
The European Economic Area revisited

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BACKGROUND

The European Economic Area (EEA) provides a stable relationship between the European Union (EU) and several European states which, though politically and economically qualified for EU membership, have remained outside. In fact it is the closest form of relationship, other than full membership, that the EU has ever offered to neighbouring countries.

Three states of the European Free Trade Area (EFTA) - Norway (population 5 million), Iceland (330,000) and Liechtenstein (36,000) - have access to the EU's Single Market through the EEA, which extends to them more or less automatically the relevant EU legislation.

The remaining EFTA state, Switzerland (7.8 million), has access to the Single Market through a number of bilateral agreements. Moreover, all four EFTA countries are in the passport-free Schengen area,

and in this respect are more integrated than some EU members.

Questions are now being asked about the future of these arrangements:

- In Norway, a recent report has opened up a public debate about the EEA for the first time.
- If Iceland joins the EU, only Norway and Liechtenstein will be left on the EFTA side of the EEA.
- In addition, the arrangements with Switzerland have encountered various problems. The EU's Council of Ministers is planning to review the EEA and related agreements at the end of 2012.
- Meanwhile, demands in Britain for a referendum on EU membership have renewed interest in the EEA as a possible model for the future.

STATE OF PLAY

The EEA came into being in 1994, having been conceived in 1989 when the EFTA countries (Finland, Sweden, Norway, Iceland, Switzerland, Liechtenstein and Austria) were concerned that their trade with the EU would be obstructed by the development of the Single Market. It is not a customs union, but provides conditions of free trade by transposing EU legislation on the free movement of goods, persons, services, and capital into the legal order of the EFTA members. European law is part of their national law, despite the fact that they are not members of the EU, and they have a higher degree of economic

integration with the EU than countries covered by its enlargement and neighbourhood policies.

EEA members participate in several fields of EU policy related to the Single Market, and make a financial contribution to social and economic cohesion in the EU. This contribution has increased tenfold since the EU's enlargement of 2004, and for Norway it is worth an annual equivalent of about 70 euros per head of population.

According to some analysts, the EEA was designed to prevent EFTA countries from applying for full EU

membership. But Austria, Sweden and Finland soon applied nonetheless, and the EEA was effectively a launch pad for them to join the EU in 1995. Norway and Switzerland also applied for EU membership, but in 1994 Norway withdrew its application after citizens said 'no' in a referendum on the EU, and Switzerland froze its application after a 'no' in its referendum on the EEA.

That left Norway, Iceland and Liechtenstein on the EFTA side of the EEA. Under its 'decision-shaping' procedures, they have access to European Commission committees that prepare legislation and enjoy the right to submit comments, but they have no access to the EU's decision-making process in the Council or the Parliament.

Although EFTA members may refuse to apply new legislation, the fact that such a refusal could lead the EU to suspend the corresponding elements of the EEA agreement has in the past served as an effective deterrent. The EEA's institutional framework includes a Joint Committee and a Council at ministerial level, while the EFTA Surveillance Authority and EFTA Court have tasks corresponding to those of the European Commission and the European Court of Justice.

Norway

For Norway, the EEA is a 'waiting room' that offers a close relationship with the EU without obliging it to address the thorny question of membership. Nevertheless, it is not without problems. The Norwegian government last year asked an independent committee, chaired by a law professor, to enquire into the political, legal, social and economic consequences of the EEA.

Its recent report¹ noted that as a result of the EEA, Schengen and other agreements, Norway had taken over approximately three-quarters of EU law. It stated that "the most problematic aspect of Norway's association with the EU is the fact that Norway is in practice bound to adopt EU policies and rules on a broad range of issues without being a member and without voting rights.

This raises democratic problems. Norway is not represented in decision-making processes that have direct consequences for Norway, and neither do we have any significant influence on them. Moreover, our form of association with the EU dampens political engagement and debate in Norway and makes it difficult to monitor the government and hold it accountable in its European policy".

