amendments to the Constitution of Liechtenstein Proposed by the Princely House of Liechtenstein, Venice, 13 – 14 December 2002.

²³ C. Frommelt and S. Gstöhl (2011) *Liechtenstein and the EEA: the Europeanization of a (very) small state*, Europautredningen, rapport no. 18.

²⁴ Frick, A. (2009) EFTA 50th/EEA 15th Anniversaries Seminar. 20.11.2009, p. 3.

²⁵ C. Frommelt and S. Gstöhl (2011), p. 11.

For Liechtenstein the EEA is an attractive and effective agreement and one that the country wishes to retain. There is no EEA-sceptic political party and no campaign for EU membership either. EU membership is regarded as unrealistic and burdensome for such a small country.

The EEA Agreement has entailed extensive obligations, but also savings in regulatory development. Liechtenstein has 85 state employees working on various aspects of European policy, with the EEA coordination group under the prime minister forming the core unit. This comprises seven people. Very few Liechtensteiners work in the EFTA institutions, and the country has no national experts at the European Commission.

During the entire period, Liechtenstein has consistently implemented EU/EEA legislation. It has not had recourse to the reservation clause, but generally the country has been more reluctant than Norway to stretch the limits of the agreement to incorporate desirable legislation. Liechtenstein has been effective in implementing new legislation and also has relatively few legal disputes compared with many EU Member States. Liechtenstein has secured a large number of exemptions within the EEA Agreement, mainly because of its size or its special relations with Switzerland. For instance, the country has significant exemptions from EEA rules on free movement of persons. This means that, on average, only 56 new residence permits are issued in Liechtenstein every year. At the same time, it has gradually become easier to obtain citizenship. Between 1970 and 2007, 6410 foreign nationals were given citizenship in Liechtenstein.

EU/EEA legislation has shaped a significant part of Liechtenstein law. One study found that, between 2001 and 2009, 41 % of new legislation in Liechtenstein was EU/EEA-related. By comparison, only 33 % of legislation was exclusively related to national affairs over the same period. In 2010 it was estimated that 27 % of Liechtenstein's legislation in force was based on EU legislation. This might be compared with the figures for Denmark (19.7 %), the Netherlands (12.6 %) and Austria (10.6 %) in 2003²⁶.

The EFTA institutions are particularly important for Liechtenstein with regard to speed of adaptation and quality. The EFTA institutions provide valuable input in administrative capacity and resources. However, seen from the Liechtenstein capital Vaduz, it is unfortunate that Norway at times manages matters on its own initiative and takes these up with the EU prior to their being taken up in EFTA/EEA institutions²⁷. The fact that Norway was going to use the reservation clause on the Third Postal Directive in the spring of 2011 was for instance first communicated at an EU meeting without Norway's EFTA partners being given advance notice of this.

Nevertheless, cooperation with Norway and the other EFTA States is described as good in the report that the Committee commissioned on Liechtenstein's experience of the EEA Agreement. Clearly, there are considerable differences of interest between an energy-rich Nordic member of NATO with an active foreign policy and a small, neutral Alpine state that is an important financial centre and widely regarded as a tax haven. There are also significant cultural differences related, for instance, to openness. A recurring theme has therefore been the issue of openness and transparency in the EFTA institutions. Here Norway has wanted more liberal rules, but this has not been supported by the other EFTA States.

In the Norwegian public and political debate, little attention has been paid to Liechtenstein's interests and role in Norway's relations with the EU. However, during the enlargement of the EU and the EEA in 2004, links of dependency within EFTA became more clear. Liechtenstein tried to postpone the decision on the enlargement of the EEA. The reason was a dispute relating to the

²⁶ C. Frommelt and S. Gstöhl (2011) pp. 21 – 23.

²⁷ C. Frommelt and S. Gstöhl (2011) p. 50.

Prince's former possessions in the Czech Republic. The dispute concerned the confiscation by the Czechoslovaks of all German property in the country following the Second World War (the Beneš decrees). This meant that property belonging to the Princely House was also confiscated, despite the fact that Liechtenstein was not German and was also officially neutral during the war²⁸.



Figure 13.5 Liechtenstein

Liechtenstein is one of Norway's closest allies in European policy. Liechtenstein is one of Europe's smallest states and is sandwiched between Switzerland and Austria. The prince's castle is in the capital Vaduz.

Photo: Reuters/Christian Hartmann/Files

Prior to the signing of the EEA enlargement agreement, Liechtenstein demanded that the country's claims be recognised by the Czech Republic and Slovakia²⁹. Liechtenstein's foreign minister also warned that the country would possibly leave the EEA if this did not happen. The case was of concern to the Norwegian government which for a time considered whether it could implement the agreement without Liechtenstein's signature. Norway and Iceland did not take a decision on the issue itself but, in the event, supported Liechtenstein in postponing the signing of the agreement. The upshot was that the EFTA States later signed the enlargement agreement without coming to any lasting agreement on the issue. As a result of this delay, the EFTA States did not take part in the solemn and historic celebration of Europe's reunification, either. The EEA enlargement agreement was instead signed by EFTA in a much more modest setting in Vaduz.

Another issue in EU-Liechtenstein relations may have fundamental significance for the EEA as a whole. In what is known as the Rimbaud case, in 2010 the European Court of Justice ruled that a Member State may discriminate between companies that are established in the EU and the EEA in cases where the state has not signed agreements combating tax evasion. Rimbaud was a company registered in Liechtenstein and the company believed that the EEA Agreement should guarantee equal treatment. However, the European Court of Justice deemed that the principle of equal treatment between EU and EEA States should count less than the goal of preventing tax evasion³⁰. The ruling therefore provides less extensive rights for the EEA than for the EU. This is the first time that the European Court has departed from the principle of uniform interpretation of EU and EEA law to the detriment of EFTA States, and this is evidently because of lack of confidence in Liechtenstein tax law.

