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BACKGROUND AND CONTENTS

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Foreword

The Treaty on the European Economic Area is the most comprehensive and far-reaching agreement which the European Community has ever concluded with a group of third countries. However, the Treaty as such, with its numerous annexes, protocols and declarations, does not constitute an easy and quickly accessible source of information on the precise contents of the new EC-EFTA cooperation. For this reason the European Parliament's Directorate General for Research considers it useful to present the contents of the EEA Treaty in a more concentrated, yet relatively detailed form. As many of the Treaty provisions are the result of difficult political compromises it is considered essential also to describe the historical background and the negotiating process leading to the conclusion of the EEA Treaty.

DIRECTORATE GENERAL FOR RESEARCH

I FROM EFTA TO THE EEA

By signing the European Economic Area Agreement on May 2,1992 in Oporto (Portugal) the legal framework of a free trade area of some 380 million inhabitants was created.

Contracting Parties to this Treaty are the EC and its 12 member states, and six EFTA countries. The Agreement was signed by all seven EFTA countries at the time but the Swiss rejection in its ratification process in December 1992 will prevent it from becoming a Contracting Party for the time being. This rejection, however, will not prevent the EEA Agreement from coming into force with regard to the remaining EFTA signatories. A new protocol allows Switzerland to enter the EEA at a later stage.

Before discussing the content and impact of the Treaty, a historical introduction concerning relations between EC and EFTA will be given. The developments leading to the establishment of the European Economic Area (EEA) are given specific emphasis.

1. The European Free Trade Association (EFTA)

In 1957 when the six founder members of the EC signed the Treaty of Rome, several European countries were not prepared to commit themselves to supranational organisations. Nevertheless, they feared isolation from the mainstream of European development, and argued that a free trade area would provide a boost to their economies. The result was the establishment of the intergovernmental European Free Trade Association (EFTA) on 3 May 1960 on the basis of the Stockholm Convention between the seven founder members Austria, Denmark, Norway, Portugal, Sweden, Switzerland and the United Kingdom. Finland joined on 26 June 1961 as an associated member and became full member on 1 January 1986. Iceland joined EFTA on 1 March 1970. Liechtenstein became a full member in 1991.

The central aim of EFTAs trade regime was a progressive reduction and final abolition of custom duties and quantitative restrictions on industrial products. In accordance with EFTAs objective of working for a wider European agreement, the dates and rates of reduction of EFTA tariffs closely followed those in the EEC Treaty. The establishment of a free trade area for industrial goods between its members was accomplished by 31 December 1966, although Portugal was granted a longer period for removing its tariffs.

The EFTA is not a customs union but a free trade zone as defined in Art XXIV of the GATT. This leads, inter alia, to the notorious chestnut in free trade arrangements, of the problem of "area origin". Free Trade Arrangements involve reciprocal preferential treatment for products originating within the free trade area to which products from third countries are not entitled. Since they have no common external customs tariff each member country applies its own autonomous external tariff. Origin rules are designed to ensure that the free ciculation of goods applies only to products "mainly" produced in the area. The origin rules in EFTA as well as in the FTAs are complicated and costly to both traders and customs authorities. Proposals for simplification are therefore under consideration and constituted a main issue in the talks between the Community and EFTA countries throughout the years.

The Stockholm Convention does not contain any provisions with supranational content. Unlike the European Community, which has a range of institutions with

powers to impose decisions directly binding on Member States and even having direct effect within their legal system, EFTA itself never exercised treaty-making power. Accordingly negotiations with EFTA states led to bilateral - and often identical - agreements with the individual EFTA countries.

EFTAs only institution, the Council, set up a Secretariat and a number of committees and working parties to conduct the day-to-day running of the Association.

2. The Free Trade Agreements

As early as 1961 the United Kingdom, Denmark, and Norway applied bilaterally to the EC for membership. However the political climate in Western Europe and setbacks in the ECs internal integration delayed new membership until the 1970s. Only then was the Community prepared for enlargement. Negotiations resulted in Danish, British and Irish membership from 1 January 1973. Denmark and the UK left the EFTA concurrently. Norway could not join following a negative outcome of a referendum on accession.

The remaining seven EFTA members, including Norway, concluded more or less parallel bilateral Free Trade Agreements (FTAs) with the EC and the ECSC in 1972/73.

The Agreements envisaged the staged elimination of duties on all industrial products, except for some "sensitive" products, by 1.7.1977. The objective of 1977 was achieved on time with the final removal of import duties on almost all industrial goods traded between the EFTA countries and the EC. In relation to "sensitive products", tariff barriers and quantitative restrictions were abolished on 1.1.1984.

With the accession of Greece to the EC in January 1981 and Spain and Portugal[1] in January 1986, the free trade system now comprised nineteen countries.

All FTAs, except the one with Finland, contained the so-called "evolutionary clause" which allows for an extension of the scope of cooperation outside the trade area to fields not covered by the agreements, where Contracting Parties consider this to be in their mutual interest[2].

The FTAs have resulted in increased economic interaction between the countries concerned. EFTA countries were determined to ensure that the advantages deriving from free trade would not be jeopardized as a result of diverging economic developments and policies. For that reason Heads of State and Governments of EFTA countries declared at a summit in Vienna on May 13 1977[3] concerning the development of trade and economic co-operation with the EC (Point 4 of the Declaration) that it would be desirable to develop the

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1 Portugal had do leave EFTA though the Industrial Development Fund for Portugal which has been in operation since 1977 continued and is still in operation

2 e.g. Art 32 of the Austrian FTA; in the FTAs with Portugal and Sweden the phrase "in the common interest" is used

3 EFTA Bulletin 1977, p.5 sq.

existing co-operation on a pragmatic and practical basis by means of an increased exchange of information and closer consultations on economic questions as well as on corollary economic policies, simplification and improvements of the rules of origin and customs procedures, processed agricultural products, transport policy, research and environment. In 1978 the EC Council reacted by listing conceivable fields for closer cooperation[4].

The following years were marked by bilateral talks between the EC and each EFTA country. The cooperation was thereby extended in many fields not directly within the scope of the FTAs[5]. Although several arrangements were reached, the EC and the EFTA countries were not fully satisfied with the way in which cooperation was unfolding. The bilateral negotiations did not result in the desired effects which were expected by the participants. There was an increasing awareness of the limitations inherent in the bilateral approach to cooperation[6].

Only in 1982 when celebrating the 10th anniversary of the FTAs the EC Council[7], EC Commission[8] and the EFTA Council[9] declared again their political will for strengthening the cooperation between the parties.

The European Parliament, which has always been in favour of strengthening the links between EEC and EFTA[10], called on the Commission[11] to draw up a list of sectors for which it believed that closer cooperation between EEC and EFTA was both desirable and feasible. The EFTA Ministers welcomed the resolution and reaffirmed their willingness to expand cooperation in all fields of mutual economic interest[12]. In its Communication to the Council[13] the Commission listed 25 sectors, in some parts a repetition of the 1978 list.

The approach to expand relations only in fields of mutual interest clearly shows the selective approach taken by the negotiating parties. From the statements it was clear that the EC Commission wanted to open as many areas

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4 Council document S/2/54/78, 14.12.1978

5 e.g.: scientific research, environment, transport and economic and monetary questions

6 F.Weiss, EC-EFTA Relations: Towards a Treaty creating a European Economic Space, 9 YEL (1989), p.332

7 Statement by the Council of 20.7.1982, PE 81.596/Ann.II

8 Statement by the Commission of 22.7.1982, PE 81.596/Ann.I

9 Declaration by the EFTA Council, EFTA Bulletin No 4,1982, p.1

10 A series of Joint meetings between EC and EFTA parliamentarians began in 1981 with the central topic of further strengthening the cooperation between the EFTA countries and the EC

11 Resolution of 11.2.1983

12 EFTA ministerial meeting in Bergen, 1983

13 COM (83) 326 final

as possible to the EFTA states. Nevertheless this wish for closer cooperation was more clearly expressed at a political level by the EC than the EFTA countries[14].

3. Multi-lateralisation of EC/EFTA relations

3.1. The Luxembourg Declaration (1984)

The process to broaden and deepen the cooperation between EC and EFTA was formalised and began to gain momentum in April 1984 when ministers from all 19 members of the EC and EFTA at their first full summit since the FTAs agreed on a second generation of EC - EFTA initiatives in the so-called " Luxembourg Declaration".

In the Luxembourg Declaration the parties agreed to continue, deepen and extend cooperation within the framework of, and beyond the FTAs (Point 1 of the Declaration). Ministers were convinced of the importance of further actions to consolidate and strengthen cooperation, with the aim of creating a dynamic European Economic Space (EES) of benefit to their countries (Point 2). This was the first time the term EES was used[15]. Though the Declaration did not give any definition of the envisaged project its range can be identified at two extremes: on the one hand the EES goes further than a free trade area in that it encompasses the creation of conditions between the EFTA countries and the EC which are parallel to or resemble those of the EC internal market as closely as possible and which comprise in particular the "freedoms" related to the free movement of goods, persons, services and capital[16]; on the other hand it remains less than the internal market programme or the economic union of the twelve[17].

The Luxembourg Declaration gave an extensive catalogue of subject matters for future collaboration:

a) Results already achieved towards improving the free circulation of the industrial products are taken into consideration and it is deemed essential to continue efforts, in particular in the following areas : harmonization of standards, elimination of technical barriers, simplification of border formalities and rules of origin, elimination of unfair trading practices, state aid contrary to the free trade agreements and access to government procurement (Point 3).

b) In fields such as transport, agriculture, fisheries and energy cooperation

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14 Compare statements mentioned in n. 7, 8 and 9

15 From the end of October 1990 the EC and EFTA negotiators decided to adopt the term European Economic Area (EEA) instead of European Economic Space (EES); in this paper both terms are used synonymously as the change of name was a purely linguistic matter

16 F.Weiss, EC-EFTA Relations: Towards a Treaty creating a European Economic Space, 9 YEL (1989), p.332

17 V.Tscharner, Kommentar zur Luxemburger Erklärung, in: Beziehungen Schweiz-EG, Meyer-Marsilius/Schluep/Staufacher (Hrg), (1992), Kap. 3.1.VIII, p.1

and/or consultations should be intensified (Point 5, paragraph 1).

