Arnesen / Fredriksen
Graver / Mestad / Vedder

Agreement on the European Economic Area

A Commentary

C.H.BECK · HART · NOMOS
UNIVERSITETSFORLAGET

Arnesen / Fredriksen / Graver
Mestad / Vedder

Agreement on the European Economic Area

Agreement on the European Economic Area

A Commentary

edited by

Finn Arnesen
Halvard Haukeland Fredriksen
Hans Petter Graver
Ola Mestad
Christoph Vedder

2018

C.H.BECK · HART · NOMOS

UNIVERSITETSFORLAGET

Published by
Nomos Verlagsgesellschaft, Waldseestraße 3-5, 76530 Baden-Baden, Germany,
email: vertrieb@nomos.de

Co-published by
Verlag C.H. Beck oHG, Wilhelmstraße 9, 80801 München, Germany,
email: bestellung@beck.de

and

Hart Publishing, Kemp House, Chawley Park, Cumnor Hill, Oxford, OX2 9PH, United Kingdom,
email: orders@isbs.com

Published in North America (US and Canada) by Hart Publishing,
c/o International Specialized Book, Services,
930 NE 58th Avenue, Suite 300, Portland, OR 97213-3786, USA,
email: orders@isbs.com

Universitetsforlaget AS, Sehesteds gate 3, 0164 Oslo
email: post@universitetsforlaget.no

ISBN 978-3-8487-3219-7 (Nomos Print)
ISBN 978-3-8452-7579-6 (Nomos ePDF)
ISBN 978-3-406-70988-3 (Verlag C.H.BECK)
ISBN 978-1-5099-2242-0 (Hart Publishing)
ISBN 9-788215-030562 (Universitetsforlaget AS)

First Edition 2018

Preface

When the Agreement on the European Economic Area was signed 25 years ago, it was accompanied by a lively academic debate. Importantly, contributions were not only written in the national languages of the EFTA States. Rather, a cross-border debate about EEA law was emerging in the English language. The comprehensive commentary published by Sven Norberg et al. in 1993 still stands out today as a token of those promising early years of EEA law literature. However, the Swiss electorate's rejection of the Agreement and the decisions of Austria, Finland and Sweden to join the EU caused this broader academic interest in the EEA to fade rather quickly. Of course, academics from the three remaining EFTA States in the EEA – Iceland, Liechtenstein and Norway – continued to take an interest in the EEA Agreement and their home states' rather peculiar affiliation to the EU, but most of the contributions were written in the national languages and addressed to a domestic audience. Both in Iceland and Norway, matters of EU and EEA law are increasingly integrated into the general academic debate about the different fields of national law where the EEA Agreement is of relevance (i.e. almost all). In addition, 'EEA specific' questions are discussed in textbooks and articles devoted to EEA law as such. Notwithstanding the fact that the number of English language contributions from Icelandic and Norwegian commentators have increased in recent years, most contributions are still written in Icelandic and Norwegian and thus largely inaccessible to an international audience.

For a long time, there were essentially only two exceptions to the 'nationalisation' of the academic debate about EEA law. Firstly, the 'German-Norwegian Fellowship Program in European Law' was established already in 1994 by a group of German and Norwegian law professors, organizing biannual seminars, leading to the publication of 10 volumes on a wide variety of EEA-related matters over a time span of 20 years. The program ended in 2014, with the last volume published in 2016. Secondly, the EFTA Court and its long-serving President Carl Baudenbacher has initiated and published a number of important contributions, culminating in the Court's 20th anniversary *Festschrift* 'The EEA and the EFTA Court – Decentred Integration' (2014) and Baudenbacher (ed.), 'The Handbook of EEA Law' (2016). A notable achievement with the publications originating in and around the EFTA Court is the ability to engage leading commentators from the EU-pillar of the EEA, including Judges and Advocates General from the EU courts. In this way, the EFTA Court has managed to keep alive a debate about EEA law that makes sure that key actors in the EU-pillar remain aware of the existence and peculiarities of EEA law.