Although Liechtenstein has been satisfied with the EEA, there has recently been concern over two issues in particular. The first is that the main part of the EEA Agreement has not been revised despite the fact that there have been significant changes in the EU in that period. The second is that

²⁸ For a historical review see M. Maresceau (2011), *Very Small States and the European Union: the Case of Liechtenstein*, ed. by A. Arnulf, *A Constitutional Order of States? Essays in EU Law in Honour of Aland Dashwood*, Hart Publishing, pp.514-520.

²⁹ F. Rossavik, *Nye forviklinger om EØS-avtalen*. *Stavanger Aftenblad*, 15.10.2003.

³⁰ Case C-72/09 *Établissements Rimbaud*.

any changes in the number of EFTA member States may have an impact on how it works. In this regard, Liechtenstein has indicated that it would not oppose enlarging the EFTA/EEA to include other microstates.

The EU regards the working relationship with Liechtenstein as positive. The Council stressed in 2010 that Liechtenstein is effective in implementing EU legislation despite its limited administrative resources³¹. The EU and its Member States consider that one of the greatest challenges has been in relation to the country's banking sector and the tax haven issue. Along with Switzerland and other countries, Liechtenstein has been subjected to considerable pressure from the EU to change its rules on, for instance, secrecy in its banking and financial system. After restructuring its financial sector, Liechtenstein was removed from the OECD's tax haven list in November 2009³². In the Council conclusions, the EU expressed satisfaction with the reforms in this area. In the autumn of 2011, the EU and the G20 announced that they would step up the fight against tax havens.

13.4 Switzerland

Switzerland is a member of EFTA, but not of the EEA. Switzerland was actively involved in negotiating the EEA Agreement in 1990 and 1991, but the Agreement was rejected in a referendum in December 1992. The EEA was regarded in Switzerland as an unattractive form of association.

Switzerland has instead structured its relations with the EU through a series of bilateral agreements. The most important elements in Switzerland's links with the EU are a package of sectoral agreements dating from 1999 (Bilateral Agreements I) and another from 2004 (Bilateral Agreements II). These comprise over 120 agreements. The basis for these is the 1972 Free Trade Agreement³³. Switzerland became a member of Schengen in 2008.

The Swiss agreements are intergovernmental and are managed primarily by means of diplomatic and non-judicial processes. The ongoing management of the ties between Switzerland and the EU takes place primarily in the 27 "joint committees".³⁴ These are ad hoc committees set up where problems arise; they work without deadlines, are not required to settle cases or to substantiate their opinions.

In essence, the bilateral agreements broadly cover the same legislation as the EEA, although with some exceptions. They differ from Norway's form of association primarily in their institutional design. With a few exceptions, the Swiss agreements do not comprise any mechanisms for the continuous revision and active transposition of new legal acts, and there are no provisions for independent monitoring and judicial scrutiny.

To a large extent, the more than 120 agreements have been tied through guillotine clauses, which means that whenever an agreement is terminated, a number of other agreements are automatically terminated.

³¹ See Council (2010) *Council Conclusions on EU relations with EFTA countries*, 3060th General Affairs Council Meeting, 14.12.2010.

³² Maresceau (2011) pp. 523 – 525.

³³ G. Mathisen (2009). Den sveitsiske modellen: et EØS-alternativ? *Nytt Norsk Tidsskrift*, no. 2, pp. 178 – 184.

³⁴ C. Tobler, J. Hardenbol and M. Balázs (2010) p. 35.

Whilst Switzerland has been mostly satisfied with the bilateral agreements, the EU has been critical of this form of association³⁵. After the Swiss electorate rejected the EEA Agreement in December 1992, the European Commission stated that "it would be inappropriate for Switzerland to obtain all the advantages of an Agreement which it has rejected"³⁶. When asked about the Swiss model in 2011, a high-ranking EU representative gave the Committee the prompt response: "It's not a model, it's an accident!". The EU's view is that its relations with Switzerland may not be seen as a possible "model" for third countries, but rather as an unsatisfactory outcome of a historical development.

The EU's dissatisfaction with the nature of its relations with Switzerland has become particularly evident in recent years. A number of critical remarks were made in Council conclusions in 2008, and it was stressed that it was important to have simultaneous and homogenous application of the *acquis*³⁷. The Council pointed to the evolving nature of the EEA Agreement and indicated that aspects of this should be incorporated into the agreements with Switzerland.

A report prepared by the European Parliament in the spring of 2010 also stated that it had become costly for the EU to maintain and further develop bilateral relations with Switzerland. Doubts were expressed regarding enforcement of the *acquis*, particularly as there are no adequate provisions on monitoring and judicial scrutiny. The Commission also stated that there was a risk of "cherry picking" in relations, meaning that Switzerland has the opportunity to select the issues it wishes to work on with the EU.

In the Council conclusions of 2010, it was stressed that Switzerland, with its central location and large economy, is an important partner of the EU. The EU also welcomed Switzerland as a full Schengen member. In addition, the Council was satisfied that Switzerland and the EU had reached agreement on the free movement of Bulgarian and Romanian citizens. There was also satisfaction over the breakthrough on the construction of the Gotthard Base Tunnel, which will be one of the key transport links through the Alps and, therefore, one of the most important in Europe. The Council also stressed that there was good crisis management cooperation and that the Swiss financial regulations were evidence of solidarity and unity.

