

The History of the EEA Agreement and the First Twenty Years of Its Existence

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Abstract The present chapter describes the background to the EEA Agreement, from the aftermath of the Second World War and the creation of EFTA to the 1973 bilateral Free Trade Agreements between the individual EFTA States and the then European Economic Community. It thereafter sets out the relationship between the EU and the EFTA States, against the background of a generally improved world economic situation and the need to improve the competitiveness of the European countries, starting with the Luxembourg Declaration and leading up to the Delors initiative in January 1989, which announced a change of the very parameters of the relationship. The chapter then explains how the subsequent negotiations of the EEA Agreement were carried out and the hurdles had to be overcome. The last part of the chapter briefly discusses aspects of the developments since the entry into force of the EEA Agreement on 1 January 1994, such as the dynamic and homogeneous development of the Agreement and the protection of the rights of individuals.

In order correctly to understand the EEA and its role in European integration it is vital to know the history of its creation, which must be seen against the background of the developments in Europe after the Second World War. The creation of the EEA cannot be fully understood without knowledge of the relationship between the EFTA States, on the one hand, and the European Union and its Member States, on the other. Moreover, it is also necessary to be aware of how it has developed over the years in order to understand how the EEA functions today.

The present chapter will give a brief account of the EFTA–EU relationship over the years, of the EEA negotiations and of certain aspects of the first 20 years of the EEA Agreement.

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1 The Development of the EFTA–EU Relationship

1.1 Introduction

One of the factors contributing to the successful reconstruction and development of Europe, which in 1945, after almost six years of war, to a great extent was devastated and where millions had lost their lives, was the creation of the Organization for European Economic Co-operation ('OEEC') in Paris. In June 1947, the United States' Secretary of State, George Marshall, launched a plan containing ideas on how European reconstruction could take place, the so-called Marshall Plan. All European countries were invited to participate. Most West European countries accepted this invitation and the OEEC was established in April 1948 with the task of implementing the objectives of the Marshall Plan and administering American aid to Europe. However, the Soviet Union decided not to participate in this aid programme and also convinced a number of neighbouring European countries not to do so.

Although the reconstruction and development of Europe was also discussed in other European fora (especially in the Council of Europe, created in 1949), it is mainly within the framework of the OEEC that the cradle of the EFTA–EU relationship is to be found. All through the 1950s a number of different ideas for economic cooperation in Europe were discussed in the OEEC. It may be seen as logical that, after the creation of the European Coal and Steel Community in 1952, and thereafter of the EEC in 1958, and—as a reaction to the latter—the creation, in 1960, of EFTA, the OEEC was transformed into the more global Organisation for Economic Co-operation and Development.

During the whole of the 1960s, there were repeated EFTA efforts and invitations to the EC to create a single European market. However, this was perceived by the EC side as a challenge to the creation of the European Communities, and EFTA and its Member States were therefore treated as rivals to the Communities. It was actually only in relation to the first enlargement of the Communities in 1973 that this kind of relationship gradually changed.

The EFTA–EU relationship could be divided into five different phases. The first phase, lasting from 1960 to 1972, may at best be characterised by the fact that there existed no relations at all. This phase came to an end with the accession of two EFTA countries, Denmark and the United Kingdom, on 1 January 1973 to the EC and the entry into force in that year of bilateral FTAs between the EEC and the ECSC, on the one hand, and each of the seven remaining EFTA countries, on the other. The second phase lasted from 1973 to 1983 and was characterised by the implementation of the FTAs. Full free trade under the FTAs was finally achieved by the end of 1983. The third phase began in 1984. It was marked by the first Ministerial meeting between EFTA and EC Ministers and the European Commission in Luxembourg, and the decision laid down in a special Declaration to create a dynamic European Economic Space ('EES'), the so-called Luxembourg Declaration. This was the first time the EFTA countries acted jointly and multilaterally with the EC. The follow-up to the Luxembourg Declaration culminated in 1988.