The Declaration went also explicitly beyond trade issues to seek for consultations, contacts or exchange of information with regard to working conditions, social protection, culture, consumer protection, the environment, tourism and intellectual property (Point 5, paragraph 2), concertation of policies combatting unemployment (Point 6) and contacts in the sphere of economic and monetary policy (Point 7).

The two sides also agreed that closer cooperation could help to strengthen Europe's voice in the world (Point 7).

c) Concerning the method of cooperation between EC and EFTA both sides laid emphasis on the fact that the cooperation should continue in a pragmatic and flexible way (Point 3, paragraph 2). This means that the cooperation will be enlarged only step by step, taking into account concrete mutual interests.

The meeting in Luxembourg is seen as the beginning of multilateralisation of EC/EFTA talks[18]. For the EFTA countries this necessitates the creation of common ground for negotiation, a situation which might be seen as a drawback since it makes it more difficult to take particular demands of individual EFTA countries into account.

A new form of meetings between the EC and EFTA countries was found. Since the Luxembourg gathering annual, and later bi-annual, meetings between the EC Commission and EFTA Ministers took place[19]. This constituted clear progress for EC-EFTA dialogue. However, the Joint Committees of the FTAs met at a civil servant level, one which was scarcely conducive for stimulating new political impetus[20].

To coordinate the implementation of the Declaration the Ministers set up a High Level Contact Group (HLCG), representing the member countries of EFTA and the EC Commission. Semi-annual meetings were held from September 1984 onwards. The HLCG was also supported by around 25 expert groups working in the fields mentioned in the Declaration.

3.2. The Luxembourg follow-up (1984 - 1988)

Since April 1984 there were numerous meetings at different levels between EFTA representatives and Commission officials, to seek practical ways of giving early effect to the Luxembourg objectives[21]. The multiplication of contacts allowed a better reciprocal information, consultations, and even concerted

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18 loc.op.cit., p.1

19 1985: Vienna
1986: Reykjavik
1987: Interlaken
1988: Tampere, Geneva
1989: Kristiansand, Brussels
1990: Gothenbourg, Brussels
1991: Brussels, Luxembourg
1992: Salzburg, Luxembourg

20 supra n.17, p.2

21 COM (85), 206 final

approaches in numerous fields and joint reflections on future cooperation opportunities[22].

An additional factor was the presentation of the EC Commission's White Paper in 1985[23]. EFTA countries feared a marginalisation with trade diverting effects[24] and therefore strived for intensified talks.

In May 1985 the EC Commission laid down the framework within which it intended to conduct the follow up to the Luxembourg Ministerial Conference by defining four basic criteria in a memorandum[25]:

(a) Community integration and its independent power of decision must under no circumstances be affected.

(b) The elimination of technical barriers to trade and the simplification of administrative formalities at Community-EFTA frontiers are a logical extension of the Free Trade Agreements and should be pursued parallel to the progressive integration of the Community's internal market.

(c) No specific field should be excluded a priori from cooperation. The Community must, for example, also step up coordination with EFTA countries in fields such as transport or environmental policy, which due to their nature cannot be limited by frontiers and are also of great concern to ordinary people.

(d) It will only be possible to progress achievement of a wider European market if the costs and benefits involved are shared equally. Measures taken in parallel must involve real reciprocity.

Point (a) expresses on the one hand the Community's priority for the internal market and on the other the reluctance of the EC to involve the EFTA countries in the participation of the legislative process. EFTA had hoped for very early consultations with EC experts in order to get information and to add own ideas. Throughout the exploratory talks and the negotiations leading to the EEA Agreement the Community has remained adamant that its decision-making autonomy must not be compromised. The insistance on the principle of autonomous internal decision-making excluded any form of intervention by non-member states outside the Community structure.

As regards the areas of cooperation to be developed, the first priority for

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22 COM (86), 298 final, p.2, point 2

23 White Paper on Completing the Internal Market, COM (85) 310 final, June 1985

24 Schwok, L'AELE face á la Communauté Européenne: un risque de satellisation, Journal of European Integration, Vol XIII, no 1, Fall, 1989, p.16 et seq.

25 COM (85) 206 final, p.2, point 5

the Commission was the dismantling of technical and administrative obstacles, as pointed out in (b)[26]. The first concrete steps in this direction were the opening of negotiations in 1986 to conclude an agreement on the introduction of a single administrative document (SAD) for trade on a reciprocal basis. The corresponding Convention on the simplification of formalities in trade in goods, which was exactly the same as that which had been adopted for intra-Community trade[27] entered into force on 1.1.88, the same date as for the intra-Community trade. Thereby the Community system of the SAD is applicable to EC-EFTA trade as well as to trade between the EFTA countries.

The practical effects are impressive. The SAD has replaced some 60 different national documents by a single document covering all the EC and EFTA countries and it also represents a first step towards "paperless" trading by computerized transmission of customs declarations[28]. This Convention, and the Convention on common transit procedure[29] were the first multilateral Conventions between the EC and all EFTA countries. The latter, which also came into effect on 1.1.88, defines a uniform procedure for the customs treatment of goods in transit between the EFTA countries or through an EFTA country on their way from one EC country to another or vice versa.

Concerning the areas of future coordination (c)[30], the Commission sought for "cooperation" to be "undertaken straight away"[31], while the Luxembourg Declaration moderately proposed cooperation/ consultations/ contacts or exchange of information in these fields[32].

The accession of Spain and Portugal to the Community on 1.1.1986 provided the opportunity to enlarge the scope of the FTAs. Additional protocols and exchange of letters on agricultural and fisheries products and on products not covered by the original agreements were elaborated in three formal rounds of negotiations and numerous technical meetings[33]. Portugal and Spain were thus able to apply the FTAs in a progressive and harmonious way[34]. These

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26 For more details on this subject see Point 6 of the Commission's Memorandum

27 OJ L 79, 21.3.1985, p.1 ; OJ L 179, 11.6.1985, p.4

28 supra n.16, p.336

29 signed on 20.5.1987, Interlaken; OJ 1987 L 226/2

30 For more details see pp. 8 of the Commissions memorandum

31 COM (85) 296 final, p.4

32 Point 5 of the Luxembourg Declaration

33 For further details concerning the negotiations see Bull.EC 9-1985, point 2.3.11; Bull.EC 10 -1985,point 2.3.16; Bull.EC 11-1985, point 2.3.15; Bull.EC 2-1986, point 2.2.16; Bull.EC 7/8-1986,point 2.2.14;

34 For an evaluation of the adjustments see: 9th report from the Permanent Representative Committee on co-operation with the EFTA countries, No.doc. 8870/86 AELE 48, p.3 squ.

adaptations of the FTAs were considered as one of the successful examples of EC-EFTA cooperation[35].

In parallel with the progress in trade matters striking success was achieved in the field of research: 5 EFTA countries and twelve EC countries created, on the initiative of the French government, "EUREKA", the European high technology project and audiovisual programme[36]. The programme provides further prospects of cooperation between enterprises in the Member States and in the EFTA States.

Several COST-Agreements were concluded[37], as well as framework agreements for scientific and technical cooperation[38]. It was clear to both sides that the common projects of research and development would enhance the opportunities for European industry to compete effectively in world markets for advanced technology[39].

As for the harmonization of technical standards and regulations, the Community had already collaborated with EFTA in the framework of the European standardization organization. Agreements between EC and EFTA countries were concluded within the framework of CEN (Comité européen de normalisation), CENELEC (Comité européen de normalisation électronique) and ETSI (European Telecommunications Standards Institute).

Measured by its concrete results the Luxembourg follow-up was only partially successful. The EFTA countries, in particular, felt disappointed over the incomplete progress. This is based on two facts[40]: (1) The High Level Contact Group, lacking a stringent common institutional framework, met only twice a year. As a result the ability to influence the internal EC decision-making process for the EFTA states was limited. (2) The EC became more and more sceptical about bilateral cooperation with the EFTA states.

The Commission had very clear guidelines governing the approach to closer co-

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35 Joint Communiqué from the meeting between the Ministers of EFTA states and Mr. De Clercq, member of the EC Commission, Geneva, 29.11.1988, point 4

36 Bull.EC 7/8-1985,point 2.1.210

37 See 9th COREPER Report on co-operation with the EFTA countries, 10.9.1986

38 Switzerland: OJ L 313,22.11.85,p.6; Sweden: OJ L113, 22.11.85,p.2; Finland: OJ L 78,24.3.86,p.24; Norway: OJ L 78,24.3.86,p.27; Iceland: OJ L 14,18.1.90,p.18

39 For an exhaustive list of all activities in this field see: Report drawn up on behalf of the Committee on External Economic Relations on economic and trade relations between the EEC and EFTA member countries (Rapporteur: Mr. C.A. GALUZZI), PE 119.040/fin./Part B, p.14, 20, 22, 26, 29

40 Burtscher, Der Europäische Wirtschaftsraum (EWR) und die Beziehungen der EG zu den EFTA-Staaten, in Röttinger-Weyringer (Hg), Handbuch der europäischen Integration (1991), p.503

operation between the two blocks. Willy de Clercq explicitly referred to them in the so-called "Principles of Interlaken"[41]:

- absolute priority for the completion of the internal market

- safeguarding of the Community's decision making process

- balancing the rights and obligations as well as benefits and costs of a participation of EFTA countries in the internal market.