However, in those conclusions the Council is also critical of other aspects of Switzerland's cooperation with the EU. Because of a lack of homogeneity, the EU and EU Member States believe that the current agreements result in uncertainty for authorities, businesses and citizens. The Council is concerned that Switzerland has, on occasion, passed legislation that is not compatible with the country's existing agreements with the EU, in particular the agreement on free movement of persons. The Council is also concerned about the Swiss cantons' varying tax regimes and regrets that discussions on these have not led anywhere. The Council has also pointed to difficulties connected to the implementation of parts of the Free Trade Agreement between the EU and Switzerland. Difficulties have also arisen in the agreement in trade in agricultural products between Switzerland and the EU³⁸.

The Council's statements regarding Switzerland are unusually unequivocal. Pressure is clearly being put on Switzerland, and it is clear that there is dissatisfaction and frustration.

³⁵ M. Vahl and N. Grolimund (2006) *Integration Without Membership – Switzerland's Bilateral Agreements with the European Union*, Centre for European Policy Studies, p. 38.

³⁶ European Commission (1993) *Future relations with Switzerland*, Communication from the Commission, COM(93)486 final, p. 3.

³⁷ See Council (2008) *Council conclusions on EU relations with EFTA countries*, 2914th Council meeting (General Affairs and External Relations), 8.12.2008.

³⁸ Council (2010) p. 7.

The Council writes: "In full respect of the Swiss sovereignty and choices, the Council has come to the conclusion that while the present system of bilateral agreements has worked well in the past, the key challenge for the coming years will be to go beyond that system, which has become complex and unwieldy to manage and has clearly reached its limits. As a consequence, horizontal issues related to the dynamic adaptation of agreements to the evolving *acquis*, the homogeneous interpretation of the agreements, an independent surveillance and judicial enforcement mechanisms and a dispute settlement mechanism need to be reflected in EU Switzerland agreements."³⁹

There are several reasons why the EU has become progressively more critical of the bilateral agreements with Switzerland. One reason is that the agreements have become increasingly broad in scope and, in essence, bear a growing resemblance to the agreements with the EEA States. Another is that the EU does not wish other countries to be offered the same opportunity to choose these types of bilateral agreement. A third is that the bilateral agreements were originally intended by the EU to function as a provisional solution, prior to Switzerland's application for membership of the EEA or the EU⁴⁰. In addition, there may be some frustration and scepticism within the EU regarding the role played by Swiss banks and financial institutions, and the opportunities for tax evasion afforded to citizens and companies in EU Member States.

The first critical statements in 2008 did not result in any major changes in Switzerland. At the same time, little progress was made in negotiations with the EU on new bilateral agreements. In the summer of 2010, *Avenir Suisse*, a Swiss think tank, issued a report which concluded that the EEA was a better option for Switzerland than the bilateral agreements. Later in the summer, the Swiss President met the President of the Commission and the President of the European Council. On this occasion, it was made clear that the EU considered that the bilateral model had reached its limits. The parties agreed to set up a working party to consider other forms of association in future relations between Switzerland and the EU.

In the autumn of 2010, the Swiss authorities published a report on the country's European policy⁴¹. It stated that Switzerland faced challenges in its relations with the EU. In view of this, various possible forms of association were considered, but it was found that the bilateral model was preferable. At the same time, the Swiss authorities stated that they were prepared to meet some of the EU's demands. The report also reviews the EEA Agreement, but does not view it as a good option for Switzerland. The report states that the EEA Agreement attempts to unite two contradictory objectives. On the one hand an attempt is made to preserve autonomy, whilst on the other homogeneity of the law has to be ensured. According to the report, this cannot be done without considerable imbalance between the parties to the Agreement. The EFTA/EEA States are expected to implement all relevant EU legislation, but may only participate in the EU's preparatory phase. The Swiss authorities' assessment was that membership of the EEA would undermine Swiss autonomy, yet also confer greater predictability and control.

In 2011, a working party comprising representatives from Switzerland and the EU assessed the options for a more appropriate form of association. However, it has not made any progress to date. The Swiss authorities believe that the current bilateral agreements best serve the country's interests, but also point out that they are willing to consider future institutional reforms or some form of framework agreement. The EU has agreed to this, but has indicated that such an agreement should

³⁹ Council (2010).

⁴⁰ C. Baudenbacher (2011) *From diplomacy to judicialization? – Some thoughts on EU-Swiss relations*, appears in a festschrift to honour Pernilla Lindh.

⁴¹ Integration Office, 2010. *Switzerland's European Policy – An overview of the Federal Council's Report on the Evaluation of Switzerland's European Policy*, Integration Office FDFA/ FDEA, p. 7.

include a mechanism for a more dynamic and easier transposition of new EU legislation, as well as supervision and monitoring mechanisms to ensure that Switzerland complies with its obligations.

In substance, the more than 120 Swiss agreements generally cover the same ground as the EEA Agreement. If consensus is also reached on a framework agreement on this, with procedures for the ongoing transposition of new EU legislation and subsequent monitoring and judicial scrutiny, the result will, in fact, be very much a copy of the EEA. However, adopting the EEA Agreement, which was rejected in a referendum in 1992, is seen in Switzerland as being politically and symbolically very difficult to implement. To date, therefore, it is not clear what form an alternative framework would take. One possible solution is for Switzerland to be allowed to monitor, but until now the EU has opposed this. Another option is the establishment of a form of bilateral substitute court, but it is also unlikely that the EU would accept this.