The fourth phase, lasting from 1989 to 1993, was the negotiation phase of the EEA Agreement. The important initiative which was taken by the then President of the European Commission, Jacques Delors, at the beginning of 1989, was followed by a year of exploratory talks and less than 2 years of negotiations. This initiative was concluded by the signature of the EEA Agreement on 2 May 1992. The relationship is currently in its fifth phase, which began with the entry into force of the EEA Agreement on 1 January 1994.

The following account of the development of the EFTA–EU relationship will give more attention to events on the EFTA side, mainly because these are often less well known, but also because to a great extent during the first phases of the relationship initiatives towards cooperation started on the EFTA side.

1.2 Discussions on Economic Cooperation Within the OEEC

After the Second World War broader economic cooperation in Europe was initiated through the OEEC. The cooperation was of a truly intergovernmental character, in no way interfering with the sovereignty of the participating countries. This meant that neutral countries, such as Austria, Sweden and Switzerland, could participate from the very beginning. It did not mean that arguments were lacking for more far-reaching cooperation and a more advanced level of economic integration, but it soon became obvious that there was strong resistance to such ideas, not least from the United Kingdom, which preferred close bilateral cooperation with the United States and also had to take care of its relations with the Commonwealth. Several of the smaller countries also feared that too strong an OEEC would not take their interests into account. Nevertheless, different forms for further economic cooperation within Western Europe were discussed within this framework.

Certain of these discussions were carried out within the OEEC itself, but others took place between various groupings of its Member States. This was, for instance, the case with the discussions on customs unions, held at the end of the 1940s following American pressure. France, Italy and the three Benelux countries discussed a customs union in which they wanted to include the parts of Germany that were occupied by the Western allied countries. The project was called ‘FRITALUX’. In 1949, France and Italy also signed a customs union treaty. However, this treaty never entered into force.

The British Government, which did not want to participate in a European customs union, sought closer cooperation with some like-minded governments. In 1949 this resulted in a British initiative in connection with an OEEC Ministerial meeting. Under this initiative, it was suggested that, since the United Kingdom and the three Scandinavian countries—Denmark, Norway and Sweden—generally had the same view of economic policy, which was often different from that of the more southern European countries, the four should jointly examine possibilities for cooperation. This suggestion was well received and the idea to try to get the Netherlands and Germany involved was also broached. The cooperation, which in

the end was limited to the four countries, was called 'UNISCAN'. At the beginning of 1950, an agreement on the creation of an 'Anglo-Scandinavian Economic Committee' was signed at Ministerial level. Under the Agreement the participating countries were to inform and consult each other on economic issues, at different levels of Government. The announcement of the creation of the UNISCAN caused headlines and reactions fearing that the North European block could split Europe. The reactions, however, turned out to be greatly exaggerated. In practice the activities of UNISCAN were limited to regular consultations between the four countries on their economic policy and how to defend their interests in international organisations and conferences. The cooperation within UNISCAN ended with the creation of EFTA in 1960.

Another important discussion in the OEEC during these years concerned tariffs. The Governments of the Member States were gradually abolishing quotas in their trade. It therefore became obvious that something would also have to be done about tariffs. Within the OEEC there were in those days one group of countries with high tariffs and one group with low tariffs. The high-tariff countries were, in particular, the United Kingdom, France and Italy. The low-tariff countries were the three Scandinavian countries, the three Benelux countries and Switzerland. Initially these seven low-tariff countries worked together and formed what was called 'the Low-Tariff Club,' which in the discussions with the high-tariff countries insisted that further liberalisation of imports from those countries would depend upon them lowering their tariffs. A tariff-reduction plan was worked out by the seven low-tariff countries at a meeting in April 1956 in Stockholm, and included in the Agenda for the following meeting of the OEEC Ministers, to be held in July 1956.

