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Welcome

Spring Conference "Thoughts on the future of Europe"  
16 June 2017

## A. Introduction

### I. 25 years of the EEA (i)

On 2 May 1992, the EEA Agreement and the Surveillance and Court Agreement were signed in Oporto after protracted negotiations.

*Knut Almestad*: The EFTA Court and the EFTA Surveillance Authority are "the quintessence of the EEA Agreement."

But the national courts and in particular the Supreme Courts are of equal importance.

# A. Introduction



## A. Introduction

### I. 25 years of the EEA (ii)

*Jerzy Buzek*, former Polish Prime Minister + EP President:

“In the 20th Century, each quarter-century – 1914, 1939, 1968, 1989 – brought Europe to an unpredictable turning point.”

The past 25 years have seen:

Four American presidents.

The emergence of the internet.

*Paul Krugman*: The Internet's impact on the economy will be no greater than the fax machine's.

## A. Introduction

### I. 25 years of the EEA (iii)

Similarly, Norwegian news agency NTB 25 years ago:  
“The life span of the EEA agreement can turn out to be shorter than the time it took to negotiate it.”

- Then, the Swiss pulled out.
- The Austrians, Finns, Norwegians, and Swedes wanted to join the EU ASAP.
- The Austrians, Finns and Swedes left in 1995.

And yet the EEA thrives.

## A. Introduction

### II. Record of the Court

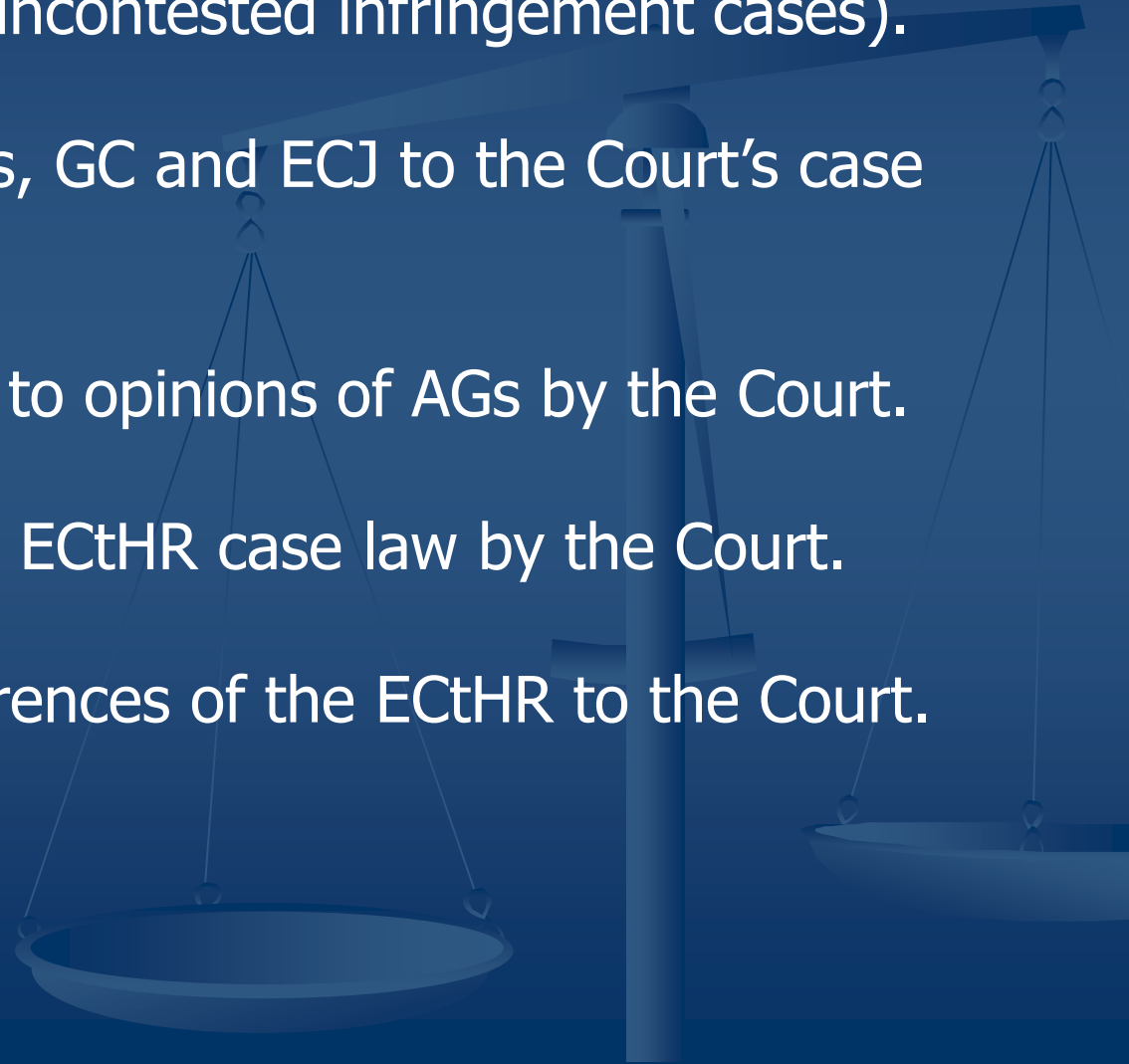
286 cases so far (77 uncontested infringement cases).

233 references by AGs, GC and ECJ to the Court's case law in 126 cases.

In 32 cases reference to opinions of AGs by the Court.

18 references in 11 to ECtHR case law by the Court.

In 1 case several references of the ECtHR to the Court.