Another option that has been raised is the use of EFTA institutions for monitoring but without Switzerland joining the EEA. The idea is that EFTA's surveillance authority (ESA) would be given the authority to monitor the Swiss authorities, whilst Swiss cases could be brought before the EFTA Court⁴². This model would raise a number of political and legal problems, and necessitate considerable flexibility on the part of the other three EFTA/EEA States, including Norway. Furthermore, it does not resolve the issue of ongoing adaptation to new EU legislation.

In other words, the development in relations between Switzerland and the EU is still unresolved (autumn 2011). Nonetheless, it is evident that these processes could have a direct impact on Norway and the Norwegian debate on Europe. If Switzerland were to join the EEA, this would affect the functioning of the Agreement, and the same obtains if the EFTA institutions were to be used to monitor Swiss affairs. In addition, Switzerland comes up, too, in the Norwegian debate on Europe as an alternative form of association to the EU. If Switzerland and the EU were to agree on a new model or framework agreement that was different and less binding than the EEA, this would probably be taken up in the Norwegian debate on Europe as a possible alternative to the current arrangement.

13.5 The micro-states

Lately, the question has arisen of possible EFTA or EEA membership for what are known as the micro-states. There are several reasons for this. Firstly, the EU wishes to have a structured and well-organised relationship with those states and is, in particular, interested in combating tax evasion. By the same token, the states are so small that membership is not on the agenda. In addition, several micro-states have expressed interest in closer integration, and some have carried out an assessment of the EEA, although to date they have not submitted any coordinated proposals and probably have different aspirations.

In connection with the Council's review of the EU's relations with the EFTA States in December 2010, it was decided that the EU should carry out an assessment of its relations with the micro-states. In June 2011 the EU Presidency submitted a report to the Council on the EU's relations with Andorra, Monaco and San Marino⁴³. Further work on this will be carried out by the Council's Working Party on EFTA.

⁴² C. Baudenbacher (2011).

⁴³ Council of the European Union, Presidency, (2011) *EU Relations with the Principality of Andorra, the Republic of San Marino and the Principality of Monaco, Report to the Council*, 14.6.2011.

The report does not mention the EEA Agreement explicitly, but the Council states that it wishes to have common rules for the micro-states which also take into account the differences between those states. A definitive solution is not clear, but the report notes that there will be a need to examine the option of establishing a new institutional framework for the EU's relations with the micro-states. By June 2012 at the latest, the European External Action Service (EEAS) and the European Commission are scheduled to submit their findings on future options for the micro-states' continued association with the EU.

Whether this will include proposals for participation in the EEA through EFTA remains to be seen. The EU agrees that EFTA should determine which countries it admits as members. The EU has nonetheless shown an interest in seeing how the countries can be linked to the EEA framework, for instance by means of some form of association agreement with EFTA or the EEA.

In varying degrees, the micro-states⁴⁴ themselves have analysed the options for EFTA and EEA membership. In 2007 a major study in *Andorra* concluded that the EEA was the most appropriate option for association with the EU⁴⁵. Andorra's recently retired prime minister, Jaume Bartumeu, also stated that Andorra should, with some exceptions, adopt the Liechtenstein model⁴⁶. It is also likely that a majority in Andorra would support an agreement with the EU that is based on the EEA model.

In February 2011 *San Marino's* foreign ministry issued a report on the country's relations with the EU⁴⁷. In this, the option of EEA membership was considered. According to the report, San Marino would be interested in EEA membership subject to retention of the current customs union with the EU. A referendum was planned for March 2011 on whether the country should apply for EU membership, but this was cancelled by the government.

No analysis is available on *Monaco's* views on EFTA and the EEA.

In addition, the *Faeroe Islands* have also carried out an assessment on membership of EFTA and the EEA. In 2010 the Faeroese authorities prepared a comprehensive report on the country's relationship with the EU⁴⁸. The report reviews the opportunities and challenges facing the Faeroes as regards various types of association with the EU. One of the options considered was EFTA membership. The Faeroe Islands is the third country to investigate systematically the options of possible EFTA/EEA membership, including the administrative and practical aspects thereof. Iceland and Norway have officially stated that they support in principle Faeroese membership of EFTA, but Liechtenstein and Switzerland have concerns in this regard⁴⁹. Another difficulty is the fact that the Faeroes are not a fully independent state, and Denmark is already a member of the EEA.

⁴⁴ Population: Andorra – 85 000, Isle of Man – 80 000, Faeroe Islands – 49 000, San Marino – 32 000, Monaco 31 000. By comparison the population of Liechtenstein is 35 000.

⁴⁵ M. Emerson (2007) *Andorra and the European Union*, Centre for European Policy Studies.

⁴⁶ See I. Andreu. Interview with Jaume Bartumeu, Prime Minister of Andorra, *In Transit*, 14.2.2011. Bartumeu states that "we [Andorra] should follow the Liechtenstein model, but with some necessary changes, because one thing is for an agreement not to be tailor-made and another is for us not to be able to adjust the seams and length of the sleeves".

⁴⁷ Secretariat of State for Foreign and Political Affairs of the Republic of San Marino (2011), *Summary of the Final Report prepared by the Technical Group for the Assessment of new Policies for the Integration with the European Union*, pp. 7 – 8.

⁴⁸ Ministry of Foreign Affairs in the Faroes (2010), *The Faroes and the EU – Possibilities and Challenges in a Future Relationship*, p. 23.

⁴⁹ See the Faroes report from 2010, pp. 53 – 55.