The application of these principles meant that the Community's dialogue and cooperation with the EFTA countries would not be allowed to delay or in any way interfere with the creation of the internal market. As far as the balance between rights and obligations was concerned, the message to the EFTA countries was that one could not stay outside the club and still expect to enjoy the full benefits of membership.

During 1988 permanent talks were held between the EC and EFTA on the subject of EFTA's method of approach and participation in the internal market programme. New agreements were negotiated and came into force[42]. However it was becoming evident that, with the case-by-case approach of the Luxembourg process, it would not be possible to create, in parallel to the establishment of the Community's internal market, a EES with conditions similar to those of an internal market[43].

On the other hand the EFTA Ministers and Mr. De Clercq at the Tampere meeting[44] stated jointly that " the Community integration process ... and the creation of a ... European Economic Space ... have now become irreversible"[45].

3.3 Oslo-Brussels or Delors process (1989/1990)

Cooperative efforts between EC and EFTA accelerated following a speech to the European Parliament by EC Commission President Jacques Delors on January 17,1989[46]. In his speech, Mr. Delors said[47] that progress in the pragmatic,

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41 Mr. De Clercq's speech to the EFTA Ministers meeting in Interlaken, see: Agence Europe, 22.5.1987, p. 12 et seq.

42 Convention on the mutual recognition of test results and proofs of conformity, OJ L 291, 23.10.90, p.2; Convention on jurisdiction and enforcement of judgments in civil and commercial matters, OJ L 319, 25.11.1988

43 Communication from the Commission to the Council on the future relationship between the Community and the EFTA, 20.11.89

44 Meeting of EFTA Ministers and Mr. Willy De Clercq, member of the EC Commission, 15.6.1988

45 Point 8 of the Joint Conclusion

46 OJ Annex,Debates of the European Parliament,17.1.1989,No 2-373,p 66 sq

47 ibid.,p.76

step by step cooperative process that had begun with the Luxembourg Declaration was becoming increasingly difficult. He saw two options for future relations. Either the present pattern of bilateral relations could continue, with the aim of creating a free trade area encompassing the Community and EFTA, or "the two blocs could strive for a new, more structured partnership with common decision-making and administrative institutions to make our activities more effective and to highlight the political dimension of our cooperation in the economic, social, financial and cultural sphere" (emphasis added). He also introduced the two pillar model, by formulating the premise that EFTA could strengthen its own structures, in which case the framework for cooperation could rest on the two pillars of the organizations.

The Delors Initiative was strongly welcomed by the EFTA states. They reacted quickly in March 1989 by reaffirming their commitment to the EES and voiced their support for it at their meeting in Oslo. The EFTA Heads of Government adopted a very comprehensive resolution concerning their future cooperation with the Community[48]. In particular, the idea of a more structured partnership with common decision-making and administrative institutions met the high expectations of the EFTA countries in this regard[49]. The Heads of Government also saw the necessity of further strengthening EFTAs internal structures and adjusting them to the multilateral dialogue between the two parties[50].

An EC-EFTA ministerial meeting in Brussels on March 20,1989 sought for a new cooperative process. The participants agreed to initiate talks in the near future to check the option put forward by Mr. Delors of a more structured partnership[51]. A joint High Level Steering Group (HLSG), consisting of high officials from the Commission and EFTA states, was set up in April to undertake a comprehensive examination of the possible scope and content of an expanded and more structured partnership, based on the fullest possible realisation of the four freedoms as well as on closer co-operation in areas going beyond the internal market programme. The HLSG established five working groups in order to examine the potential for cooperation in the following areas:

1. free trade in goods

2. free trade in services and capital movement

3. free movement of labour

4. horizontal and flanking policies

5. legal and institutional questions

While the first four groups examined issues relating to the White Paper, the

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48 EFTA Bulletin 2/89, p.4

49 cp. points 8 - 10, and 14 of the Oslo Declaration

50 Points 17 and 18 of the Oslo Declaration

51 Point 5 of the Ministerial statement, in: 29th EFTA Annual report 1990, pp.43

fifth explored institutional and legal changes needed to secure broader, institutionalized cooperation. In these working groups common positions were achieved by consensus, EFTA speaking with one voice.

In the field of the four freedoms, it was generally agreed that the relevant acquis communautaire should in one way or another be integrated into the agreement as the common legal basis for the EES[52]; the only exceptions were those justified by considerations of fundamental interest, and that transitional arrangements should be a matter for negotiation[53].

The realisation of the four freedoms would have to be accompanied by appropriate flanking and horizontal policies in the field of competition and economic and social cohesion[54].

The legal and institutional questions revealed major divergences in EC and EFTA views concerning the process of decision-shaping and decision-making in respect of future EES legislation[55]: EFTA insisted on a genuine joint decision making mechanism in substance and form[56], but was in the end prepared to agree on the negotiating process adopting a joint decision by consensus[57]. The final assessment of the Commission was that "sufficient common ground has been identified to envisage the possibility of global negotiations between the Community, acting as one, and EFTA countries leading to an overall EC/EFTA agreement"[58].

The HLSG had its last meeting in October 1989 in Brussels to discuss the findings of the working groups. The meeting was considered a success and resulted in the presentation of a preliminary feasibility study on the various options. At their meeting in December 19,1989 in Brussels EC and EFTA ministers decided to commence formal negotiations on expanded cooperation as soon as possible in the first half of 1990, with the aim of concluding them as rapidly as possible[59].

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52 Report of the Commission/EFTA HLSG, presented at their meeting in Brussels, 20.10.1989, p.2

53 Communication of the Commission to the Council on the future relationship between the Community and the EFTA, 20.11.89; and supra n.52, p.2

54 supra n.52, p.4.

55 For the different proposed models with an evaluation of the points of views, see: Interim Report on the Community's future political relations with the EFTA countries (Rapporteur: Mrs. Marie Jepsen), Doc. A 3-116/90, 23.5.1990, point 42 et seq.

56 supra note 52, p.8

57 ibid., p.4

58 ibid., p.9

59 Joint Declaration of the Ministerial meeting between the Community and its member states and the countries of the EFTA, in: EC.Bull 12-1989

According to the ambitious EFTA schedule formal negotiations should have started after 20.3.1990, the last exploratory talk. The Council initially planned to give its approval for a negotiation mandate to the Commission at its meeting in Dublin on 10.4.1990. Due to different opinions in the Community and in particular fears of the European Parliament that the decision-making autonomy of the Community could be jeopardized[60] it was not until 18.6.1990 that the Commission received its mandate from the Council. According to this, the Community was unwilling to engage in any compromise on the following 3 principles:

- priority for the creation of the large internal market;

- total autonomy in the definition of Community legislation[61];

- a proper balance between the rights and obligations.

Another principle was that exceptions to the acquis communautaire should be limited to a strict minimum.

4. Negotiations on the EEA Agreement

The negotiations started on 20.6.1990 and were carried out by the High Level Negotiating Group (HLNG) assisted by five negotiating groups concentrating on particular subject matters. The EEA negotiations required an even more intense meeting schedule than their preparation in the preceding year. Additional ministerial meetings were necessary because a number of sensitive questions were involved which could only be decided at the political level[62].

In March 1991 the Council adopted an additional negotiating Directive which provided the basis for the negotiations for agreeing to an annex extending the freedom of movement to ECSC products[63].

There were a number of areas which proved to be particularly problematic. For example, as regards the free movement of persons, Switzerland and Liechtenstein argued that there was a large surplus of EC citizens working in Switzerland compared with the number of Swiss working in the EC, and therefore demanded that it be exempted from the rule allowing free movement of nationals in their country. The other EFTA countries likewise demanded similar

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60 See Resolution of 12 June 1990 on the Community's future political relations with the EFTA countries and Resolution of 12 June 1990 on economic and trade relations between the European Community and the EFTA countries, O.J. C175, 16.7.1990, p. 49 and p. 51

61 This has to be seen in connection with Delors speech before the EP on 17.1.1990, where he stressed the fact, that joint decision making implies Community membership, OJ Annex, Debates of the EP, No 3-385, p.111

62 13./14.5.1991, Brussels
18./19.6.1991, Luxembourg
25.6.1991, Salzburg
21./22.10.1991, Luxembourg

63 Bull.EC 3-1991, point 1.3.2

exemptions in the fields of national importance to them. Another complication was the direct linkage of EFTA between the number of derogations from the acquis and the institutional framework for the EEA-Agreement and the refusal of the Community to comply with this demand.

It was possible nevertheless after six months of negotiations to identify approximately 1400 legal acts of the acquis communautaire which were to be integrated into the EEA agreement as a common legal basis for the free movement of goods, services, capital and persons.

In the field of decision-making agreement was reached on an equal opportunity for consultation by experts of the Contracting Parties in the preparation of EC proposals on new legislation on matters relevant to the EEA. Decisions at an EEA level would be taken by consensus, EFTA speaking with one voice.

At the ministerial meeting in Brussels on 13./14.5.1991, the legal and institutional questions were largely resolved; agreement was also reached on the creation of an EEA Court[64], an institution the structure of which subsequently had to be changed as a result of the opinion of the European Court of Justice[65].

As far as agricultural products were concerned, it was agreed that this sector with the exception of some processed products would remain outside the Agreement. To comply with the balance of rights and obligations EFTA countries agreed to abolish or reduce import duties from the entry into force of the Agreement on a range of products of particular importance to the less developed regions of the Community. Further measures would be introduced in the form of reciprocal bilateral agreements between the EC and the EFTA countries under the umbrella of the EEA Agreement.