Despite these efforts, the international debate about EEA law remains limited, both with regard to the volume of the literature and the number of participants. Nevertheless, the EEA Agreement is not only relevant for those specialists in the EU who takes an interest in free movement to and from the participating EFTA

States; it is relevant to a much wider audience at a time when issues of European integration (and disintegration) are hotly debated all over Europe. This book is an attempt to both deepen and broaden the literature on the EEA Agreement. The format of a German style Article-by-Article commentary makes sure that it also covers matters of EEA law which have received very little attention since the 1993 commentary by Norberg et al. This includes both important sub-fields of substantive EEA law such as environmental law, consumer protection, labour law, public procurement etc., and institutional questions revived by the 'Brexit' decision by UK voters in 2016 such as the procedures for leaving or joining the EEA, the conditions for implementing unilateral safeguard measures, cross-pillar dispute-resolution etc.

In short, this Commentary aims at presenting, taking into account almost 25 years of practice, the entire body of EEA law as it stands today. Thus, it is not limited to the Main Part of the EEA Agreement as such; the Protocols and Annexes are also covered and so are the EEA-related agreements between the EFTA States on the institutional set-up of the EFTA-pillar.

The list of contributors introduces several new voices to the debate, thus facilitating new perspectives on 'old' questions of EEA law and a much-needed enlargement of the small community of academics with an interest in the legal affiliation of the EFTA States to the EU's internal market.

The editors thank all contributors for the work put into the contributions. Our sincere gratitude also goes to Nomos Publishing House and, in particular, to Stefan Simonis, who, ever since our first meeting, shared our enthusiasm about this project and, with the necessary patience and support, helped us realize it. Many thanks also to Matthias Knopik, Andrea Schneider and the other people of Nomos for their highly effective support in the production of this book.

Augsburg/Bergen/Oslo
August 2017

Finn Arnesen
Halvard Haukeland Fredriksen
Hans Petter Graver
Ola Mestad
Christoph Vedder

Foreword

In the context of European cooperation, the Agreement on the European Economic Area is no small achievement. Since its adoption in 1992 this Agreement has been part of the development of a homogeneous and dynamic legal regime for an enhanced European free trade market, based on the law governing the internal market of the European Union. The various areas of EEA law have over the years been subjected to much scholarship and learned writings, but an updated comprehensive study covering the entire EEA Agreement had yet to appear. However, the 25th anniversary of the EEA Agreement in 2017 has now encouraged five Norwegian and German professors – having solicited contributions from 30 experts of the various fields of EU/EEA law – to elaborate, edit and publish an extensive and thorough commentary on the Main Part of the EEA Agreement and on the most important EEA-related agreements between the participating EFTA States. No doubt, this volume will serve as a most valuable source of learning, guidance and inspiration for lawyers and scholars when working with various aspects of EEA and EU law.

1.

The EEA Agreement was designed as a vehicle to promote extended European cooperation in economic and related matters. At present the parties to the Agreement are the European Union and all its 28 Member States as well as the three EFTA States – Iceland, Lichtenstein and Norway. For the EFTA States the EEA Agreement establishes basic legal links to the European Union and its internal market, thereby also implying a substantial transfer of actual sovereignty. At present, the EEA Agreement essentially amounts to a lasting alternative to EU membership, however, without any formal ties to supranational powers of EU and its institutions and agencies. To achieve this, the EEA had to be designed as a two-pillar system with an EFTA-pillar distinguishing in principle between the treaty obligations of the EFTA States and their national duties to perform these obligations by incorporating the EEA-relevant EU legal acts in their national laws. Such implementation is the key to market access and integration in the internal European market.

Modelled in general on the Treaty of Rome, the Main Part of the EEA Agreement contains the provisions on the four freedoms and other key elements of the EU primary internal market law. Included in the EEA Agreement are also numerous Protocols and Annexes. At the time of the signing of the Agreement, the Annexes included nearly 2000 legal acts adopted by the EU to 'complete' the internal market by the early 1990 s. Since then, and consistent with the dynamic character of the EEA Agreement, the EEA Joint Committee has added several thousand new EU legal acts to the Agreement.

In addition, the EEA Agreement itself is supplemented by agreements between the EFTA states establishing an independent EFTA Surveillance Authori-

ty and an independent EFTA Court. The task of these institutions is to ensure the EFTA States' compliance with their EEA law obligations.

2.

Accession to the EEA Agreement did not in itself suffice to make EEA law part of national law in the dualistic EFTA States. This was, and still is, only to be achieved through subsequent adoption of national legislative measures amending or supplementing EEA-relevant parts of the existing regulatory regimes for economic activities. Consequently, both in Iceland and Norway, legal provisions consistent with the relevant EU legal acts have continuously been adopted to incorporate EEA law with legal effect as integrated parts of Icelandic and Norwegian law. The result is that the EEA law does not constitute any separate part of Icelandic or Norwegian law.