A report by its Constitutional and External Relations Committee that was approved by the Isle of Man's Council of Ministers concluded in 2008 that the *Isle of Man* should also endeavour to review the option of establishing closer relations with EFTA⁵⁰. The report stated that the Isle of Man has the same inherent difficulties as the Faeroe Islands in that it does not have full international sovereignty.

For the moment, Norway firmly opposes enlargement of the EEA to include the micro-states. In May 2011 the Norwegian foreign minister Støre stated in the Norwegian Parliament that the micro-states do not belong within the EEA and that it is "not appropriate to link them to the Single Market through the EEA and EFTA"⁵¹. One of his arguments was the micro-states' limited administrative capacity. However, several of the micro-states already have quite extensive cooperation with the EU, and some also have larger populations and probably also greater administrative capacity than Liechtenstein. In addition to the concerns over administrative capacity, Norwegian views are probably also based on analysis of economic and political interests, and not least the Norwegian sense of identity. It is likely that the Norwegian government is concerned that an increase in the number of EFTA/EEA states would compound difficulties in coordination and alter the dynamics within the EEA.

The micro-states' future relationship with EFTA, the EEA and the EU is currently unclear and further reviews are expected in 2012. As demonstrated, this matter could have a direct impact on the Norwegian debate on Europe.

13.6 The southern perspective

In keeping with its mandate, the Committee needs to draw on studies from the southern Mediterranean to throw light on Norway's agreements with the EU. To this end, we obtained a study from Morocco⁵². Furthermore, we obtained interesting reports on and assessments of the EEA Agreement and Norway's form of association from Turkey and Israel.

13.6.1 Morocco

Since its application for EU membership was rejected in the late 1980s, Morocco has continued to draw closer to the EU through a number of association agreements, in particular through the Barcelona process and Mediterranean cooperation⁵³. Morocco's EU ties comprise trade, economic support arrangements, political dialogue and cooperation on economic, cultural and social issues. Morocco has always attached importance to close cooperation with the EU and, as a whole, the agreements are comprehensive.

Morocco continues to seek closer integration into the EU's internal market. In October 2008 the country became the first state to be granted "advanced status" within the framework of the EU's Neighbourhood Policy (ENP). Specifically, this means an expanded and more comprehensive free trade agreement with the EU and the aim of Morocco's phased integration into the EU internal

⁵⁰ Council of Ministers, Isle of Man (2008) *Report on matters relating to the Royal Assent and any implications relating to the Island regarding the United Kingdom's membership of the European Union*, p. 8.

⁵¹ J. Gahr Støre, (2011) *Utenriksministerens halvårlig redegjørelse om viktige EU- og EØS-saker i Stortinget*, 19.5.2011, St.tid. 2010 – 2011 pp. 4021 – 4027.

⁵² B.I. Idrissi, (2011) *Analysis of Morocco-European Union partnership within the framework of the advanced status*. Europautredningen, rapport no. 21.

⁵³ Morocco is a member of the Union for the Mediterranean (EUROMED).

market subject to Morocco's gradual adaptation to the EU acquis. Another key premise is continued democratic reform. Morocco has been undergoing a process of democratic transition since the 1990s and announced a new and comprehensive constitutional reform in March 2011. To a large extent, adaptation to the EU is seen as part of Morocco's overall modernisation process. It is likely that cooperation will be stepped up in the wake of the upheavals in the region in 2011.

The agreement on "advanced status" provides that the parties shall establish a common economic area inspired by the principles underlying the EEA. The agreement also provides for Morocco's involvement in EU networks and cooperation within a range of sectors including transport, energy, information and communications technology, fisheries, agriculture and the environment. Morocco will also have the opportunity to participate in individual EU programmes and agencies, including GALILEO. In other words, Morocco's ties with the EU have certain similarities with Norway's relations with the EU based on the EEA and other agreements.

The idea of an EEA enlargement to include Morocco has sometimes been raised informally. However, the Moroccan government has not expressed any official interest in this. The EEA Agreement is also reviewed in a number of reports and articles on Morocco's relations with the EU⁵⁴. However, the prospect of Morocco's incorporation in an enlarged form of the EEA seems improbable. A key stumbling block is the issue of the free movement of persons between the EU and Morocco. Meanwhile, Moroccan controls on migration and the country's strategic location account, in part, for improvements in cooperation.

The EU has established a number of funding programmes aimed at the Mediterranean region. Through these, countries such as Morocco have secured access to EU project funding. Morocco struggles with a lack of expertise and administrative capacity needed to implement the agreements and modernise its administration and economy. Accordingly, a range of "twinning" projects have been set up with the EU designed to facilitate transfer of EU expertise. There are several parallels between Morocco's and Norway's relations with the EU. In both cases, fisheries and agriculture are excluded from the outset. In essence, there is more emphasis on political dialogue in the Moroccan agreement, and agreements also include a provision on mutual assistance in foreign policy issues.

13.6.2 Turkey

Turkey applied for membership of the EEC in 1987. Since 1999 Turkey has had the status of candidate country to the EU and it has a customs union with the EU. Membership negotiations began in 2005, but progress has been extremely slow. A number of EU Member States are opposed to Turkey's accession to the EU. This has also been a controversial and divisive issue in public opinion in several EU Member States. However, this has not been an issue in the Norwegian debate on Europe, and it appears that very few people are aware that Turkish EU membership would also entail EEA membership and, as such, that this is indeed a major issue for Norway, too.