The report continued: "There have been tensions and conflicts between EU/EEA rules and Norwegian traditions and restrictions, which have been challenged in a number of fields. However, given the large number of adaptations that have had to be made, there have been relatively few conflicts, and many of them were resolved in a way that has made it possible to continue to pursue Norwegian policy aims. In other cases, it has been necessary to make changes in order to harmonise Norwegian law. But on the whole, the Norwegian social model has been safeguarded and developed in a way that has won the support of a broad majority of the Norwegian Parliament."

In its conclusions, the committee suggested bringing Norway's agreements with the EU into a single coherent framework, with better frameworks for cooperation with the EU in justice and home affairs, in foreign and security policy, and for Norway's financial contribution; improving the Norwegian parliament's procedures for international agreements, its control function over European affairs, and its system of consultation to ensure more real debate and clarification; and reviewing the government's administrative apparatus and the EFTA machinery. After a period of consultation, the Norwegian government is expected to publish a White Paper on the EEA later this year.

Iceland

Iceland's application to join the EU in 2010 was primarily motivated by the desire to replace the Icelandic krona with the euro - and despite the euro zone's current problems, that aim is still supported by public opinion. Iceland's membership of the EEA since 1994 has allowed it to make faster progress in accession negotiations than other countries. It also provides a 'safety net' should the people of Iceland say 'no' to EU membership.

If Iceland joins the EU, it will move from the EFTA side to the EU side of the EEA, leaving only two states on the EFTA side. This would put the future of the agreement into question, not so much for technical reasons - problems such as the appointment of members of three different nationalities could be solved - but because the consistency of the EFTA pillar would be reduced if it were to include only a small state (Norway) and a micro-state (Liechtenstein). The issue will not become topical until Iceland decides on EU membership, and even then, both sides may prefer to maintain the EEA.

On the other hand, Iceland's accession would make the 'marginalisation' of the EEA more pronounced: since its creation, the EFTA side

of EEA has already shrunk from six to three, while the EU side has grown from 12 to 27. Meanwhile the importance of the EEA, which is basically related to the Single Market, has shrunk in relation to the EU's other activities, which have expanded into many fields of policy.

Switzerland

After rejecting EEA membership, Switzerland concluded a series of agreements with the EU in 1999 and 2004, and more than 100 bilateral agreements are now in force covering the Single Market and related areas such as taxation, social policy, environment and transport. The Swiss make a financial contribution to the EU equivalent to about 20 euros per head of population. In general the agreements have functioned well, and have been accompanied by a remarkable degree of integration: taking goods, services and investment together, Switzerland is the EU's second biggest economic partner after the USA.

However, the functioning of this 'bilateral approach' causes problems on both sides. The Swiss must constantly monitor changes in EU law to see whether they present obstacles. They are frustrated by the EU's desire to maintain a balance of interests when negotiating new agreements ('principle of parallelism'). For the EU, the absence of automatic take-overs of new EU *acquis*, and a lack of supervision and enforcement on the Swiss side, results in legal uncertainty for firms and citizens in the Single Market ('lack of homogeneity').

There is an increasing desire on the EU side to make the system more automatic - in fact, more like the EEA. In December 2010, the EU's Council of Ministers stated that "issues related to the dynamic adaptation of agreements to the *acquis*, their homogeneous interpretation, independent surveillance, enforcement and dispute settlement mechanisms, need to be reflected in EU-Switzerland agreements". It will review progress on this in December 2012.

Switzerland is willing to discuss a new institutional set-up, but reluctant to accept automaticity, at least without being granted more say in EU decisions. It is categorical in rejecting supranational control mechanisms. It insists on a margin of manoeuvre "to safeguard national independence". But although the EU needs to find a *modus vivendi* with Switzerland, an important economic partner in the heart of Europe, the Swiss have come to realise that in practice their country - surrounded by the EU with a population of 500 million - has little choice but to adopt EU laws and standards in many areas, even for taxation and banking.

EEA for others?

Although Liechtenstein (population 36,000) is in the EEA, this is not the case for the other European mini-states Andorra (85,000), Monaco (36,000), San Marino (32,000) or the Vatican (800), which have *ad hoc* relations with the EU. But Andorra and San Marino, which need economic modernisation and integration to replace their 'tax-haven' status, are interested in a more structured relationship with the EU.