The fisheries sector created considerable problems as fish-exporting EFTA countries wanted to have free access to Community markets for their products but refused to give Community vessels access to their fishing waters. The meeting of EFTA Ministers and EC Commission on 18./19.6.1991 in Luxembourg had to tackle this sensitive matter but could not agree on a final result. EFTA Heads of Government and Ministers at their meeting in Vienna on 24.5.1991 recalled in their final declaration their position, inter alia that the treaty should provide for free market access for fish and other marine products. They reaffirmed the opinion that there could be no linkage between access to markets and access to resources[66]. The question of fish was finally solved at a meeting between EFTA Ministers and the EC Commission on 20./21.10.1991, in Luxembourg. EFTA obtained duty free access to EC markets for a number of fish and fish products, and a gradual reduction of duties for certain other categories of fish before 1.1.97. Some categories of fish remain outside the scope of these tariff reductions, but an evolutionary clause keeps the ultimate aim of full free market access as an option. The question of access to fish resources was settled in bilateral negotiations.

In Salzburg, a meeting was held on 25.6.1991 between the EFTA Ministers, the Vice-President of the EC Commission and the President of the EC Council.

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64 Point 22 of the Joint Brussels Declaration, in: 31st EFTA Annual Report (1992), p.58

65 Opinion 1/91 of the Court, 14.12.1991, OJ 92/C 110/01

66 Point 6 of the Vienna Declaration, in EFTA Bulletin 3-4/91, p.12

Originally it had been hoped that the EEA Agreement could be initialled[67] at this meeting. However the only positive result on this occasion was the notification that the majority of substantial, legal and institutional questions relative to the EEA had now been resolved [68].

It was only during the night of 21 to 22 October, after more than a year of intense and complex negotiations, that the text of the Agreement could be finalized.

The EFTA Ministers at their Council meeting in Geneva on 10./11.12.1991 welcomed the conclusion of the negotiations on the establishment of the European Economic Area and pointed out that "the EEA marks the beginning of a new and challenging era in the European Community. By its comprehensive and dynamic character, the Agreement provides far-reaching opportunities and benefits for all the nineteen EFTA and EC countries and their citizens"[69].

After the finalisation of the text, the EC Commission, pursuant of Article 228 (1) of the EEC Treaty sought the European Court's opinion on the compatibility of the EEA Agreement with the provisions of the EEC Treaty and more particularly the compatibility of the judicial machinery.

On 14.12.1991 the Court of Justice of the European Communities rendered its Opinion 1/91[70]. It considered that the aims and context of the EEA Agreement were not in conformity with those of Community law and that ,accordingly, the achievement of the objective of homogeneity in the interpretation and application of the EEA Agreement with the EEC Treaty was not guaranteed (point 29 of the Opinion). In the examination of the judicial structure, the Court concluded that the EEA Court could undermine the autonomy of the Community legal order in pursuing its own particular objectives (points 30-46), and accordingly, the proposed system of judicial supervision was incompatible with the Treaty establishing the European Economic Community.

The Agreement had to be renegotiated, and the Court was asked again for its opinion on the new parts of the agreement. On 10 April 1992 the European Court of Justice rendered its second opinion[71]. This time the altered paragraphs in the text of the EEA Agreement were considered to be compatible with the EEC Treaty. This paved the way for the signing of the Agreement on 2 May 1992 in Oporto.

Shortly after this event EFTA Ministers expressed their great satisfaction and declared their readiness to set up the necessary structures for the implementation of the EEA Agreement, i.e. the EFTA Surveillance Authority (ESA), a Standing Committee of the EFTA States and an EFTA Court[72].

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67 Declaration of Vienna, point 7, EFTA Bulletin 3-4/91, p.12

68 Declaration of Salzburg, in: 31st EFTA Annual Report (1992), p.63

69 Point 2 of the Communiqué issued by the EFTA Ministers, in: EFTA Bulletin 1/92, p. 17

70 OJ 92/C 110/01

71 Opinion of the Court 1/92, OJ 92/C 136/01

72 Communiqué of EFTA ministers at their meeting in Reykjavik, 20./21.5.1992, point 7, in: EFTA Bulletin 2/92, p.7

II. THE EUROPEAN ECONOMIC AREA AGREEMENT

1. Introduction

The major goal of the EEA negotiations was to elaborate a system whereby EFTA countries were able to participate in the EC's Internal Market Programme. Negotiations were able to take place on common ground as the relationship between the parties concerned was based on common values of democracy and market economy, interdependence of their economic relations[73] and common European identity. The establishment of the EEA is seen as an active contribution to the new European architecture.

The Agreement is the most comprehensive ever to be concluded either by the EC or EFTA. The underlying idea is that the same legal rules should apply in the participating countries[74], and that Community law as it has evolved over the past thirty years should be the basis for these rules.

EFTA countries will take over 80% of the acquis communautaire related to the four freedoms and flanking policies. In some cases transition periods had to be included. The homogeneity between EC rules and corresponding EEA rules shall not only be ensured at the entry into force of the Agreement, but also during the dynamic development of the Agreement. This has considerable political and legal consequences in so far as it creates a new, albeit complementary, institutional structure.

Delicate questions arose in the construction of a legislative system within the EEA. In particular, the preservation of decisional autonomy of both sides seemed to give rise to insurmountable problems. The solution negotiated is one of checks and balances based on close co-operation.

The EEA is a dynamic and open concept with the possiblity for existing members to withdraw[75] or new members to accede[76]. This dynamic character became apparent during the negotiations when changes in central and eastern Europe coincided with the EEA negotiations. This prompted the majority of EFTA countries to reconsider their attitude towards EC membership. Thus the character of the EEA was evolving even while negotiations were still in progress. The EEA will be the first step towards membership for those EFTA countries which have already decided to make an application for EC

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73 In 1991 60.9% of EFTA countries' imports came from the EC and 59.4% of EFTA exports went to the EC. 1/4 of the Community's external trade is with EFTA, equivalent to its trade with the United States and Japan combined

74 Article 126; twelve EC Member States and seven EFTA States

75 Article 127: Each party may withdraw from the Agreement with at least a twelve months notice in writing to the others

76 Article 128.1: If a European state becomes a member of the Community it shall, if it becomes a member of EFTA it may apply to become a party to the EEA Agreement

membership[77]. It does not prejudge, however, the possibility of any EFTA state to accede to the European Communities. During the years ahead, the EEA will constitute an element of predictability during the negotiations for full Community membership.

The EEA offers a multi-functional strategy. It may serve as an optimal preparation for membership as well as a medium-term independent option. It has to be pointed out, however, that the EEA is no substitute for EC membership: several fields are not covered by the Agreement (cp. Chapter 3) and EFTA states cannot participate in the EC decision-making procedure (cp. Chapter 4.5).

For some EFTA countries the EEA may remain the only basis of their relations with the Community for many years to come. The potentially wider role which the EEA could play is one reason to see the Agreement as more than just a short term stepping stone to full Community membership.

The EEA will bring major economic benefits for all its partners. One market for 380 million consumers and economic operators will be established which covers 40% of world trade.

The scope of the Agreement goes beyond that which was normally ascribed to classical FTAs with the EFTA countries. It is drafted as a substantially improved free trade area, a logical continuation of existing free trade arrangements and compatible with Art XXIV GATT. It differs from the former FTAs in so far as it is possible that the Agreement will develop dynamically in the future. It is clear that the EEA is an important investment in the future for the participants as well as for Europe.

2. General remarks

The Treaty establishing the EEA is an Association Agreement in accordance with Art 238 of the EEC Treaty. This article allows the Community to conclude with a third state, a union of states or an international organisation international agreements establishing an association involving reciprocal rights and obligations, common action and special procedures. Such agreements are concluded by the Council, acting unanimously, after receiving the assent of the European Parliament by absolute majority.

As the EEA Agreement concerns not only competences of the Community but also those of the Member States it is a "mixed agreement", that is to say, it requires not only the signature of the Council of Ministers, but also those of the national governments and thereafter it has to be ratified by the Parliaments of the EC member states in acordance with their own national law.

Unless otherwise provided the Agreement prevails over existing bilateral or multilateral agreements binding the Community and one or more EFTA states to the extent that the same subject matter is covered by the Agreement (Article

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77 Official applications from Austria, 17.7.1989; Sweden, 1.7.1991; Finland, 18.3.1992; Switzerland, 26.5.1992; Norway 25.11.1992

120)[78]. According to the "Joint Declaration on the relation between the EEA Agreement and existing agreements" the EEA Agreement shall not affect rights assured through existing agreements until at least equivalent rights have been achieved under the current agreement.

Furthermore, the EEA Agreement does not preclude existing regional cooperation agreements in Europe[79] under the condition that the good functioning of the Agreement is not impaired (Article 121).

The Agreement consists of the main part with 129 Articles, 50 Protocols and XXII Annexes. The Protocols and Annexes form an integral part of the agreement (Article 119). The main part describes the general provisions of the EEA whereas the Protocols regulate specific issues such as rules of origin, transitional periods and simplified customs procedures. In the Annexes the relevant acquis communautaire for the fields covered by the agreement is listed by way of reference, i.e. that the title of the relevant legislation and the source in the Official Journal is mentioned. If technical adaptations to the text for EFTA countries are needed (e.g. replacing EC institutions with EEA institutions) they are indicated after the Community Act.

Attached to these three parts there are the Agreed Minutes and 32 Joint Declarations for interpretations and/or application of the Treaty, and 39 Declarations by one or more Contracting Parties laying down the opinion of interpretation or application of certain provisions.

3. Areas not covered by the EEA Agreement

As the EEA does not establish a customs union but technically is still based on the concept of a free trade area, there will be no common trade policy and therefore no common customs tariff as foreseen in Articles 18 to 29 of the EEC Treaty. This means that some border controls will still exist. Further the "rules of origin" regime will be applicable leading to the economic drawback of additional administrative and production costs (see also Chapter 5.1).