If Turkey fails (or does not wish) to secure full EU membership, the question arises of alternative forms of association. In that instance, the EEA agreement could be an issue. As far as the Committee is aware, little attention has so far been paid to this and there has not been any systematic research in Turkey on the EEA. However, prominent political parties in the country have sometimes taken Norway up as an example of an alternative model for EU association. In October 2009, President Abdullah Gül stated that Turkey might adopt the Norwegian model. By this he meant that the country could ultimately implement EU acquis, whilst remaining outside the EU like

⁵⁴ L. Jaïdi, og I. Mardi, (2010) *Comment faire avancer le Statut Avancé UE-Maroc*, Institut Européen de la Méditerranée.

Norway. This idea was also expressed by Egemen Bağış, Turkey's Minister for European Affairs, at the end of 2010⁵⁵.

Others have been more guarded about using the Norwegian model for Turkey. For instance, in 2010 the international coordinator of the Turkish Industry and Business Association (TUSIAD), Bahadır Kalegasi, stated that the Norwegian model is unacceptable for Turkey. He pointed out that the Norwegian model entails acting as an EU member, whilst not in fact having membership. Kalegasi stressed that from a democratic perspective it is not acceptable that Turkey should agree to anything less than full participation in the EU legislative process, if the EU *acquis* is to be applicable for the country⁵⁶.

13.6.3 Israel

Israel is a part of the EU's Neighbourhood Policy (ENP). With regard to this, an Action Plan has been drawn up for the country which supplements the older association agreement between Israel and the EU. Israel has signed several agreements with the EU in such areas as agriculture and fishing. Israel is a member of the Union for the Mediterranean (EUROMED).

Interestingly, we found comprehensive research in Israel on Norway's form of association with the EU, together with analysis of what Israel can learn from this. In an extensive study from 2006, the Norwegian and the Swiss models are described as having "semi-colonial" features, and particular emphasis is given to the idea that the EEA is undemocratic⁵⁷. The study also states that the EEA may be a stepping stone to possible EU membership. It argues that the EEA model offers greater influence in decision-making than the Swiss model. However, referring to the region's political tensions, the author concludes that a bilateral solution is the most realistic for Israel.

13.7 A model for others?

For almost 20 years the EEA Agreement has failed to serve as a model for other countries. The EFTA side of the EEA has not been enlarged since 1995, and no country has formally applied for membership. The EFTA States have not demonstrated, either, any particular interest in broadening cooperation. Unlike the EU, there are no criteria for EFTA membership, such as provisions on democracy, the rule of law, the protection of minorities, etc.

On some occasions, however, EFTA enlargement has been on the agenda. The first instance of this was in the mid-1990s when several Central and Eastern European countries sought closer relations with the EU. However, it was not clear when the EU would be enlarged and how many states would be in the first wave of accession. Furthermore, in 1994 the Spanish Secretary of State for European Affairs, Carlos Westendorp, stated that the EEA Agreement could serve as a transitional arrangement for Central and Eastern European countries⁵⁸. Several countries in Central and Eastern Europe, therefore, explored the options for membership of EFTA and the EEA. This was particularly the case for Slovenia, for which at one point the process towards EU membership seemed to be blocked by Italian territorial claims from the war. Accordingly, Slovenia indicated that it was interested in the possibility of EEA membership.

⁵⁵ Euractiv. *Turkey offers referendum gamble to Europe*. 4.10.2010.

⁵⁶ Euractiv 2010.

⁵⁷ A. Tovias, (2006) *Exploring the 'Pros' and 'Cons' of Swiss and Norwegian Models of Relations with the European Union – What Can Israel Learn from the Experiences of These Two Countries? Cooperation and Conflict*. Vol. 41, no. 2.

⁵⁸ A.O. Ask, *Usikker fremtid for EØS-avtalen*. Dagens Næringsliv. 20.12.1994.

At the time, EFTA's response was mixed. The Icelandic government showed some goodwill. David Oddsson, the Icelandic Prime Minister at the time, said that Slovenian interest in EFTA "makes it possible to revitalise EFTA" and that "Slovenia can now take Sweden's place." However, there was more scepticism in Norway. In December 1994 the Slovenian ambassador, Anton Bebler, was asked whether Slovenia could realistically join EFTA the following year. His answer was that Norway held the key⁵⁹. Norway did not want this enlargement. In the event, Slovenia did not become a member of EFTA and is now an EU Member State.



Figure 13.6 EFTA at 50

Liechtenstein issued this postage stamp in 2010 to mark EFTA's 50th anniversary. It shows the flags of its current members (Iceland, Liechtenstein, Norway and Switzerland) and those of its former members (Denmark, Portugal, Finland, the United Kingdom, Austria and Sweden).

The EEA has most often come to the fore in debate on Europe where it has been seen as an example of a possible form of association for other third countries. For example, in 2006 a comprehensive analysis was carried out by British House of Lords where various forms of association for third countries were assessed⁶⁰. The EEA was one of several options. The report and the subsequent hearing indicated that it was most unlikely that EEA/EFTA membership would be acceptable to the EU's neighbouring countries, and that such membership was not seen as an appropriate solution for countries such as Israel and Georgia.

In 2002 Romano Prodi, the European Commission President at the time, stated that it was worth investigating what could be learned from the EEA model and the experience of the EU's relations with other neighbouring countries⁶¹. He stressed that EEA membership would not necessarily lead to subsequent EU membership. The European Commission's communication to the European Parliament and the Council on the European Neighbourhood Policy (ENP) in 2003 also focused on the EEA⁶². The document stated that the long-term goal for the EU as regards its eastern and southern neighbours was "to move towards an arrangement whereby the Union's relations with the neighbouring countries ultimately resemble the close political and economic links currently enjoyed with the European Economic Area"⁶³. According to the Commission, this also meant that

⁵⁹ A.O. Ask, *Norge nølende til EFTA-utvidelse*, Dagens Næringsliv. 7.12.1994 and A.O. Ask, *En seier og et tap for Norge i EFTA*, Dagens Næringsliv. 15.12.1994.