Prior to the entry into force of the EEA Agreement in 1994, the Main Part of the Agreement was enacted in Icelandic and Norwegian law by separate statutes. At least in Norway, however, the need for further legislative actions was less than could be expected, often limited to various additions or amendments to existing legislation. One reason was that in many areas Norwegian economic law, having long been influenced by the legal systems of key European countries and later also by Community law, already was largely consistent with much of the EU secondary legislation. In the 1980 s, the Norwegian government required that developments in Community law should be duly considered in the preparation of any major national law reforms. Thus, important parts of the new statutory regimes for credit and financial institutions and insurance undertakings adopted in 1988, were in fact already modelled on relevant EC directives.

Another reason for the limited need for legislative action was that major parts of the various EC legal acts could be implemented into Norwegian law by the government itself exercising existing or new regulatory powers. Many of these regulations were drafted as a mere translation of the provisions in the EU legal acts.

Irrespective of legal form of the legislative measures applied to incorporating EEA law, the accession to the EEA in the early 1990 s was a formidable and challenging operation to Norway. The legal instruments required were prepared and continuously adopted in accordance with ordinary national procedures. This meant that government bills to the parliament usually were accompanied by explanatory comments relevant to the meaning and interpretation of the statutory provisions proposed. One consequence was that the problems caused by apparent differences between the EU and Norwegian statutory drafting traditions, would thereby be addressed, explained and overcome, thus facilitating also the subsequent application of imported EEA law.

3.

During the 25 years since the EEA Agreement was signed in 1992, the European Union has constantly revised, modernised and further developed the legal regime for the internal market. Much of EU's new secondary legislation has been elaborated and adopted in the implementation of ambitious law programmes designed to broaden and strengthen the regulatory role of legal frameworks defined at the Union level. In view of the EEA Agreement's objective of dynamic homogeneity between EU and EEA law, the EEA relevant parts of novel EU legislation have subsequently been included in the Agreement by decisions of the EEA Joint Committee. In Norway and the other EFTA states, consequently, both the scope and the volume of EEA-conform law have increased quite significantly over the years.

Equally important, the character of EU secondary law has gradually changed by means of more detailed drafting that offers less of the flexibility earlier available when incorporating EU legal acts in national law. In recent years, the EU legislator has also generally favoured directives aiming at full rather than only minimum harmonisation of the laws of Member States. Furthermore, the use of directly applicable regulations has increased significantly. In terms of content, the result is that much of the recent secondary legislation now offers comprehensive, almost exhaustive, elaborate and detailed legal regimes, leaving very limited room for national supplements or alternatives. Moreover, broadly articulated legal standards are frequently used to regulate complex matters, often supplemented by powers for the Commission to issue delegated acts setting out a great number of detailed rules. All this has significantly added to the volume and complexity of EU's legal market order.

In several areas, EU has also established Union agencies to promote, coordinate and control uniform interpretation and application of various parts of EU law in the Member States, either through recommendations and guidelines ('soft law') or by way of binding decisions. A recent example is the regulations establishing the "European System of Financial Supervision", consisting of three separate authorities for the banking, insurance and securities sectors. In view of the two-pillar structure of the EEA Agreement, this development is problematic as it also implies exemptions from the principle of national enforcement of EEA law. The road to an agreed solution, consistent both with the two-pillar structure of the EEA Agreement and the national Constitutions of the EFTA States, has been long and difficult.

The quite remarkable increase in the volume and detailed complexity of EEA law has resulted in an equally substantial increase of the administrative resources required merely to handle EEA law at the national level. The resources required for the implementation, application and supervision of EEA law exceed by far the resources regularly available in small countries such as Iceland and Norway (not to mention Liechtenstein). The sheer volume of EU/EEA law may

thus have detrimental implications for the degree of compliance throughout the EEA.

4.

The main objective of the EEA Agreement is the realisation of the four freedoms within the whole of the European Economic Area, achieving thereby that the EU internal market is extended to the EFTA States. This requires homogeneous interpretation and application of the common EU/EEA rules throughout the EEA. Consequently, the principle of homogeneous interpretation of EU and EEA law has gradually been fully recognised by courts and administrative authorities of both pillars. In the EFTA States, the EU law background of the implemented EEA rules as it appears in the explanatory comments to the implementing legislative measures, is regularly regarded as clearly significant for the interpretation thereof.