In general it can be said that rules governing the Community's relations with third countries are not part of the Agreement. Nevertheless certain aspects inevitably have to be coordinated to some extent. However this coordination will take place on a case by case basis[80].

There will be no common policy on taxation and financial matters. This means that the harmonization of direct or indirect taxation will not apply to the EFTA countries, neither will they participate in the European Monetary System

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78 Exceptions to Article 120 are laid down in Protocols 41, 42 and 44. Protocol 41 explicitly list four agreements which will remain in force; Protocol 43 deals with the bilateral agreement between Austria and the EEC on the transit of goods by road and rail. Regarding the last protocol cp. Chapter 5.3

79 Nordic cooperation; Switzerland and Liechtenstein; Austria and Italy concerning Tyrol, Vorarlberg and Trentino - South Tyrol/Alto Adige

80 Protocol 12 on Conformity Assessment Agreements with third countries

(EMS) nor in the European Monetary Union (EMU)[81]. The same holds true for all EC developments towards political union and a common defence and foreign policy[82].

Finally, the Common Agricultural Policy and the Fisheries Policy of the EC are not part of the EEA. This means that unless otherwise provided (see also Chapter 5.1) agricultural products, fish and other marine products can be subject to customs duties or quantitative restrictions.

4. Institutional provisions, Article 89-114

4.1. Joint bodies

The Agreement establishes the following joint bodies:

1. The EEA Council
2. The EEA Joint Committee
3. EEA Joint Parliamentary Committee
4. EEA Consultative Committee

4.1.1. EEA Council

The EEA Council is responsible for giving the political impetus in the implementation of the Agreement and laying down the general guidelines for the EEA Joint Committee. It shall take the political decisions leading to amendments of the Agreement (Article 89).

The EEA Council consists of the members of the EC Council and members of the EC Commission, and of one member of the Government of each EFTA State. Decisions are taken by agreement between the Community and the EFTA States (Article 90). It will convene twice a year or whenever circumstances so require (Article 91). In exceptionally urgent cases the Contracting Parties may use the "droit d'évocation" which allows them to refer particularly difficult issues (see below 2. EEA Joint Committee) to the EEA Council after having first discussed it in the Joint Committee (Articles 5 and 89.2).

4.1.2. EEA Joint Committee

The EEA Committee is created to ensure the effective implementation and operation of the Agreement (Article 92). It consists of representatives of the Contracting Parties - most typically, high officials, and takes its decisions by agreement, EFTA speaking with one voice (Article 93). In order to fulfil its functions it shall meet at least once a month (Article 94.2). An annual report will be issued on the functioning and the development of the Agreement (Article 94.4)

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81 Article 46 foresees exchange of views and information on the conduct of economic and monetary policies on a non-binding basis. Thereby the Contracting Parties have the possibility to discuss unforeseen developments or avoid disconcerted actions

82 According to a Declaration by the Governments of the Member States of the EC and the EFTA States a political dialogue on foreign policy with a view to developing closer relations in spheres of mutual interest is envisaged

One of the main objectives of the EEA Joint Committee is to provide a forum for consultations between the Contracting Parties (e.g.in the case of safeguard measures - Article 113; cp.Chapter 4.3.) and for the exchange of views and information (e.g.in the decision making process - Articles 97; cp.Chapter 4.5.).

Decisions to amend Annexes and several protocols may be taken by decision of the EEA Joint Committee (Article 98). Furthermore the Committee is charged with the uniform interpretation of EEA rules in the future[83]. To this end it will keep under constant review the development of case law as far as provisions of the EEA Agreement or those of Community legislation which are substantially reproduced in the Agreement are concerned[84]. Should any interpretation in case law which is not homogeneous with Community law arise, the Joint Committee has to try to solve it (Article 105). In so doing it may not affect the case law of the European Court of Justice (Protocol 48).

The EEA Joint Committee may also settle disputes (cp. Chapter 4.4.) concerning interpretation or application of the Agreement (Article 111).

At any time a Contracting Party may exercise the "droit d'evocation" i.e. raise a matter of concern at the level of the EEA Joint Committee. Consultations shall be held on any point of relevance to the Agreement which gives rise to a difficulty (Articles 5 and 92.2).

4.1.3. Joint Parliamentary Committee[85]

The Committee is composed of an equal number of members of the European Parliament and members of the Parliaments of the EFTA States appointed by the respective bodies. The total number of members is sixty-six. The Committee shall elect its President and Vice-President from among its members. The office of President shall be held alternately, for a period of one year, by a member appointed by the European Parliament and by a member appointed by a Parliament of an EFTA State. The Committee shall set up a bureau.

The Joint Parliamentary Committee has a different function from that of the European Parliament. Unlike the European Parliament it has no formal role in the decision-making process in the EEA but is intended to contribute to a better understanding and promote the dialogue between the parties. To this end it shall hold twice yearly general sessions alternately in the Community and in an EFTA state. At each session a decision shall be taken where the next general session shall be held. Extraordinary sessions may be held when the Committee or its bureau so decides in accordance with its rules of procedure

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83 Article 6 contains the key provision for the interpretation of the Agreement as finally drafted: if provisions are identical in substance to EC law they shall be interepreted in conformity with the relevant rulings of the Court of Justice of the European Communities given prior to the date of signature of the Agreement

84 This makes it necessary to send all relevant judgments of the EFTA Court, the Court of Justice of the European Communities, the Court of First Instance of the European Communities and the Courts of last instance of the EFTA States to the EEA Joint Committee

85 The relevant provisions are to be found in Article 95 and Protocol 36

(which will be adopted by a two-thirds majority of the members of the Committee).

It may express its views on all questions concerning the Agreement in the form of legally non-binding reports or resolutions. In particular it shall examine the annual report issued by the EEA Joint Committee.

4.1.4. EEA Consultative Committee

The Committee unites an equal number of members of the EC Economic and Social Committee and members of the EFTA Consultative Committee. It shall form the basis for co-operation between economic and social partners and is intended to enhance awareness of the economic and social aspects in relation to the growing interdependence within the context of the EEA. Its views may be expressed by legally non-binding reports or resolutions (Article 96).

4.2. Surveillance Procedures

Besides these joint bodies there are a number of surveillance bodies to ensure that the Contracting Parties fulfil their obligations (i.e. implement, apply and interpret EEA rules correctly) and that EEA competition rules are respected[86] (cp.Chapter 5.1.).

In this respect the two pillar model is pursued. The EC and EFTA will assume surveillance according to their own responsibilities. The EC Commisssion will ensure observance of rules within its own competence, and its counterpart, the EFTA Surveillance Authority (ESA), will ensure observance in so far as it has jurisdiction in the EFTA countries[87]. In order to ensure uniformity both bodies, which are completely independent and separate, will co-operate, exchange views and consult each other on surveillance policy issues and individual cases (Article 109.2).

A fundamental prerequisite for the functioning of the two-pillar structure are sufficiently clear and objective criteria for the attribution of cases. The monitoring of competition law cases by these two bodies is dealt with by Article 56 which establishes a system allocating cases based on the criteria of turnover threshold or territory concerned.

An EFTA Court is intended to act in cooperation with the European Court of Justice. The jurisdiction ratione materiae as laid down in Article 108.2 covers:

a) actions concerning the surveillance procedure regarding EFTAStates

b) appeals with regard to decisions taken by ESA in the field of competition, including state aid
c) disputes between two or more EFTA states regarding the interpretation of

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86 This involves the provisions on public procurement (Articles 65(1)); state aid (Articles 49, 61-64); and agreements between undertakings (Articles 53-60)

87 In accordance with Article 108.1 the ESA was set up by Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice

the EEA Agreement, the Agreement on the Standing Committee or the Agreement establishing the ESA and the EFTA Court[88].

4.3. Safeguard measures

In accordance with a general safeguard clause a Contracting Party may be allowed to take measures contrary to the obligations contained in the Agreement.

The clause may be triggered where serious economic, societal or environmental difficulties of a sectorial or regional nature liable to persist arise. A Contracting Party may unilaterally take appropriate measures strictly necessary to remedy the situation which will be applicable to all Parties. Priority will be given to those measures which least disturb the functioning of the Agreement (Article 112).

A Contracting Party which considers it necessary to take a safeguard measure is obliged without delay to notify the other Contracting Parties and to follow the procedure established in Article 113 with regard to its implementation. The other Contracting Parties have the possibility to take proportional rebalancing measures if, through recourse to the safeguard clause, an imbalance arises between the rights and obligations under the Agreement (Article 114)[89].

4.4. Settlement of disputes

The Agreement introduces an international dispute settlement system whereby the EEA Joint Committee, in order to guarantee and preserve homogeneity in the EEA, has been given the special task of settling disputes concerning interpretation or application of the EEA Agreement. The Community (not a single EC member state) or an EFTA state may bring the matter before the EEA Joint Committee.

If the provisions involved are substantially identical to those of the EEC Treaty, the ECSC Treaty or secondary legislation derived therefrom, the parties to the dispute, after three months of unsuccessful engagement in the EEA Joint Committee, may agree to request the Court of Justice of the European Communities to provide a (binding) ruling on the interpretation of the relevant provisions. If the EEA Joint Committee has not reached a solution within six months or if, by then, the Contracting Parties have not asked the Court of Justice, a Contracting Party may, in order to remedy possible imbalances, either take safeguard measures in accordance with Article 112 or

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88 Article 108 should be interpreted in connection with Article 32 of the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice

89 Iceland and Austria have made unilateral declarations concerning the conditions under which they envisage making use of the safeguard clause; in relation to the latter the EC made a declaration that it considered it to be without prejudice to the rights and obligations of the Contracting Parties

instigate the proceedings set out in Article 102[90], which may ultimately lead to the provisional suspension of the relevant rules (Articles 111.1 - 3).