⁶⁰ See House of Lords, (2006) *The Further Enlargement of the EU: Threat or Opportunity?* European Union Committee, 53rd Report of Session, Authority of the House of Lords, p. 65.

⁶¹ Prodi, R. (2002) *A Wider Europe – A Proximity Policy as the key to stability*, tale, 6.12.2002.

⁶² European Commission (2003) *Communication from the Commission to the Council and the European Parliament – Wider Europe – Neighbourhood: a New Framework for Relations with our Eastern and Southern Neighbours* COM(2003)104.

⁶³ European Commission (2003).

neighbouring countries must take on significant obligations in constantly aligning their laws to EU legislation⁶⁴.

In its submission to the Commission, the European Economic and Social Committee (EESC) pointed to an issue which has sometimes been raised in discussions as regards the idea of the EEA being a model for the ENP. The submission stated that "the EEA option is illusory for the eastern neighbours: if they meet the requirements, they could just as well become Member States".⁶⁵

In discussion on the EU's Neighbourhood Policy (ENP) on subsequent occasions, no special reference has been made to the EEA. However, the EU has indicated that EFTA, the EEA and the micro-states should be included in the ENP development process. Elmar Brok, Member of the European Parliament, said that he could envisage Ukraine and Turkey achieving "a kind of Norwegian status" in their relations with the EU. Furthermore, referring to Finland, Sweden and Austria, he pointed out that the EEA is not a closed door. Iceland is also currently seeking EU membership. EEA membership can therefore be regarded both as a final and intermediary step⁶⁶. Brok also raised the issue of what is known as "EEA-plus", meaning a compromise between the ENP and full EU membership. It was probably on this basis that Štefan Füle, Commissioner for Enlargement and European Neighbourhood Policy, said with reference to the turmoil in North Africa in the spring of 2011: "Rising to meet an historic challenge, the European Union should offer its southern neighbours the chance to participate in its internal market and join the European Economic Area, which currently includes Iceland, Liechtenstein and Norway"⁶⁷.

Several factors explain why EFTA and the EEA Agreement have not yet served as a model for other third countries seeking association with the EU, and which either do not wish to or are not being allowed to become full members⁶⁸.

Firstly, EEA membership entails either EFTA or EU membership. Until now, the EFTA states have not wanted to enlarge EFTA.

Secondly, few third countries have regarded the EEA as an attractive form of association with the EU. Most of the countries that have wanted closer ties with the EU have sought EU membership. The EEA Agreement has not functioned as a stepping stone to EU membership, but is increasingly seen as a permanent arrangement entailing a risk of marginalisation⁶⁹. A large number of third countries also argue that the arrangement has significant democratic weaknesses.

Thirdly, the EEA is, for the most part, suitable for states that are not keen on obtaining EU financial transfers. The EEA countries are net contributors to the EU and have shielded themselves from

⁶⁴ European Commission (2003).

⁶⁵ European Economic and Social Committee (2003) *Opinion of the European Economic and Social Committee on a Wider Europe – Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours*. 11.12.2003, p. 8.

⁶⁶ G. Gotev, Leading MEP: Turkey should seek Norway-type EU relationship, *Euractiv*, 29.09.2010.

⁶⁷ G. Gotev, EU wants to open single market to Mediterranean countries, *Euractiv*, 13.04.2011.

⁶⁸ This is examined more closely by U. Sverdrup, (2008) EØS som modell?, *Nytt Norsk Tidsskrift*, no. 4. pp. 348 – 357. See also E.D. Stratenschulte, (2011) Die europäische Einbahnstrasse – in beide Richtungen gesperrt! Der Europäische Wirtschaftsraum als Möglichkeit der Integration Osteuropas? i Høibraathen, H. og Hille, J. (red) *Northern Europe and the Future of the EU*, Berlin Wissenschaftler-Verlag, pp. 143 – 159.

⁶⁹ S. Kahraman (2005) The European Neighbourhood policy: The European Union's New Engagement Towards Wider Europe, *Perceptions*, vinter 2005, pp. 1 – 28.

involvement in agricultural policy and the Structural Funds. However, most other countries that are outside the EU and wish to join have an interest in receiving such transfers through the Structural Funds and the common agricultural policy.

Fourthly, EEA cooperation draws on considerable national administrative resources and an ability to assume obligations and abide by them in the same way as within the EU. These obligations are extensive, and it is especially difficult to implement them properly without being part of the EU system. The countries currently seeking new forms of association with the EU often lack the kind of political and administrative infrastructure that has made it possible for the EFTA States to implement their obligations under the EEA Agreement.

Lastly, it can be argued that the EEA Agreement is best suited to small states, which are accustomed to having to adapt to others and have no particular desire to influence developments in Europe. This makes it, for instance, difficult to imagine that a growing regional power such as Turkey would wish to submit to this form of association without representation.

13.8 Concluding remarks

In conclusion, the *Committee* would stress the importance of knowing how the EEA, Schengen and the other Norwegian agreements on EU association are seen by other parties, both by EU institutions and other countries within and outside the EU. Firstly, this may throw light on the kind of association Norway has with the EU and on how that works, not least on how unique that association is. Secondly, future developments in Norway's relations with the EU will not only depend on Norway's choices, but will also be affected by choices made in Brussels and in other European countries. There is little awareness of this in Norway, other than in the inner circles of the Foreign Ministry. In general, the Norwegian debate on Europe appears to be somewhat introverted, nationally focused and limited to Norwegian interests and viewpoints.