National courts have a particularly important role when it comes to interpretation and application of EEA law. The number of EEA-related cases brought before Norwegian courts has gradually increased over the years, and the knowledge of EEA law among judges and lawyers in general has improved accordingly. At present, we can note not only that a substantial number of EEA-decisions have been rendered by the Supreme Court, but also that an increasing number of EEA-related cases are decided by the lower courts in a way that often convinces the Supreme Court that leave to appeal is not warranted or needed.

The EEA Agreement contains provisions presupposing that the EFTA States normally shall follow decisions of the EU Court of Justice when interpreting EU-conform provisions of EEA law. Consistent with the principle of homogeneity, the Supreme Court of Norway has in its judgement over the years regularly referred to and relied on the relevant decisions of the ECJ, and repeatedly stated that relevant rulings from the ECJ are to be given significant weightage by Norwegian courts when interpreting EEA law. Recently, this principle was authoritatively confirmed by the Supreme Court sitting in plenary in the case HR-2016-2554-P *Holship*. However, this principle does always not give ready-made answers. Essentially it means that in the Supreme Court the relevant decisions of the ECJ will ordinarily be analysed and applied, or distinguished on the facts, in the same manner as the Supreme Court's own precedents in other fields of law.

This may be illustrated by two recent Supreme Court decisions relating to the 2007 Lugano Convention, modelled on the Brussels I Regulation (44/2001), the Norwegian interpretation of which during more than 20 years has regularly been based on ECJ decisions. The issue in both Rt. 2011 p. 897 *Marin Alpin* and Rt. 2015 p. 129 *Arrow Seismic Invest* was how to interpret Article 5(3) of Lugano allowing actions for damages to be brought 'where the harmful event occurred'. In *Marin Alpin*, the Supreme Court, based on an extensive analysis of the ECJ's decisions in the Cases C-71/76 *Bier*, C-220/88 *Dumez*, C-364/93 *Marinari* and

C-168/02 *Kronhofer*, held that an action in tort for general economic loss could only be brought in the State where the tortious act was committed, and not in the state where the person having suffered the loss had its domicile. However, four years later, in *Arrow Seismic Invest*, the Supreme Court, having considered the same four decisions of the ECJ, concluded that the rule therein applied by ECJ did not also cover and apply to an action in tort to recover economic damage directly resulting from the loss of a lien held in the State where the action was brought. Thus, the authority of the ECJ decisions was not in question, only their *ratio decidendi* in relation to the second case before the Supreme Court.

Even if the Supreme Court normally will follow existing decisions of the ECJ, this does not mean that the Supreme Court always also will reach the same result as the ECJ itself would have done. Clearly, the principle of homogeneous interpretation as based on reported ECJ decisions will normally prevail. However, the situation is different if no clear ECJ precedent exists. In such a case the Supreme Court seems to be somewhat reluctant to be a "frontrunner" and preempt what would be the result of a dynamic interpretation of the EU law by ECJ, particularly if a question of principle is involved.

In Rt. 2012 p. 1951 *Trico Subsea* the question was whether a person domiciled in a third country (Singapore) could invoke the Lugano Convention and, thus, would be entitled under its Article 2 to bring an action at the defendant's domicile in Norway. The Supreme Court noted that these questions were relevant also in relation to the same provision in the Brussels I Regulation, and the Court held, notwithstanding certain general statements by the ECJ in Cases C-412/98 *Group Josi* and C-281/02 *Owusu*, that the questions could not be considered as squarely decided by the ECJ. In view of this, the majority in the Supreme Court concluded that it was not the task of the Supreme Court to preempt or anticipate how such questions relating to third-state rights under EU law would be resolved by ECJ in the future. Consistent with principles of treaty law relating to third-state rights, the Court instead held that the action by a plaintiff from Singapore could not be brought in Norway under Lugano Convention, but only under the rules on jurisdiction in the domestic legislation.