However, it turned out that at that meeting two other events had to be taken into account and that the tariff-reduction plan had been overtaken by events. About a month earlier, at a meeting in Venice, the Governments of the six Member States of the European Coal and Steel Community (established in 1952, see below) had approved the 'Spaak Report' regarding the creation of a European Economic Community and a European Atomic Energy Community, the treaties on which were being prepared. Furthermore, the British Government presented a proposal for what was called 'Plan G', creating a free trade area covering the whole of Western Europe. When Ministers discussed Plan G and the Low-Tariff Club proposal regarding a general lowering of tariffs in Europe, it was finally decided to entrust the OEEC with the task of examining the free trade plans and the 'tariff-reduction plan' was shelved.

1.3 The Creation of the European Communities

On 9 May 1950, the French Foreign Minister, Robert Schuman, presented a plan for the creation of a European Coal and Steel Community. This plan, a major architect of which had been the French Minister for Planning, Jean Monnet, proposed to bring all French and German production of coal and steel under one joint authority

(the High Authority). Other countries were invited to join the initiative but only Germany, Italy and the Benelux countries did so, while the United Kingdom immediately declined this invitation. The basic idea of the plan was to coordinate and control the coal and steel industries, the essential tools for any war industry, and thereby secure peace in Europe. The Treaty on the European Coal and Steel Community was signed in Paris on 18 April 1951 by Belgium, France, Germany, Italy, Luxembourg and the Netherlands. It entered into force on 25 July 1952.

In October 1951 a proposal for a European Defence Union was presented by France. All six ECSC Governments supported the proposal and a Treaty was signed in May 1952 in Paris, very much inspired by the ECSC Treaty. However, in August 1954, the French Parliament refused to approve the Treaty and the plans to set up a European Defence Union were abandoned. An Agreement on a European Political Community, signed by the same six Governments in 1953, also had to be abandoned.

In this time of something of a crisis for the ideas of European integration, Jean Monnet, then President of the High Authority of the ECSC, left that post in order to concentrate fully on the realisation of his ideas regarding a United States of Europe. Since it was difficult to find support for such ideas in France at that time, he turned instead to the Benelux countries and especially to the Belgian Foreign Minister, Paul-Henri Spaak. One of Monnet's main ideas was that Europe needed cooperation in order to be able to exploit peacefully the new source of energy: nuclear power. His plans included also wider cooperation in the field of transport.

So far only the Benelux countries had managed to create a customs union in Europe, and it was clear that within the wider OEEC group it would not be possible to agree on such far reaching economic integration. In April 1955 the Dutch Foreign Minister, Johan Willem Beyen, launched a plan to create a European common market. The Benelux countries made a synthesis of the Beyen Plan and the ideas of Monnet.

At a meeting of the Foreign Ministers of the six Member States of the ECSC at the beginning of June 1955, in the Italian city of Messina, the Benelux countries succeeded (particularly thanks to Italian support), in getting the ECSC governments to adopt a resolution declaring that the time had come for the Member States of the ECSC to go further, towards a common European market with common institutions. The aim would be to abolish in stages tariffs and quotas within such a market. Social policies should also be harmonised. A special committee of government representatives was entrusted with the preparatory work for an intergovernmental conference.

The committee was chaired by Spaak, who in April 1956 presented the report of the committee to the Foreign Ministers of the six ECSC Member States. At a meeting in Venice the following month, the Ministers endorsed the report and decided that treaty texts for both a European economic community and a European community for the peaceful exploitation of atomic energy should be drafted. A second Spaak committee was entrusted with this task. On the basis of that work Belgium, France, Germany, Italy, Luxembourg and the Netherlands were in a position on 25 March 1957 in Rome to sign the Treaty on the European Economic

Community and the Treaty on the European Atomic Energy Community ('Euratom'). The two treaties entered into force on 1 January 1958.

1.4 The Creation of the European Free Trade Association

Within the OEEC new attempts were made in the first half of the 1950s to achieve wider West European free trade, not least in the light of the advance preparations among the six ECSC Member States ('the Six')¹—for the conclusion of what was to become the EEC Treaty. To this end the Ministerial Council of the OEEC decided in February 1957 to start work on the preparation for a West European free trade area. Negotiations were initiated during the autumn of 1957, in an inter-governmental Committee of Ministers under the Chairmanship of Reginald Maudling, the then British Paymaster General. The objective was to avoid economic division in Europe by negotiating a free trade area agreement in accordance with Article XXIV GATT, covering all seventeen European Member States of the OEEC, and in which the EEC, to be created following the signature in Rome of 25 March 1957, would form one part. The ambition was to conclude an agreement in time before 1 January 1959, when the first tariff reductions were to take place in the EEC.