If a dispute concerns the scope or duration of safeguard measures or proportionality of rebalancing measures the EEA Joint Committee will try to solve the dispute within three months (Article 111.4). After this date any Contracting Party may refer the dispute to an arbitration binding inter partes[91]. No question of legal interpretation may be dealt with in such procedure[92].

4.5. The decision-making procedure in the EEA

This part of the agreement attempts to integrate the EFTA countries and the EC into a common structure. Nevertheless the EEA institutions and those of the Community should develop in a parallel way and there is no intention to merge the existing Community institutions into a single set of EEA institutions having ultimate control over both the EFTA countries and the EC member states. The basic concept is constant exchange of information and views between the EC and the EFTA countries, respecting the EC's and EFTA's decision making autonomy with the possibility for EFTA states to make their views known in a very early stage.

As no Contracting Party transferred legislative competences to an EEA body, the parliaments in the EFTA countries maintain their legislative power i.e. the right to accept or refuse any amendment to the EEA rules.

Articles 99 and 100 are the central provisions concerning the EEA decision-making procedure. The aim of the two provisions is to guarantee the EFTA countries a de facto influence on new EEA-legislation while at the same time safeguarding the formal autonomy of the EC's decision-making.

Whenever EC legislation affects fields governed by the EEA Agreement the EC Commission is obliged to informally seek advice from experts of the EFTA states in the same way as it seeks advice from experts of the EC member states for the elaboration of its proposal (Article 99.1).

Where the EC Commission is assisted in the exercise of its executive powers by committees, it shall ensure that EFTA experts have as wide a participation as possible in the preparatory stage of the draft measures before the submission to the relevant committee. In this regard, when drawing up draft measures the EC Commission shall refer to experts of the EFTA States on the same basis it refers to experts of the EC member states (Article 100)[93]. The

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90 This provision is rather unclear, as it is not known excactly how the extent of the relevant acquis to be suspended will be determined

91 cp. Protocol 33 on arbitration procedures

92 The wording of this provision follows the Court of Justice Opinion (1/91) in which the Court made it clear that no other judiciary body than it is entitled to interpret EC law

93 As a supplement to this provision Article 101 provides the possibility for EFTA experts to be associated with the work of 8 Committees, mentioned in Protocol 37

experts involved will have an equal standing with national experts from the EC member states in the work preparatory to consultation of the EC Committees. The EC Commission will pursue these consultations as long as it is deemed necessary before the matter is finally submitted at a formal meeting[94]. Where the EC Council is seized in accordance with a procedure applying to a particular committee, the EC Commission shall transmit to EC Council the views of the EFTA experts concerned.

As soon as a legislative act is adopted in the EC on an issue which is governed by the Agreement the Community shall inform as soon as possible the other Contracting Parties in the EEA Joint Committee. To guarantee legal security and homogeneity of the EEA an amendment of the Annex to the Agreement shall be adopted in the EEA Joint Committee as closely as possible to the corresponding new Community legislation with a view to permitting a simultaneous application (Article 102).

The legal acts adopted by the Joint Committee are binding for the Contracting Parties only at an international level. Articles 7 and 104 along with Protocol 35 explicitly rule out supranationality. The Contracting Parties have to ensure domestic implementation and application. If constitutional requirements have to be fulfilled, Article 103 lays down several dates on which a decision of the Joint Committee may enter into force[95].

Where agreement on an amendment cannot be reached in the EEA Joint Committee because the adoption of a new Community law constitutes problems for EFTA countries, the EEA Joint Committee shall examine all further possibilities to maintain the good functioning of the Agreement and take any decisions necessary to this effect (Article 102.4). Should it not be possible to find an amicable solution and therefore no decision is taken in the Joint Committee for six months (from the date of referral to the EEA Joint Committee or, if this is later, on the date of entry into force of the corresponding Community legislation) the affected part is regarded as provisionally suspended, subject to a decision to the contrary by the EEA Joint Committee. The EEA Joint Committee shall pursue its efforts to agree on a mutually acceptable solution in order for the suspension to be terminated as soon as possible (Article 102.5)

From the point of view of the EFTA-countries the formulation of Articles 97-104 can be criticized because of their implicit assumption that all initiatives aimed at modifying the annexes and protocols to the EEA-Treaty should come from the Community. While Articles 97 - 104 do not explicitly exclude initiatives from the EFTA-side, the underlying assumption is that the drafting - also of rules having their origin in an EFTA-initiative - should be carried out by the EC-Commission according to internal EC rules.

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94 Declaration by the European Community on the participation of EFTA states' experts in EC Committees applying Article 100 of the Agreement

95 According to the Declaration by the governments of the EFTA States on Article 103.1 they will use their best endeavours to ensure that the necessary constitutional requirements are fulfilled at the earliest possible date

4.6. Homogenity

The objectives of the Contracting Parties is to achieve as uniform an interpretation as possible of the Agreement provisions. The Joint Committee is under an obligation to attempt to homogenise the differences in interpretation which may arise (Article 105), and if necessary use the dispute settlement procedure. a system of exchange of information is also provided (article 106). Article 107 grants EFTA states the option to allow a national court or tribunal to ask the Court of Justice of the European Communities to give a binding ruling on the interpretation of an EEA rule[96]. If an EFTA state wishes to do so, it has to notify the Depositary and the European Court according to the procedure laid down in Protocol 34.

5. The Four Freedoms

The Agreement aims at creating a homogeneous EEA in which trade and economic relations based on common rules and equal conditions of competition may develop (Preamble and Art 1.1). For this reason the extension of the Four Freedoms to the EEA is envisaged (Preamble and Art 1.2).

5.1. Free movement of goods and related legislation, Articles 8-27, 53-60, 61-64 and 65.

Approximately 800 acts of EEC legislation associated with the free movement of goods have been integrated into the Agreement.

5.1.1. Products to which the free movement will apply

The freedom of movement will apply to industrial products (Chapters 25 - 97 of the Harmonized Commodity Description and Coding System) (Article 8) - save some exceptions listed in Protocol 2[97] and certain processed agricultural products in Protocol 3.

Regarding agricultural products, six bilateral agreements which further develop or supplement the existing agreements were signed in the form of exchanges of letters[98] at the same time as the EEA Agreement and will enter into force at the same time as the Agreement (declaration of principle in Protocol 42). They contain, apart from reciprocal trade concessions, unilateral concessions by the EFTA States in order to contribute to the reduction of social and economic disparities between regions within the EEA (cp. "principle of cohesion" below).

Protocol 3 lists several processed agricultural products falling under the EEA

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96 Protocol 34 and Article 107 were introduced after the first EC Court of Justice Opinion (1/91). National courts are now bound by a preliminary ruling of the European Court. The previous text only forsaw an optional binding character of the ruling

97 casein, egg albumin, milk albumin, dextrins and starches

98 The bilateral agreements are based on Article 113 of the EEC Treaty

regime[99]. For the majority of these products the system of import levies and export refunds on the agricultural component, known from the previous EC-EFTA FTAs will be used. Only a few, typically tropical products, such as coffee and tea, are not subject to this system.

The EEA also incorporates provisions which aim to abolish technical barriers to trade in certain agricultural products[100]. In an evolutionary way agricultural trade shall be liberalised progressively by carrying out reviews of the conditions of trade in this sector (Article 19.2 and 3).

In this context the principle of cohesion has to be considered. EFTA states will contribute to the reduction of social and economic disparities between the EEA regions[101]. This obliges EFTA countries on the one hand to give easier market access for certain agricultural products (cohesion products) and on the other hand provide financial assistance for a five-year period in the form of two percentage point interest rebates for loans (1.5 billion ECU) and direct grants (500 million ECU) (Protocol 38). Member States which will benefit from this assistance are Greece, Ireland, Portugal and some regions in Spain, with priority given to projects in the fields of environment, transport, education and training. The mechanism will be administered by the European Investment Bank (EIB) and the loans will be made according to current EIB criteria.

The regulations for fish products, mainly important for Norway, Sweden and Iceland, are to be found in Protocol 9. According to this Protocol customs duties, quantitative restrictions and measures having equivalent effect will be abolished for certain products when the EEA Agreement enters into force[102]. Duties on the remaining varieties will gradually be reduced or abolished over a period of several years until 1.1.1997[103]. For very sensitive products[104] some EFTA States may temporarily maintain restrictions in accordance with Appendix 1 of Protocol 9. A third category of fish and fish products will continue to be subject to existing levels of duty.

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99 e.g. buttermilk, yoghurt, margarine, confectionary and chocolate, pasta, bread, potatoes, jams, fruit jellies, ice cream, beer

100 Protocol 47 on the abolition of technical barriers to trade in wine (including sparkling wine) and Joint Declaration on Protocol 47: the relevant EC legislation on wine relates to product definition, oenological practices, composition of products and modalities for circulation and marketing. Annex I deals with Veterinary and phytosanitary matters

101 Preamble paragraph 6; Article 115; Protocol 42

102 These products are listed in Table I of Appendix 2 as regards EFTA imports (processed products of fish and crustaceans, molluscs and other aquatic invertebrates) and in Table II of Appendix 2 for the Community (e.g. cod, haddock, saithe, caviar substitutes)

103 Table III of Appendix 2 (e.g. live fish, crustaceans, molluscs)

104 Finland: salmon, baltic herring; Liechtenstein and Switzerland: fats and oils for human consumption, feedingstuffs for production animals; Sweden: herring, cod

State aid which distorts competition shall be abolished[105]. The Contracting Parties shall endeavour to ensure conditions of competition which will enable the other Contracting Parties to refrain from the application of anti-dumping measures and countervailing duties (Protocol 9, Article 4.3).

