

Speech at the launch of The Handbook of EEA law

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Your Excellencies, Ladies and Gentlemen,

The EEA Agreement entered into force slightly more than 21 years ago. It had to wait for almost another 12 months for this impressive birthday present in the form of a book. Nevertheless, it was worth it. Today, we can say that the EEA Agreement truly comes of age with the publication of this – of The – Handbook of EEA Law.

The Handbook, already by its sheer weight, eloquently demonstrates how far we have come over these almost 22 years. In fact, I am not sure whether, given its 900 pages, the title “Encyclopaedia of EEA Law” might not have been more appropriate. But then the publishers were evidently trying to be modest.

The EEA Agreement was an ambitious project from the start. It covers a wide breadth of law, effectively the greater part of the economic law governing the 31 States that are today bound by it. And it also contains a plethora of procedural and institutional rules.

Since 1994, there have been important developments throughout the spectrum of law covered by the Agreement. There have been many legislative developments since the *acquis* that was taken on board in 1994, but there have also been developments through the interpretation and application of EEA law. It is no easy task to fit all of that into a book. Even less so in as approachable and absorbing a way as that is done here.

The Handbook to some extent has all the characteristics of a classical *Bildungsroman*, a coming-of-age story recounting the growth of the protagonist from youth to adulthood. I am

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told by Wikipedia¹ that the genre evolved from folklore tales of a youngest son going out in the world to seek his fortune. Usually in the beginning of the story, there is an emotional loss which makes the protagonist leave on his journey. For the EEA EFTA States, this was clearly the rejection in December 1992 by the people of Switzerland, followed by the loss of half their number with the 1995 enlargement of the European Union.

The protagonist in a *Bildungsroman* then goes on to achieve maturity gradually and with difficulty. This often involves conflicts between the main character and outsiders. In the Handbook, it is the EFTA Court and, to a lesser extent, the EFTA Surveillance Authority which are cast in the role of educators.

In fact, many of the most important principles of EEA were filled with proper meaning only by judgments of the EFTA Court, which played a pivotal role in the process of evolution. The variety of the subjects on which the EFTA Court has pronounced itself is truly impressive, ranging from the core subjects of internal market, competition and State aids to fundamental issues of constitutional dimensions such as the issue of State liability for breaches of EEA law. In many instances, the EFTA Court paved the way for subsequent judgments by the ECJ and the General Court. A topical example relevant in an important ongoing case – about the Icelandic meat ban – which springs to mind is the precautionary principle.

It is thus quite right that, with the Handbook, we have for the first time a reference work recounting not only the case law of the courts “on the other side of the road” in Luxembourg, but giving proper weight also to our own court, the EFTA Court. Without that case law, one knows only half the story.

The second important influence for the character development of the EEA Agreement which I would like to mention has been my Authority, ESA. We have clearly contributed to the development of the case law of the EFTA Court by being active in issuing decisions which were later appealed to the EFTA Court. Though I would like to stress that that is in my experience at least not exactly our intended outcome. It certainly is not in the occasional case where the Court ends up disagreeing with how we have dealt with a matter. We at ESA have

¹ Wikipedia: <https://en.wikipedia.org/wiki/Bildungsroman>

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of course also been active by bringing infringement cases against EFTA States and by intervening in Advisory Opinion cases.

The Handbook will be an invaluable tool for the day-to-day work of ESA providing guidance are regards the enforcement of EEA law. My fellow College Member Frank Büchel has of course co-authored the chapter on ESA's role and procedures, and for that reason alone, I would like to see whether, over a glass of wine, we can negotiate a bulk discount for a large order later on this evening.

In any event, a mature legal order need a mature legal literature and this Handbook provides an important marker in that respect. I am convinced that it will be an invaluable tool for national courts and practitioners and thus ensure the further reach of the EEA Agreement as a whole. It gives "food" for the academic community, which will ultimately contribute to promote the future evolution of EEA law. In this context I would like to mention our own activity this fall promoting the EEA Moot Court Competition at the Faculty of Law at the University of Oslo, an activity we plan to extend to Iceland next year.

We can now release the EEA Agreement into adulthood safe in the knowledge that it has grown up. In that future process, all those of you who have contributed to the impressive Handbook will effectively continue to play the role of good godparents, offering further guidance as and when required. The EEA community owes all of you a debt of gratitude, in particular of course the person here who has effectively personified the EEA legal order in recent years: the President of the EFTA Court and editor of the Handbook.

Mr. President,

Allow me a personal note. In your many years as president of the EFTA Court, it has contributed to the strengthening of the EEA Agreement, its robustness and the European Union's confidence in it. The Court is respected and relevant as an institution. You have become an institution within the institution, and added professionalism, courage and dignity to the Court. I mentioned the difficult birth and the troubled youth of the EFTA Judicial system, and you have alluded to this many times. The founding fathers and mothers of the EEA agreement, or rather Jacques Delors and Gro Harlem Brundtland, never believed, I believe, that we would be sitting here battling for judicial homogeneity in an EEA consisting of three EEA/EFTA states and 28 EU/EEA states. However, they would be happy to note that the EEA

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Agreement, and the principle of homogeneity, has been secured both on the legislative and judicial level.

For both of us and for the institutions we have the privilege of heading, it is a worthy task to monitor the EFTA States to ensure the effective implementation of Internal Market rules into their domestic law. Keeping markets fair, level and open is good for our economies and societies. It establishes a good environment for business in Europe where companies can generate wealth, create jobs, and invest in the future. We at ESA will continue to do our part in ensuring that EEA law is applied correctly in the EFTA States, and contribute to judicial homogeneity and the evolution of EEA law.

The saga of the EEA, ESA and the EFTA Court has not yet been written, but this book will enhance the institutional memory in the EFTA institutions, and provide a solid foundation for the future of the application of EEA law. I thank you and the other Contributors for that achievement.

Your Excellencies and Distinguished Guests,

Jean Monnet, who became recognised as the Father of Europe, gave a speech in the Royal Albert Hall more than half a century ago. He said: "Human nature does not change, but when nations and men accept the same rules and the same institutions to make sure they are applied, their behaviour towards each other changes. This is the process of civilisation itself."

Thank you for your attention!