However, even though the complex issues involved were examined by a special committee and a great number of working parties, and considerable progress was made in finding solutions, the basic idea of a wide free trade area remained unacceptable to some of the countries that had just created the EEC, and in particular to France. On 14 November 1958, the French Minister of Information, Jacques Soustelle, held a press conference, where he announced that the French and British positions were irreconcilable and that it was senseless to continue any further. The negotiations were suspended a month later.

In December 1958 and January 1959 various attempts were made to bring together the non-EEC countries (the United Kingdom, Denmark, Norway, Sweden, Austria, Switzerland, Portugal, Ireland, Greece, Iceland and Turkey—the latter three being represented by Ireland) in order to create a front against discrimination by the EEC and to try to find a joint agreement with the Six.

At an informal meeting of Government officials in Oslo, in February 1959, the idea of creating a 'small' free trade area was first launched. This idea involved rather advanced thoughts on a Nordic Customs Union, discussed since 1957 between the Scandinavian countries.² After a new meeting in March 1959 in Stockholm, the Swedish Government, in May, issued invitations to begin substantive negotiations.

¹ During the late 1950s and the 1960s the Member States of the European Communities were frequently referred to as the '(inner) Six' and the EFTA countries as the '(outer) Seven'.

² The idea of a Nordic Customs Union, in which Finland would also participate, was eventually discarded in July 1959 at a Nordic Ministerial meeting in Kungälv, Sweden.

Talks were initiated between Denmark, Norway, Portugal, Sweden, Switzerland, the United Kingdom and Austria ('the Seven') on the creation of a free trade arrangement between them. The objective of such an arrangement was twofold: firstly, to prevent economic discrimination from the newly-created EEC and, secondly, to create free trade between the Seven in parallel to that within the EEC, with a view to later being able to conclude an agreement with the Six. This work benefited from the work already carried out during the Maudling negotiations.

The talks and the subsequent negotiations were carried out in Saltsjöbaden, in the Stockholm archipelago, during the summer of 1959. A draft plan for a European Free Trade Association was drawn up in June. On the basis of that plan Ministers from the Seven in July agreed in principle to the creation of such an association. During 8 weeks in the autumn the text of the convention was worked out and the EFTA Convention was initialled at a Ministerial meeting in Stockholm on 20 November 1959. On that occasion Ministers also expressed their readiness to negotiate with the Six with a view to creating an association of all OEEC countries. The signing of the Convention establishing the European Free Trade Association (the Stockholm Convention) took place in Stockholm on 4 January 1960 and the Convention entered into force on 3 May 1960.

It is interesting to note that the building up of the Association and a small Secretariat had started in December 1959 in Paris, which was considered to be a very suitable seat for EFTA due to the location there of the OEEC. A first sounding out of the French authorities regarding the location of EFTA to Paris, in the autumn of 1959, had received a positive reaction. However, after later negative reactions from the French side to having the seat of EFTA in Paris, at the beginning of 1960 it was decided to locate EFTA in Geneva.³ The French Government had taken the view that the OEEC should be transformed into an organisation dealing with economic matters in general, thereby preventing new 'free trade ideas' from being revived. It was thus in favour of abolishing the OEEC as a European economic organisation and replacing it by a more global organisation, the OECD, in which, *inter alia*, the United States, which had only an observer in the OEEC, now became a full member.