As far as trade in coal and steel products is concerned (Article 27) Protocol 14 provides as a general rule that the bilateral FTAs remain unaffected unless otherwise provided for in the protocols. New elements which are not covered under the FTAs are e.g. abolition of quantitative restrictions on export and measures having equivalent effect as well as customs duties and charges having equivalent effect. Specific provisions on competition in the coal and steel sector are laid down in Protocol 25.

5.1.2. Provisions directly affecting the free movement of goods

Customs duties on imported and exported goods, and any charges having equivalent effect[106] as well as customs duties of a fiscal nature are prohibited.

According to Articles 11 and 12[107] quantitative restrictions on imports and exports and all measures having equivalent effect must be abolished. Only Iceland may retain quantitative restrictions on certain products, basically "brooms and brushes" (Protocol 7).

Obstacles to trade are justified only on the grounds enumerated in Article 13 the terms of which are identical to Article 36 of the EEC Treaty.

Rules of origin for the EEA are laid down in Protocol 4. A product is considered to have EEA origin where it is either "wholly obtained or sufficiently worked or processeed in the EEA" . It is EEA origin, and not that of the individual EEA countries which matters: this allows for an unlimited cumulation of manufacturing processes within the whole of EEA territory. This is extremely important for economic integration within the EEA as only products which have obtained EEA origin can circulate free of duty between the EC and the EFTA countries.

Anti-dumping measures, countervailing duties and measures against illicit commercial practices attributable to third countries may not be applied to areas covered by the Agreements and in which the acquis communautaire is fully integrated into the Agreement (Article 26 and Protocol 13).

As border controls remain in the EEA the Contracting Parties include

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105 Protocol 9, Article 4.1 and Joint Declaration on the agreed interpretation of Article 4.1 and 4.2. of Protocol 9 on trade in fish and other marine products

106 Article 10 corresponds to Articles 12 and 17 EEC Treaty. Customs duties on imports and exports, and charges having equivalent effect have been abolished under the FTAs since 1984

107 Equivalents to Article 30 and 34 EEC Treaty

provisions for simplified cross-border traffic (Article 21 and Protocol 10[108]) and mutual assistance in customs matters (Protocol 11[109]). The cooperation in trade facilitation shall be improved in the context of Community programmes and actions (Article 21.3).

In order to abolish possible technical barriers to trade (Article 23 (a)) and to provide for the same rules in the technical field the EFTA states will integrate 650 legal acts into their national laws. Areas covered are listed in Annex II[110]. As regards areas not regulated by Community law the principle of mutual recognition will apply, i.e. a product lawfully produced and put on the market in and EFTA state can also be put on the Community market and vice versa[111].

5.1.3. Other provisions related to the free movement of goods

The acquis communautaire in transparency and competition mattters related to the production and sale of energy largely applies to the EEA[112]. Of particular importance in this context are two Community directives, one on the transit of electricity through transmission grids and the other on the transit of natural gas through grids. According to these directives, the high voltage or high pressure grids must henceforth be open to other grid operators if capacity is available and a price is agreed.

The Agreement introduces a new element in relation to trading monopolies: state monopolies of a commercial character (monopolies of production and services monopolies are not included) must be adjusted so that no discrimination in the conditions under which goods are procured and marketed will exist between nationals of EC members and EFTA States[113]. According to Protocol 8 a transitional period ending 1 January 1995 is granted to Austria (salt) and Iceland (fertilizers). Some room for manoeuvre is granted to the EFTA countries monopoly over sale of alcohol. The Nordic EFTA states declare that their monopoly is based on important health and social policy considerations.

So far no bilateral agreements on public procurement existed between the EFTA countries and the EC. The EEA Agreement will integrate this sector and create

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108 Random checks, common border posts, harmonization of opening hours and simplified procedures for certain kinds of goods

109 Exchange of information between customs authorities

110 e.g. motor vehicles, tractors, lifting and mechanical handling appliances, household appliances, gas appliances, textiles, foodstuffs, medicinal products, cosmetics, toys, tobacco

111 The so-called "Cassis de Dijon principle" which only knows exceptions if a state proves that the observance of national rules is necessary to satisfy mandatory requirements relating in particular to the protection of public health, the defence of the consumer and the protection of the environment

112 Article 24, Annex IV

113 Article 16 corresponds to Article 37 of the EEC Treaty

single market in public procurement[114]. Consequently it will not be possible to use preferential procurement policies to support domestic industry in the fields of telecommunications, water, transport and energy.

The regulations on public procurement are to be under constant EEA surveillance (cp. Chapter 4.2). The surveillance body has the right to rectify infringements and prevent further injury to the aggrieved party as well as the power to suspend contacts and award damages.

The aim of the competition rules (Articles 53-60, Protocols 21 to 25 and Annex XIV) is to create equal conditions of competition for economic operators within the whole EEA. Thus far the anti-trust rules in the EC and in EFTA countries were different in a number of areas. The Parties decided to base the system on the existing EC rules[115].

The EEA competition system and its surveillance is based on the two pillar model (cp. Chapter 4.29). ESA has the same powers as the EC Commission in handling competition matters falling under its competence. ESA will thus be able to issue negative clearances, individual exemptions, undertake investigations and issue fines for infringements of competition rules which are enforceable in the EEA (Article 110)[116]. Appeals concerning decisions initiated by the ESA will be dealt by the EFTA Court.

State aid which affects trading relations between the Contracting Parties is generally prohibited[117]. Exceptions may be granted in the light of certain political, economic or social considerations. Thus aid of a social character granted to individual consumers is compatible with the EEA-Treaty, provided that it does not discriminate between products depending on their origin (Article 61.2 (a)). Aid to promote development in regions with an abnormally low standard of living or serious underemployment is also permitted (Article 61.3 (a)).

In order to ensure a uniform implementation, application and interpretation of the rules on state aid throughout the EEA as well as to guarantee their harmonious development, the EC Commission and the ESA shall exchange information on views of general policy, prepare surveys on state aid in their respective countries and shall inform each other of all decisions as soon as they are taken (Protocol 27). All existing and planned aid schemes must be reported to the relevant surveillance authorities, which then will have the right to abolish or alter them. New aid schemes must be approved by the relevant surveillance authority before they are implemented (Article 62).

If one of the surveillance authorities considers that the implementation by the other authority is not in conformity with the maintenance of equal conditions of competition within the EEA regarding state aid it shall seek an

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114 Article 65.1, Annex XVI

115 Articles 85-90 of the EEC Treaty

116 Norway and Austria made unilateral Declarations on the enforcement of decisions regarding pecuniary obligations followed by corresponding declarations of the EC

117 Articles 61-64 (Articles 92,93 EEC Treaty), Protocols 26,27, Annex XV

exchange of views. If a commonly agreed solution has not been found interim measures may be taken, which can be transformed into definitive measures after three months (Article 64).

The Council Directive 85/374 will be the basis for the rules regarding product liability (Article 23 (c) and Annex III). Under this directive a Community producer is liable for faulty products originating within the Community. Where the products originate from third countries the importer is held liable without the need to show fault. This system is to be extended to include the whole of the EEA but only on the condition that the Lugano Convention on jurisdiction and enforcement of judgements in civil and commercial matters is ratified by the states concerned. The Lugano Convention ensures that a domestic verdict in favour of a consumer is executable in the entire EEA area. Until the Convention enters into force for the particular country concerned the importer will remain liable without fault for imported products. Once it does enter into force the importer's liability will be waived and the producer will be held liable[118].

The prohibition of discriminatory fiscal treatment with regard to products of EFTA countries (Article 14) was already covered by the FTAs. Henceforth the Contracting Parties will not be able to impose on the products of another Contracting Party any internal taxation of such a nature as to afford indirect protection to other domestic products (Article 14.2). As to internal taxation on products to be exported to another Contracting Party, the repayment of such taxes shall not exceed that imposed on them, whether directly or indirectly (Article 15).

The provisions related to intellectual property[119] incorporate a number of rules which aim to harmonize the law. The protocol lays down a number of areas of action: the internal legislation of EFTA countries is to be adjusted so as to make it compatible with Community law; the existing Court of Justice case law on the exhaustion of intellectual property rights shall apply; the Contracting Parties will have the right to take decisions on the extension of the legal protection of semi-conductors to persons from a third country, such extensions having to be recognised by all Contracting Parties; EFTA countries will now have the right to participate in the negotiations for a Community Patent system; adherence to a number of international Conventions by 1 January 1995; and agreement to implement any results reached at the end of the Uruguay Round of the GATT negotiations.

The EEA Agreement contains only two trade related safeguard clauses[120]: one on the re-export of products to third countries to which quantitative restrictions apply and the shortage of essential products (Article 25), and the other on balance of payment difficulties (Article 43.4).

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118 This includes import cases from and EFTA State into the Community or from the Community into an EFTA State or from an EFTA State into another EFTA State

119 Article 65.2, Protocol 28 and Annex XVII

120 for the general safeguard clause cp. Chapter 4.3.; for the safeguard clause related to capital cp.Chapter 5.4

5.2. Free movement of persons, Articles 28 - 35

The EEA Agreement guarantees free circulation for all EEA workers and self-employed persons[121]. The entire acquis communautaire related to this sphere is integrated into the EEA.

As is the case within the EC free circulation of persons does not apply to employment in the public service (Article 28.4). The very restrictive interpretation of this concept by the European Court of Justice is, according to Article 6, part of the Agreement (cp.n.83).

Free movement of persons results in the abolition of all discrimination based on nationality regarding employment, remuneration and other working and employment conditions. An EEA worker has the right to accept job offers and to move freely to and stay in any EEA country for this purpose and to remain there after having been employed. In order to ensure freedom of movement for workers, self-employed persons and their dependants, regulations are foreseen in the field of social security[122] and mutual recognition of diplomas, certificates and other evidence of formal qualifications[123]. Some exceptions for technical reasons were included for the mutual recognition of professional qualifications.