The *Committee* notes that the Norwegian form of association has, until now, been regarded as unappealing and irrelevant to most other European states. No country has applied for membership of EFTA or the EEA since 1995. Most of the original EFTA States have either left the EFTA side of the EEA to join the EU, or have chosen to remain outside (Switzerland). This form of association is seen by other third countries as having significant weaknesses, particularly in respect of participation and involvement in the EU decision-making processes.

Furthermore, the *Committee* would point out that, seen from the EU institutions in Brussels, the EEA Agreement in general and Norway's relations with the EU in particular require little attention and work well, and do not necessitate the use of a lot of time and resources. Since 1994, the EEA Agreement has never been high on the EU agenda, and there are only a couple of people in the EU system who deal with EU-Norway relations on a daily basis. In general, the EU is satisfied with the status quo. The EU's view is that it has shown considerable goodwill towards Norway by giving the country access to the internal market, Schengen and most of the other areas of EU cooperation that Norway has requested, including a large number of EU agencies and EU programmes. For the EU, Norway is a "privileged partner" and the third country that is the most closely associated with the EU without being a member. At the same time, Norway has earned these benefits by fulfilling its obligations effectively and in good faith, and by contributing to social and economic development in Europe, EU crisis operations etc.

In addition, the *Committee* would point out that relations with Iceland and Liechtenstein have also played a surprisingly small part in public debate in Norway, despite the fact that they have been Norway's two closest partners in European policy for almost two decades, that all important EU/EEA issues need to be coordinated with them and that they are involved in running the whole

institutional superstructure of EFTA and the EEA, along with a number of agencies and institutions. Norway is closely tied to these two countries in a common destiny through the EEA Agreement, and needs to work closely with them on a daily basis. How they handle their European policies affects Norway directly. As a whole, the two countries share many of Norway's experiences of the EEA Agreement. However, there are also differences in how the Agreement has worked and is perceived. In general, cooperation between the three countries has been good, but there are certain inherent tensions, and at times there has been disagreement on important issues. In addition, securing agreement within EFTA is often time-consuming. The need for unanimity between the three EFTA states is, in practice, a significant obstacle in Norwegian policy on Europe and a potential source of vulnerability in Norway's relations with the EU. In the *Committee's* view, the internal processes within EFTA and between the EFTA States in general are given too little attention in Norway.

The *Committee* would point out that after a long period of stability on the EEA Agreement, in recent years there have been developments in several areas that can create new momentum. There are currently developments in a number of countries that may raise questions about the efficacy and stability of the agreements. It is still too early to determine whether we are reaching the point where the fundamental relationship will again be on the agenda, and it is not clear whether this will happen. But the possibility is there. Among the external factors that, individually or collectively, might call into question the nature of Norway's association with the EU over the next few years are, in particular:

- developments relating to Iceland's application for EU membership
- developments in the relationship between Switzerland and the EU, and negotiations on a "framework agreement"
- the aspirations of Andorra, San Marino and other micro-states as regards association with the EEA
- the aspirations of other third countries (to the south and east) as regards closer association with the EU
- EU aspirations as regards a more unified and streamlined model for third countries.

It is also possible that some EU countries may wish to leave the EU and choose the EEA instead, but at present this seems only to be an issue for a few right wing and extreme euro sceptic parties. Furthermore, it is possible that some Member States may be compelled to leave the EU as a result of the current economic crisis and will seek refuge within the EEA. However, there is currently no immediate prospect of this.

The *Committee* would point out that it is in Norwegian interests to monitor all these developments closely, not least the debate on Europe in Iceland and Switzerland. Iceland is currently in negotiations on EU membership which are due to be completed in 2013. At present, the majority of the Icelandic population opposes membership, but a lot may change in two years and nothing can be taken for granted. If Iceland were to join the EU, it is clear that this would affect the working of the EEA Agreement and it would be very difficult to retain the current institutional system. In addition, the very process relating to possible Icelandic membership affects the EEA Agreement in practice, in that it draws administrative capacity away from work on the EEA and because the Icelandic debate on the question of EU accession automatically highlights issues that are already covered by the EEA and could influence attitudes towards such agreements.

In addition, developments in relations between the EU and Switzerland may be of considerable significance for Norway. This is particularly the case if Switzerland, again, were to show an interest in joining the EEA, although at present this seems unlikely. However, if Switzerland and the EU were to reach agreement on a framework for the existing circa 120 agreements involving ongoing transposition of new EU legislation along with monitoring and judicial scrutiny, the outcome would

effectively resemble the EEA, and would be an alternative to the EEA in the Norwegian debate on Europe. The view in Brussels is that there is little sense in having two almost identical, yet different, frameworks for relations with Norway and Switzerland.

Since the end of 1994 there has been a high degree of stability in Norway's relations with the EU, and most Norwegians have begun to think of the EEA as a "Norwegian" agreement, over which Norway has responsibility and control. The *Committee* would stress that in future this cannot be taken for granted. The EEA Agreement may prove to survive another twenty years, but it may always be tested by external factors over which Norway has little influence. After the submission of the Committee's report, the EU is scheduled to conduct its own assessment of the EEA and the other Norwegian association agreements. It is therefore important that the Norwegian authorities systematically and critically consider, in advance, all the possible outcomes in this process, and that the Norwegian public is informed of developments.