The Stockholm Convention contained the basic provisions needed in order to arrange for full free trade in industrial goods between the Contracting Parties. This meant that the Convention, apart from institutional provisions, mainly contained provisions regarding the abolition and prohibition of customs duties and quantitative restrictions, and equivalent measures, on imports and exports. Furthermore, provisions were contained regarding the prohibition of State aid, certain measures in relation to public undertakings, restrictive business practices, establishment as well as dumped and subsidised exports. With regard to the field of agriculture, certain provisions were contained in particular regarding the trade in processed

³ After the first year of operation of EFTA there was a total of 50 EFTA staff. During the first 30 years it never reached 100. That figure was only exceeded in 1990 in view of the EEA negotiations when the staff increased to 160.

agricultural products, whereas for other agricultural products bilateral agreements were concluded between some of the countries. Trade in fish and other marine products were also subject to some liberalisation. As originally provided for in the Convention, the abolition of tariffs and quantitative restrictions was to take 10 years, which would allow parallelism with the corresponding process going on in the EEC. When, however, the EEC decided to accelerate its timetable, EFTA did the same and this resulted in tariffs on industrial goods being abolished, with a few exceptions, 3 years ahead of schedule, on 31 December 1966, which, in fact, was one and a half years ahead of the EEC.

Finland had, in 1959, in connection with the Ministerial discussions in Saltsjöbaden, to which the Finnish Minister for Trade and Industry had also been invited, expressed its interest for free trade with the Seven. At the end of November 1959, the Seven invited Finland to negotiations, which were initiated in early 1960. A draft agreement granting Finland a particular status as a Member of EFTA was worked out and prepared for signature at an EFTA Ministerial meeting in Lisbon in May 1960. However, in parallel, the Finnish Government had to negotiate with the Soviet Union regarding their mutual trade relations and those negotiations led to an agreement under which Finland was to grant the Soviet Union most-favoured-nation treatment, i.e. the Soviet Union was to receive the same treatment by Finland as it had to grant the EFTA countries. This led most of the EFTA countries to insist on a withdrawal of the agreement prepared earlier that year, and, after some months, new negotiations with Finland started with a view to finding new forms for Finnish participation.

In March 1961, the 'Agreement creating an Association between the Member States of the European Free Trade Association and the Republic of Finland' ('the Finland-EFTA Agreement') was concluded. That Agreement, which in practice provided the same treatment for trade with Finland as for trade between the other EFTA Member States, lasted, until Finland became a member of EFTA on 1 January 1986. The Finland-EFTA Agreement established a new free trade area on the basis that Finland, with a few exceptions, was to have the same rights and obligations towards the EFTA Member States as the latter had among themselves. The Finnish reduction of tariffs to zero in relation to the other countries was completed by 31 December 1967.

Formally speaking there were two associations: EFTA and the Finland-EFTA Association. Institutionally, this meant that there were two governing bodies: the EFTA Council and the Joint Council of EFTA and Finland, both of which could meet at Ministerial and/or official level. During the first years the EFTA Council met regularly and took decisions before the Joint Council adopted corresponding decisions with effect with regard to Finland. From 1968 onwards the two Councils, however, regularly met simultaneously. For all practical purposes the position of

Finland was then that of a member of EFTA and from the outside it was hardly noticeable that this was not formally the case.⁴

Iceland joined EFTA on 1 March 1970. In 1973 Denmark and the United Kingdom left EFTA upon accession to the European Communities, as did Portugal in 1986. Liechtenstein, which since the conclusion of the Stockholm Convention had been covered by the Convention through a particular Protocol, under which the interests of Liechtenstein were represented through Switzerland, became a member of EFTA on 1 September 1991.

1.5 Attempts to Create a Single European Market

As mentioned above, EFTA was created more as a reaction to the creation of the EEC than as an end in itself. The ambition of the EFTA countries was as soon as possible to find acceptable solutions to the problems created by the division of Western Europe into two economic trade blocks.

When the Foreign Ministers of the Member States of the ECSC met in Messina in June 1955 and adopted their declaration on wider economic integration, the United Kingdom was invited to participate in the further work. However, the British Government, represented by an observer during the first months of the work of the Spaak Committee, did not believe in a successful outcome and decided not to participate in the preparatory work on what ultimately became the EEC Treaty. The United Kingdom instead preferred to concentrate on the creation among the OEEC countries of a wider free trade area for the whole of Western Europe, the negotiations on which, however, failed, as mentioned above.