The freedom of establishment means that nationals of an EEA country will have the right to set up business, agencies, branches and subsidiaries to pursue activities as self-employed persons anywhere in the EEA[124]. The provisions on the right of establishment incorporating the acquis communautaire are laid down in Annex VIII[125]; specific professional fields in the section related

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121 Article 28 (Article 48 EEC Treaty), Annex V (freedom of movement for workers, movement and residence for workers and their families, right to remain in the territory after having been employed) and Article 29

122 Article 29 (Article 51 EEC Treaty) and Annex VI: Council Regulation on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community

123 Article 30 (Article 57 EEC Treaty) in connection with Annex VII which incorporates the Council Directive on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration and lists specific professions e.g. legal profession, medical and para-medical activities, architecture, commerce and intermediaries, industry and crafts, and services incidental to transport and film industry

124 Article 31 (Article 52 EEC Treaty), Annexes VIII to XI

125 Abolition of restrictions on freedom to provide services; right to remain in the territory after having pursued therein an activity in a self-employed capacity; right of residence; right of residence for employees and self-employed persons who have ceased their occupational activity; right of residence for students

to the free movement of services are listed in Annexes IX to XI[126].

Companies or firms formed in accordance with the law of an EC Member State or an EFTA State and having their registered office, central administration or principal place of business within the EEA shall, with regard to freedom of establishment, be treated in the same way as natural persons who are nationals of EC Member States or EFTA States (art. 34).

5.3. Free movement of services, Articles 36-39

Significant obstacles which had remained over the last few years were removed by the EEA Agreement. There will be no restrictions on the freedom to provide services within the EEA Area.

In particular financial services, a domain which traditionally is highly regulated will be governed by the principle of a single licence and home-country control (Annex IX).

In order to make transportation more efficient, the transport markets in the EEA will be open to competition[127]. The principle of mutual and reciprocal access to markets for road haulage is applicable. In the civil aviation sector market access and the structure for setting fares will be made more flexible[128]. Nevertheless Austria negotiated and concluded a bilateral Agreement with the EC on Alpine transit traffic. This agreement is not part of the EEA Agreement[129] and the provisions in the bilateral agreement will prevail over those in the EEA Agreement to the extent that it covers the same ground. Accordingly some parts of the EEA regulations on transport will not be applicable to Austria.

In the telecommunications, information and audio-visual services a number of EC Directives have been taken over by the EFTA countries to create a basis for closer cooperation and common regulation. The aim is to create a competitive market for a sector which previously has been the exclusive domain of public or semi-public monopolies. In particular, the Directive on competition, the Open Network Provision Directive in the telecommunication area and the Directive on television broadcasting in the field of audiovisual services will have important impact on the market (Annex X and XI).

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126 Annex IX: Financial Services (Insurance: Non-life insurance, motor insurance, life insurance; Banks and other credit institutions; Stock exchange and securities); Annex X: Audiovisual Services (Television broadcasting activities); Annex XI: Telecommunication Services (Open Network Provision, Directive on competition, frequency band for the coordinated introduction of digital European cordless telecommunications (DECT))

127 Articles 47-52, Annex XIII (Inland transport, Road transport, transport by rail, transport by inland waterway, maritime transport, civil aviation)

128 The Agreement incorporates the EC's "second liberalization package" in air transport which allows individual operators on a route greater freedom to set fares

129 Protocols 43 and 44 and Declaration by Austria

5.4. Free movement of capital, Articles 40-45

This freedom, which is closely linked to the free movement of persons and services, is another example of a major achievement reached in the EEA agreement. In general it enables unrestricted capital movements to take place in the EEA.

Capital may move freely from the entry into force of the Treaty with a few temporary exceptions. In general, a company or a person resident in one of the EEA countries will be able to make a direct investment[130], acquire real property[131], purchase shares, bonds or units of an investment fund, take loans and credits and make deposits with a bank in any other country of the EEA.

As free movement of capital may give rise to critical situations, a safeguard clause allows, under specific conditions, autonomous measures to place temporary restrictions on their movement[132].

6. Flanking and horizontal policies

Flanking and horizontal policies (Articles 66 to 88) do not directly influence the establishment of the four freedoms but indirectly have a very strong impact on them. Cooperation in these areas, therefore, shall be strengthened and broadened. Thus relations between the EC and EFTA countries within this field shall be on a legally binding basis for the first time.

In several specific sectors such as company law, statistics, environment, consumer protection and social policy, Community law is incorporated into the Agreement (see below). In other fields - not directly covered by EEA provisions - the cooperation will be intensified within the framework of the Community's activities (Article 78: research and technological development, information services, environment, education, training and youth, social policy, consumer protection, small and medium-sized enterprises, tourism, the audiovisual sector and civil protection). If the parties agree that it is of mutual interest it will be possible to add new areas. One such area could be cultural matters[133].

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130 During transition periods EFTA States shall not treat new and existing investments by companies or nationals of EC Member States or other EFTA States less favourably than under the legislation existing at the date of signature of the Agreement - Annex XII, 1. (e).
Iceland and Norway may continue to apply restrictions of investments in the fisheries sector - Annex XII, 1.(g), (h).

131 Austria, Finland and Iceland may continue to restrict purchase of real estate until 1.1.1996; Norway until 1.1.1995 - Annex XII, 1. (d)

132 Article 43 which corresponds to Articles 107, 108 of the EEC Treaty

133 cp. Joint Declaration on cooperation in cultural affairs in which the parties declare their "intention to contribute to a better understanding between the peoples of a multi-cultural Europe and to safeguard and further develop the national and regional heritage that enriches European culture by its diversity"

Cooperation outside the four freedoms shall normally take one of the following forms (Article 80):

- participation by EFTA States in EC framework programmes, specific programmes, projects or other actions;

- establishment of joint activities in specific areas, which may include concertation or coordination of activities, fusion of existing activities and establishment of ad hoc joint activities;

- the formal and informal exchange or provision of information;

- common efforts to encourage certain activities throughout the territory of the Contracting Parties;

- parallel legislation where appropriate, of identical or similar content;

- coordination, where this is of mutual interest, of efforts and activities in the context of international organisations and of cooperation with third countries.

Each of the EFTA states will have to pay its share in financing such programmes according to a distribution key based on the share of each EFTA states' GDP of the total EEA GDP (Article 82).

EFTA countries and undertakings will have the possibility to participate in the EC's research and technological development framework programmes notably in the Third Framework programme (1990 - 1994) (Protocol 31, Article 1.1). The governments of the EFTA countries will pay their share of the budgets of the specific programmes and the EFTA partners (companies, universities, research centres) will participate on equal footing in the projects under those programmes. The strengthening of the scientific and technological basis of European industry will help it become more competitive internationally.

The EEA Agreement gives the EFTA states the possibility of participating in the Community programmes in the field of information services - SPRINT and IMPACT. The terms and conditions for cooperation in this field will be decided after the EEA enters into force (Protocol 31, Article 2).

EFTA countries may participate in EC programmes in the field of education and training. Based on previous agreements EFTA countries already participate in COMETT II and ERASMUS. In future they will also be able to participate in Youth for Europe (Protocol 31, Article 4.1). However, participation in other EC programmes will be allowed only after the beginning of 1995 (Protocol 31, Article 4.2). This two-year delay represents the only transition period requested by the Community in the EEA Agreement.

MEDIA 95, a programme adopted by the EC in 1990 for the following five years aims to unite the resources of the fragmented audio-visual sector in Europe. The necessary decision to ensure the participation by the EFTA states in this programme shall be taken as soon as possible after the entry into force of the Agreement (Protocol 31, Article 9). The audio-visual industry in the EFTA countries will thus be able to benefit from the MEDIA 95 programme.

As mentioned above in several sectors Community law is incorporated into the EEA. Specific EC provisions on company law are laid down in Annex XXII. The

present acquis communautaire concerning company law (1st to 4th, 6th to 8th, 11th and 12th Company Law Directives) is adopted by the EFTA states. Liechtenstein enjoy a 3 year transition period, while the other EFTA states have a period of 2 years.

EC and EFTA countries have cooperated in the environmental field for many years. This will be deepened and broadened to the benefit of the environment in all EEA countries. The principle of prevention and the "polluter-pays" principle are included (Article 73.2) as well as the possibility for any Contracting Party to maintain or introduce more stringent protective measures compatible with the Agreement (Article 75). Once the European environmental Agency is established the EFTA states will be able to participate in its operation (Protocol 31, Article 3.2).

The EC provisions concerning consumer protection are incorporated[134] and the dialogue will be strengthened with a view to identifying areas and activities where close cooperation could contribute to the attainment of the parties' objectives (Protocol 31, Article 6.1). Cooperation in future EC activities in this specific field are envisaged (Protocol 31, Article 6.2).

In social policy the approach chosen by the Community to give generally binding minimum standards for working conditions with the possibility for each member to maintain or introduce more stringent measures is extended to the EEA (Article 67 and Annex XVIII). Cooperation will take place through dialogue. In particular, priority areas for cooperation are: hygiene and health at work; equal opportunities for women and men; long-term unemployment; and employment of disabled and social integration of less privileged groups. EFTA states shall participate also within the framework of the Community actions for the elderly (Protocol 31 Article 5).

The Community Charter of Fundamental Social Rights for Workers of December 9th 1989 is subject of a declaration by the Governments of the EFTA States. They underline their wish to actively contribute to the development of the social dimension of the EEA and endorse the principles and basic rights laid down in the Charter.

In order to describe and monitor all relevant economic, social and environmental aspects of the EEA, statistical information shall be provided (Article 76 and Annex XXI). All data has to be transmitted to Eurostat (Protocol 30).

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134 Article 72 and Annex XIX inter alia list Directives on price labelling, door to door selling, misleading advertising, dangerous products and package tours