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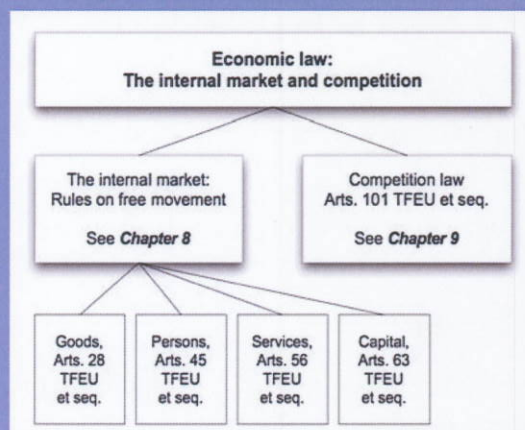
## The Internal Market beyond the EU: the EEA and Switzerland

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European Parliament, Internal Market and Consumer Protection Committee  
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## The Internal Market of the EU



Taken from:  
Christa Tobler/  
Jacques Beglinger,  
**Essential EU Law  
in Charts**,  
Budapest 2010

[www.eur-charts.eu](http://www.eur-charts.eu)

## Extension of the Internal Market

### **Four freedoms and their meaning in relations with third countries**

- In principle, the Internal Market of the EU works only within the EU, to the exclusion of third countries.
- In some cases, (part of) the freedoms have been extended to third countries through agreements.
- The briefing paper looks specifically at the EEA EFTA States and at Switzerland. In how far do the four freedoms exist in relation to these countries?

## The Internal Market beyond the EU: the EEA and Switzerland

### **The aim of the briefing paper**

- To look at the functioning of the extended Internal Market.
- In doing so, to examine two different models of integration.
- To identify challenges.
- To point to ways to enhance the performance of the extended Internal Market.

## The relevant agreements

### Two rather different legal frameworks

- The EEA:
  - A *multilateral* legal framework.
  - Based on *one agreement*, namely the European Economic Area Agreement of 1992.
- Switzerland:
  - A *bilateral* legal framework.
  - Based on *more than 120 agreements*, 20 of which form the core of the so-called “bilateral law”.

## Different degrees of extension

### Almost encompassing vs. quite selective

- EEA - almost encompassing:  
All four freedoms, though with certain limits (goods).
- Bilateral law with Switzerland - quite selective:
  - Goods: essentially for industrial and agricultural goods.
  - Persons: for natural persons only, to the exclusion of companies and firms;
  - Services: for both natural and legal persons, but quite limited (only for certain services and only for a limited time per year; special derogation possibilities);
  - Capital: in principle not covered.



## Temporal aspects

### Highly dynamic vs. essentially static

- EEA - highly dynamic:  
Originally based on European Community law pre 1992, but since then on the level of secondary law continually updated by the Joint Committee.
- Bilateral law with Switzerland - essentially static:
  - Based on the law in force at the time of the signature of the agreements.
  - Limited possibilities of adaptation by some Joint Committees.
  - Only gradual extension of the Agreement on the free movement of persons to the 2004 and 2007 Member States.

## Influence of the third countries on EU law relevant for the extension

### Some vs. almost none

- The issue: secondary law adopted by the EU may become part of the extension of the Internal Market to third countries. Do these countries have an influence on its adoption and/or content?
- EEA EFTA States: no decision-making, but a certain degree of decision-shaping.
- Influence of Switzerland: only in very few contexts a bit of decision-shaping.

# The meaning of free movement (1)

## Same vs. different interpretations

- EEA: essentially the same interpretation by the European Court of Justice (ECJ) and the EFTA Court.
- Bilateral law with Switzerland - different interpretations may be possible; e.g.:
  - In some agreements: time limits to homogenous interpretation.
  - Interpretation different from EU law due a different framework; e.g. goods: the Cassis de Dijon principle is not applied by the Swiss Federal Tribunal.
  - Important questions are open or debated; e.g. persons and services: prohibitions of discrimination on grounds of nationality *and* of restrictions? Specifically: acceptability of certain flanking measures? Rights of service recipients?
  - Danger of divergent interpretations on the two sides.

# Management

## Relatively cumbersome vs. very cumbersome

- EEA - in certain respects relatively cumbersome:  
Due to the challenges presented by the highly dynamic nature of EEA law in particular for the Joint Committee (may lead to considerable time gaps).
- Bilateral law with Switzerland - very cumbersome:  
Due in particular to the large number of Joint Committees, which may lead to problems; e.g.:
  - Relatively few meetings of the Joint Committees.
  - Lack of communication between the different Committees.
  - Slow adaptation of the annexes (if at all - no duty to adapt).



# Monitoring and enforcement

## Common mechanism vs. unilateral mechanisms

- EEA: the usual elements of EU law applied in a two pillar system (Commission/ESA as watchdogs, national courts and ECJ/EFTA Court).
- Bilateral law with Switzerland - in general no common system:
  - In principle, the national authorities and courts are in charge.
  - May lead to different views on important issues (e.g. direct effect).
  - Procedures before the ECJ only within the EU; e.g.:
    - Preliminary ruling procedure; e.g. *Grimme* (2009).
    - Annulment procedure; e.g. *Champagne* (2007).
    - Enforcement procedure.

# Overall findings

## Part of the Internal Market vs. selective participation

- EEA EFTA States - “in principle a true part of the Internal Market”:
  - Based on a well-functioning, if somewhat cumbersome legal system.
  - Free movement plus other policies that complete the internal market (e.g. competition, company and financial services law).
- Bilateral law with Switzerland - “more and more integrated”, but still quite selectively:
  - Based on a very complex and quite cumbersome legal system that in a number of respects falls short of encompassing and full free movement.
  - Reluctant to add policies that complete the internal market.

## Recommendations (1)

### Concerning the EEA - relatively few

- Notification by the Commission of legislative proposals that fall within the scope of the EEA.
- Better involvement of the EEA EFTA countries in the decision-shaping process and in the implementation phase.
- Updating the EEA Agreement itself in view of the developments of EU law.

## Recommendations (1)

### Concerning Switzerland

- Comparatively more challenges.
- Accordingly, more recommendations; e.g.:
  - Creating awareness as well as political will for better cooperation and intensification of relations (Switzerland: half-direct democracy with referenda!).
  - Involving Switzerland more in the decision-shaping process.
  - Holding more meetings of the Joint Committees (JC).
  - Strengthening of the relations between the JC and the EU institutions.
  - Notification by the Commission of legislative proposals that fall within the scope of the bilateral law.
  - Ideally: create a common enforcement system.

# Thank you for your attention!

## For further information

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