Following the creation of EFTA, the British attitude towards the European Communities changed quite quickly. After a meeting of EFTA Ministers in London in June 1961, where it was agreed to use a bilateral approach towards the Communities, the British Prime Minister, Harold Macmillan, as early as July 1961 declared in the House of Commons that the United Kingdom should ask for negotiations on membership of the Communities. This would be done on the assumption that the conditions would be reasonable and that the interests of the Commonwealth as well as of the EFTA countries could be taken care of. The UK Government submitted an application for membership in August 1961, which was very soon followed by corresponding Danish and Norwegian applications.⁵ Three of the remaining EFTA countries, Austria, Sweden and Switzerland asked for association agreements in accordance with Article 238 EEC (now Article 217 TFEU), while Portugal suggested negotiations on cooperation with the EEC.

⁴The EFTA emblem, consisting of a circle of the flags of the EFTA countries with 'EFTA' in the middle, thus already included the Finnish flag, and the term 'EFTA countries' was generally used in EFTA during these years to cover both the Member States of EFTA and Finland.

⁵Ireland had already somewhat earlier asked for negotiations on membership in the Communities.

This started the period which in EFTA history is referred to as ‘the phase of expectation’.

Negotiations between the European Communities and the United Kingdom and Denmark started in October 1961 and began with Norway in July 1962. However, it soon became very clear that the President of France, Charles de Gaulle, did not consider it appropriate to allow the United Kingdom to enter the Communities. On 14 January 1963 he declared at a press conference that there was no point in continuing the negotiations, one of the reasons certainly being his doubt as to the British ability to act as a genuine Member State in view of its links to the Commonwealth and the United States. This led the Communities on 29 January 1963 to declare that continued negotiations were impossible taking into account the French attitude towards British membership. As a consequence, negotiations and preparations with the other EFTA countries were interrupted at the same time.

During the rest of the 1960s the relationship between the EFTA countries and the EEC can at best be characterised as non-existent. In 1965 and 1966, a main EFTA activity was to seek to bring nearer the single European market which was the objective of all EFTA countries. In May 1965, EFTA Ministers expressed their determination to take another initiative with a view to bridging the growing gap between the two trading groups in Europe. At an EFTA Ministerial meeting in Copenhagen in October 1965, the EEC was invited to establish a dialogue with EFTA at all possible levels, and so benefit European trade. In Bergen, in May 1966, the EFTA Ministers in vain reiterated their invitation to the EEC.⁶

From the EFTA side during these years a great number of attempts were also made to build bridges to the EEC. To this end the EFTA countries used a very pragmatic approach, by which for each individual case as smooth and simple a solution as possible without heavy structures or legislative means was used. This was in stark contrast to the legal framework provided by the EEC Treaty. Some of the most important and lasting activities concerned the field of eliminating technical barriers to trade. The EFTA countries during the 1960s started to work out a number of international arrangements providing for mutual recognition of national tests or inspections of imported products. Although these instruments originated in EFTA, they were open to other countries wishing to take part. The first of these instruments, the Pharmaceutical Inspection Convention (‘PIC’), was concluded in 1970 and came into force in 1971.⁷ This Convention was followed in the next couple of years by the Convention on the Control and Marking of Articles of

⁶ The Eighth Annual Report of EFTA of September 1968 contains under the heading European integration the following statement: ‘The disappointing record of efforts during the past twelve months to achieve EFTA’s long-term aim of a single market in Western Europe is well known, and need hardly be recounted again in detail here.’

⁷ Since 1993, the Convention has 18 Member States (4 EFTA States, 13 EU States and Australia). In the early 1990s it was realised that because of an incompatibility between the Convention and EU law it was not possible for new countries to be admitted. In 1995 it was therefore decided to create the PIC Scheme. PIC and the PIC Scheme operate in parallel and are jointly referred to as PIC/S and have today 44 Member States, see <http://www.picscheme.org>.



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