



EUROPEAN PARLIAMENT

**DIRECTORATE-GENERAL FOR EXTERNAL POLICIES OF THE UNION
DIRECTORATE B
- POLICY DEPARTMENT -**

NOTE

on

**Future Prospects for the
European Economic Area (EEA)**

This note examines possible opportunities and challenges to the unique set-up of the European Economic Area in the context of recent and future EU enlargement rounds. It is intended as a contribution to the debate of the 29th session of the EEA Joint Parliamentary Committee, scheduled for November 2007 in Strasbourg.

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**DGExPo/B/PolDep/Note/2007_169
[PE N°]**

**04/10/2007
EN**

This note was requested by the European Parliament's Delegation for relations with Switzerland, Iceland and Norway and to the EEA Joint Parliamentary Committee, and is submitted in English.

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Brussels, European Parliament, 4 October 2007

BACKGROUND

When the EEA Agreement was signed in May 1992, after lengthy and often intense negotiations, it finally provided a durable solution for the uncertainties raised in 1973, when Denmark and the United Kingdom "crossed the floor" from the European Free Trade Area (EFTA) to the then European Communities. Bilateral free-trade agreements had been put in place to fill the gap, but extending the benefits of the emerging Single Market to all EFTA partners would help create "*a dynamic and homogeneous European Economic Area*"¹

By 1994 however, when the Agreement entered into force, circumstances had changed again: EFTA members Austria, Finland and Sweden were on track to join the newly-minted European Union a year later, but Norwegians had, for the second time, put a clear stop to their government's EU accession plans. Meanwhile the Swiss people and cantons had rejected even EEA membership in a referendum, and an Observer status had to be defined in a hurry.

However much some of its fathers may have intended the EEA Agreement as a transitional arrangement towards EU membership, it thus became clear that EEA was here to stay. With the judicial uncertainties out of the way, its political structures - the Council and Joint Committee, the EFTA Surveillance Authority and Court, and not least this Joint Parliamentary Committee - began their work and settled in for the long haul. From mid-1995, Liechtenstein having joined EFTA in May of that year, the EEA Agreement brought together 15 EU Member States with 3 EFTA States and one Observer.

Having thus been in operation for more than 12 years (possibly longer than it was designed to last) the European Economic Area can rightly be called a remarkable success story. The participation of the EEA EFTA States in the Single Market, through application of the Four Freedoms, has been of mutual benefit to all parties involved and vastly increased business opportunities for their economic operators. To this date, the EEA Agreement is the most far-reaching relationship that the EU maintains with any group of third countries.

Not only did it survive a first decade of considerable political and economic challenges for Europe and the world, it also weathered an EU enlargement of historic proportions in 2004, with EEA EFTA States generously contributing to cohesion in the enlarged Area. Despite some protracted negotiations over similar commitments in the context of the 2007 enlargement, the core of the Agreement continues to function smoothly to this day, with the transposition of new Community legislation almost routine business.

Moreover, the EEA's existence seems to enjoy lasting support among the citizens of EEA EFTA States, and even to have increased popular interest in EU membership, or at least not to have had any dampening effect: The most recent opinion polls in both Iceland and Norway show approval for EU accession inching close to the 50% mark.

¹ EEA Agreement, Recital 4.

FROM ENP TO EEA PLUS ?

On the strength of this successful performance, the notion of an "EEA Plus" was floated in certain quarters during the debate which arose in late 2005 and early 2006 from a critique of the European Neighbourhood Policy (ENP): The latter's spread of instruments was perceived as insufficient, especially after events in Ukraine and Georgia, and it was felt that the EU needed a more coherent approach to its neighbourhood, as well as an alternative prospect to full membership.²

Among various other models proposed, that based on the EEA Agreement, but extending into Justice and Home Affairs as well as into cooperation under CFSP and ESDP (hence "EEA Plus") would offer several advantages:

- It would enable the EU to offer a European perspective to all European states, without overextending itself.
- This would represent a strong incentive for reform even in states with remote or no membership prospects.
- At the same time, the option of eventual membership would remain intact, provided the state in question satisfied the criteria and EU absorption capacity allowed it.

In discussions surrounding this model, its proponents saw such an arrangement include the EU's Eastern and South-eastern neighbours (including Turkey should accession negotiations fail), but also Norway and Switzerland. By implication therefore, it would indeed expand the EEA Agreement both geographically and in substance.

Following a report in the Foreign Affairs Committee by MEP Elmar BROK (EPP-ED/D), the European Parliament endorsed this approach in a resolution of March 2006 which pointed at the need for *"a broader spectrum of operational possibilities"*. The Institution calls on Council and Commission to submit, *"for all European countries currently without membership prospects, proposals for a close multilateral relationship with the EU"*, while at the same time emphasising *"that it is up to all countries with recognised membership prospects to join this multilateral framework as an intermediate step towards full membership"*.³

Despite the obvious attractiveness of such a single framework for all the EU's relations with its European neighbours, criticism and outright rejection of the model were not long in coming. These reactions originated both among the EEA EFTA states, which naturally enough did not relish the prospect of seeing their "special relationship" with the EU subsumed into a greater scheme, and within the EU itself, as questions arose about the practicality of the single-model approach.

It should be borne in mind that the EEA Agreement is the EU's most advanced set of external ties precisely because it reflects the unique relationship existing between the EU (of 1992) and

² See, inter alia, the paper by Dr. Jörg Schneider and Barbara Thoma, *"Formen der abgestuften Zusammenarbeit zwischen der EU und (Noch-)Drittstaaten - Vom Handelsabkommen zum EWR Plus"* Deutscher Bundestag, Wissenschaftliche Dienste, Nr. 26/06 (8 May 2006).