Since the EEA is the EU's closest form of relationship with its neighbours, and has served as a launch pad for EEA members wishing to join the EU, why not consider it as an option for countries that are in the EU's accession process (Western Balkans, Turkey) or may wish to join (Ukraine, etc.)? The problem is that to implement the EEA, a country needs to satisfy EU standards of governance - good administration, rule of law, etc. - and that is a weak point in many candidate countries.

In addition, to join the EEA candidates would need to be admitted to EFTA, whose members also have high standards. The correlation between economic development and good governance means that poorer countries cannot really aspire to join the EEA. But significantly, in developing its Neighbourhood Policy, the EU has offered to the Eastern Partnership countries the long-term prospect of a 'Neighbourhood Economic Community based on the European Economic Area'.

Britain

The EEA is often seen as the 'default mode' for Britain outside the EU. This is not an academic question, since the declared aim of some members of the British Conservative Party, as well as the UK Independence Party, is a referendum followed by Britain's departure from the EU. Prime Minister David Cameron and Foreign Minister William Hague, although professed Eurosceptics, wish to avoid a referendum.

However, the so-called 'veto' at the European Council in December 2011 suggests that on EU matters the present government is vulnerable to pressure from Europhobes, and can be accident-prone. So although a British EU referendum is unlikely, it is not impossible. Meanwhile, it seems certain that there will be a referendum in 2014 on Scotland's membership of the United Kingdom.

Those in favour of an independent Scotland wish it to stay in the EU, while those in favour of Britain leaving the EU usually see relations with Norway

or Switzerland as a model. One option, in theory, would be the Swiss 'bilateral approach', but in view of the difficulties experienced with that, the EU would hardly wish to consider it for Britain. A recent analysis by a British anti-EU think-tank² concluded that the EEA would be the best option.

From the point of view of British economic interests, some of its arguments are valid: as an EFTA member of the EEA, Britain would be largely exempted from common policies for agriculture and fisheries, and would pay less into the EU's

budget. Other arguments - that it would boost British jobs and growth - are more contestable, and moreover Britain would have to apply rules relating to the Single Market without having an effective voice in determining them.

While this may be sustainable for a small country such as Norway, it can hardly be considered as 'more democratic' than EU membership, and it is difficult to imagine that it would be tolerable for a country such as Britain, with its large economy, to be excluded from decision-making on the Single Market.

PROSPECTS

For nearly 20 years the European Economic Area has provided a stable relationship between the European Union and neighbouring EFTA countries. From the EU's point of view it has been largely trouble-free, and although it needs to be reviewed and updated, there is no disposition to change it substantially.

For the EFTA countries, it continues to provide satisfactory access to the EU's Single Market - but at a price, both in budgetary terms and in terms of democracy, for it obliges them to adopt EU policies without any say in decisions on them.

There is already pressure in Norway to test the automaticity of the EEA, as seen last year in its refusal to take over the Postal Services Directive, and the public debate now launched in Norway will stimulate demands to improve the consultation procedures. But although this may eventually lead to more disputes within the EEA on specific issues, fundamental changes to the system should not be expected.

The EU's experience with Switzerland has been less satisfactory, and it will no doubt put further

pressure on the Swiss to move from their 'bilateral approach' towards a system that makes the extension of EU legislation more automatic - in fact, more similar to the EEA.

For mini-states such as Andorra and San Marino, a semi-automatic system could be a solution for relations with the EU, but in the case of Switzerland, traditional attitudes and constitutional requirements limit its capacity to change track. This may lead to more difficulties in Swiss relations with the EU in coming years. Meanwhile for a country such as the United Kingdom, where alternatives to EU membership are under consideration, experience of the EEA shows that its 'democratic deficit' is a serious political handicap.

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1. 'Outside and Inside: Norway's agreements with the European Union', report presented to Norway's Foreign Minister by a committee chaired by Fredrik Sejersted, Oslo, January 2012.
2. 'EFTA or the EU' by Hugo van Randwyck, Bruges Group, London, February 2011.

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