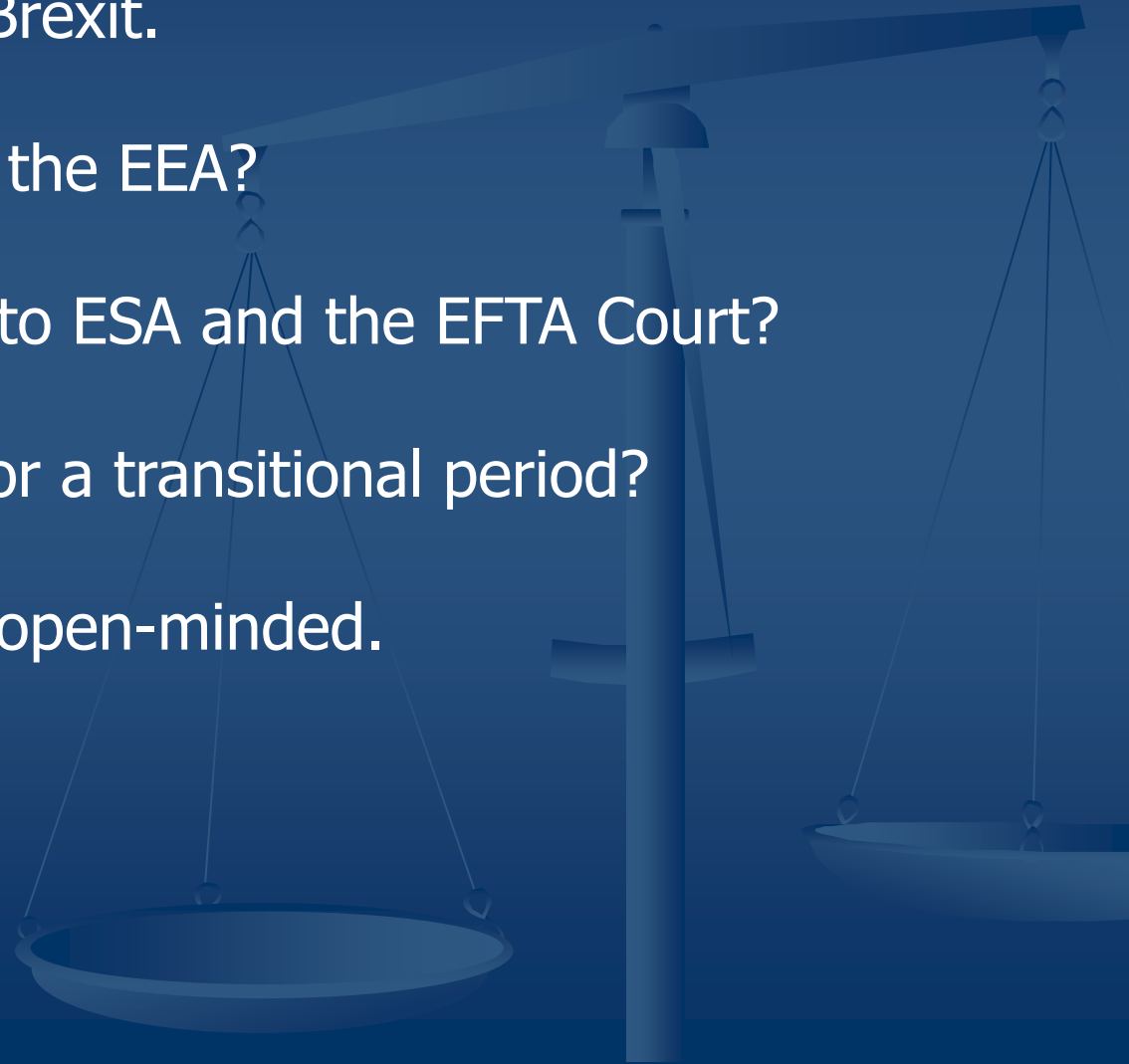
## B. New interest in the EEA

### I. Brexit

Hard Brexit and soft Brexit.

- UK membership of the EEA?
- Docking of the UK to ESA and the EFTA Court?
- EEA membership for a transitional period?

EEA/EFTA States are open-minded.



## II. Switzerland (i)

### 1. The approach of the Federal Council (2013)

Conflicts CH – EU dealt with by Joint Committee.

Each side can unilaterally invoke the ECJ.

ECJ rulings would be binding, but not the last word.

Last word would be for the Joint Committee (= not legal, but political).

- Acceptable to the ECJ? (Article 218 [11] TFEU).
- Referendum in Switzerland? (Court of the other Contracting Party).



## B. New interest in the EEA

### II. Switzerland (ii)

#### 2. Pentecost proposal of a group of parliamentarians

“EEA/EFTA” solution.

I.e. docking to the EFTA Court (and to ESA).

Subjecting the bilateral agreements to the jurisdiction of the EFTA Court vs. having a judge there in the cases concerned.

Having an own judge is deemed to be important.

On 13 June 2017, the Swiss Foreign Minister resigns.

## C. Thoughts on the Future of Europe

Today, in this time of flux, we look ahead and share:  
*Thoughts on the Future of Europe.*

- Developments in the U.S.
- Brexit.
- EU and EFTA.

Courts are a central feature of both the EU and EFTA pillar of the EEA.

Fundamental freedoms, and prohibitions to restrict competition give private operators rights which can be enforced in court.

## C. Thoughts on the Future of Europe

Debate about the role of courts also lies at the heart of the Brexit process.

- HM Government rejects the jurisdiction of the ECJ.
  - But after the election, membership in the single market has become an important issue.
  - British industry is used to have access to a court in Luxembourg.
  - The task of a court in Luxembourg is not only to protect operators against hardships which come from foreign governments, but also from their own government.
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