³ 'European Parliament resolution on the Commission's 2005 enlargement strategy paper', adopted on 16 March 2006 in Strasbourg (P6_TA(2006)0096), esp. paragraphs 3, 9 and 10.

the three EEA EFTA States. This encompasses the long-standing exchanges between both sides, their comparable development in the political, economic and social field, as well as compatible choices made on the key issues defining those areas. All these factors combine and culminate in the ability to accept and implement the *acquis communautaire* - not once but on a continuous basis - which constitutes the core of this singular arrangement.

It is therefore difficult to conceive how the EEA model could be extended to a whole slew of the EU's neighbours to the East and Southeast whose political and constitutional situation, economic development and social choices differ so markedly, not only from those of the EEA EFTA states, but even more importantly from each others'.

Furthermore, whatever its original objectives, the EEA Agreement today has become a framework for organising the closest possible co-operation with states which do not wish for EU membership, and may well never do so. The neighbouring states at which the idea is aimed, on the other hand, to varying degrees have given notice of their determination to eventually become full members of the Union, with the possible exception of Belarus. Even if the EEA arrangements do not preclude such a development, it is doubtful that they could function for partners with so widely diverging assumptions.

The need to develop a more effective approach to the Union's neighbourhood, and in particular, credible alternatives to the prospect of full membership, is not disputed here. However, as the above considerations show, the EEA Agreement, having been conceived for a different set of countries and circumstances, will not serve as the "magic formula" to resolve a complex question likely to remain on the EU's agenda for years to come.⁴

CHALLENGES TO EEA ITSELF

Having established that the EEA - Plus or no Plus - is no suitable model for the European Neighbourhood Policy, it does not follow automatically that it has no need to consider its own current state and future prospects. As the EFTA Bulletin foresaw already in 2000: *"The challenge for the EEA EFTA States will be to cope with the deepening and widening of the EU. The institutional reform of the EU will have implications for the decision-shaping process within the EEA, while enlargement will affect its overall balance."*⁵

The exact details of the Union's institutional reform remain to be determined, hopefully by the end of this year, and its impact on EEA operations will only then become apparent. Several key features of the EEA's new environment, however, directly derive from the mathematics of enlargement, and as such have already made themselves felt:

- increasing difficulty in influencing decision-making among growing numbers;
- increasing costs for achieving economic cohesion across the Area;
- increasing uncertainty about consistent implementation of all rules.

⁴ For an appraisal of ENP and the EEA Plus concept, see the policy paper by Dr. Fraser Cameron, *"EEA Plus? Possible institutional arrangements for the European part of the European neighbourhood Policy"*, DG External Policies Study no. 2005/02 of 12 April 2005 (PE 381.360)

⁵ EFTA Bulletin, *"EFTA 1960-2000: Commemorative Publication"*, p.41

The EEA Agreement provides - limited - scope for the EFTA States to influence legislation, mostly through participation in committees advising the European Commission in the early drafting stage. While this room for manoeuvre has not always been fully used in the past, concern among EEA EFTA States that it will further diminish in practice as a consequence of enlargement⁶ may be well-founded: Among growing numbers, any given state (be it EU or EFTA member, incidentally) will find it hard to gain attention and understanding for its particular sensitivities, while at 3 among 30, the EEA EFTA States may well find the Commission disinclined to create precedents for exceptions to any given piece of legislation.

Budgetary concerns also loomed large in recent EEA enlargement negotiations: EFTA governments were initially surprised by the amount of the "suggested" increase of the EEA Financial Mechanism, although they quickly rallied and, led by Norway, rose to the occasion in a generous manner. However, the fall-out was already felt when negotiations became much more fraught for 2007, to the point of derailing the simultaneous enlargement of EU and EEA, which had still been salvaged three years earlier. In years to come, increased contributions for undoubted, but less quantifiable benefits of enlargement may well lead to stronger resistance among the electorate, as was already seen in Switzerland.

Finally, despite the European Commission's best efforts, the special circumstances of many new Member States of 2004 and 2007 has necessitated an unprecedented amount of transitional clauses and exemptions. Although "grace periods" accompanied previous EU and EEA enlargements, their sheer number at this juncture creates diverging levels of implementation of the *acquis communautaire*. Again, this is first and foremost a problem for the Commission and the European Court of Justice. At the same time, it is particularly frustrating for the EFTA States, which recently improved their transposition record considerably, and in their view at least, may well threaten the objective of "*a homogeneous European Economic Area*"⁷. Taken together with notions of a shrinking influence on formulating legislation as described above, such perceptions may raise concerns about the enduring legitimacy of the EEA arrangement.

Of these challenges, none is of course specific to the EEA context. Indeed, threats to the institutional balance, the cost of cohesion and the risk of diluting the *acquis* have all been widely discussed on the occasion of the recent EU enlargements, and continue to dominate the debates on institutional reform as well as on future enlargement rounds. For the EEA EFTA States however, the shifting numerical balance and its implications could amount to a change in paradigm, which may prompt them to review their options, including that of EU membership, in a very different light from only a few years ago.

⁶ On this and the following points, see the paper by Dr. Ulf Sverdrup, "*How the enlargement challenges the institutions - or the existence - of the European Economic Area*", ARENA Working Papers 05/02. - His view that interaction with the Commission will become less effective due to the increasing legislative powers of Parliament appears debatable, and largely theoretical given past performance.

⁷ EEA Agreement, Article 1