In accordance with the principle of homogeneous interpretation of EEA law, the Supreme Court in the *Holship* also confirmed that Norwegian courts should give significant weightage to the interpretations of EEA law made by the EFTA Court of Justice. The EFTA Court itself will very often also rely on decisions by ECJ. However, since the EFTA Court usually issues only "advisory opinions", Norwegian courts would consequently in particular cases have to independently decide also the questions on how to interpret or apply the EEA law. In so doing, a Norwegian court should, as stated by the Supreme Court in *Holship*, normally not deviate from an advisory opinion of the EFTA Court, unless warranted by special circumstances.

5.

The law of major European states has over the years generally influenced many areas of Norwegian law as well as the national legal science. For several decades, however, the development of the new EC legal regime attracted only limited interest in Norwegian legal education and science as well as in the legal professions in general. Thus, Norwegian legal communities were generally unprepared to meeting the challenges later to follow from the elaboration and adoption of the EEA Agreement in the 1990 s and the resulting national reception of EC law.

The adoption by the EC of the Single European Act of 1987 caused a change in attitude. It became apparent to the EFTA States that the envisaged completion of the EC internal market by the early 1990 s would entail significant consequences also for them, thus requiring that in the future new and serious attention be given to EC market law. When Commission President Delors followed this up in 1989 with his plan for a 'structured partnership' between the EC and the EFTA States, it became obvious to several members of the law faculty in Oslo that there was an urgent need for new Norwegian knowledge and expertise in EC law. Consequently, a "Centre for European Law" was quickly established to organise research and later teaching in basic EU law. As the initiative came from professors working with shipping, offshore and finance law, the Centre was organised as part of the Scandinavian Institute of Maritime Law. The Centre soon attracted many young and enthusiastic students and scholars. Even before the EEA Agreement entered in force in 1994, many studies on topics of EC/EEA law had been published, including a textbook for a new obligatory course in EEA law at the Oslo faculty. Moreover, a comprehensive treatise on EEA law, written by five of the graduate students at the Centre, was published in 1995; a revised third edition appeared in 2011.

After a few years, the Centre of European law became a key institution for teaching and research in European law, and it soon also received the privilege of being an EU documentations centre. Over the years, a great number of law students have completed their master degree thesis on topics of EU/EEA law. Also, more than 20 of the graduate students at the Centre have completed their doctor degree thesis, many of whom having thereafter become professors at the Oslo faculty. During the 2000 s, professors and scholars attached to the faculties of law in Bergen and Tromsø have also become more actively engaged in teaching and research in European law and, consequently, have broadened the Norwegian expertise in EU/EEA law. Furthermore, the Centre has always endeavoured to establish and maintain good links to other European institutions and law faculties, promoting good cooperation particularly with Scandinavian, German and Dutch law faculties and scholars. In recent years, the ties with Icelandic scholars working with EEA/EU law have also been strengthened.

Instrumental in these concentrated efforts to meet the need for Norwegian competence and expertise in EEA law, has been the scholarship program estab-

lished in 1994 by the German Ruhrgas company. Over the years, this program enabled a substantial number of the most talented masters and post-graduate students at Norwegian law faculties to carry out lengthy studies and research in European law at German law faculties. Moreover, the program has contributed significantly to renewing and strengthening the cooperation in European law and in law in general between German and Norwegian law faculties.

The present book is essentially a true-born child of the German-Norwegian cooperation within the "E.ON-Ruhrgas scholarship-program". The German colleagues editing and contributing to the book have handled the German side of this program for many years. Furthermore, most of the Norwegians editors and contributors have previously carried out studies at German law faculties within the scholarship program. The Commentary to the EEA Agreement is a great achievement, containing a detailed outline of the scope, content and condition for the integration of the three EFTA states in the EU internal market.

6.

The EEA Agreement will in years to come most probably still provide for and maintain the basic legal links between the three EFTA States and the European Union and its Member States. Even if the EEA Agreement itself does not govern all the areas of cooperation between the EU and the EFTA States, it has nevertheless served as a point of departure for further development of extended cooperation with the European Union. Important areas of cooperation outside the EEA Agreement have already been the subject of separate agreements between EFTA States and the EU. In this context, the outline in this Commentary of the scope of the EEA Agreement contributes to clarifying the borderlines between the EEA Agreement and other agreement on which EFTA States have made the European Union.

Current trends in European and world politics seem to cast certain shadows of concern in relation to future development of the European Union and its internal market. In a troubled world and in view of the effects thereof for world trade and geopolitics, however, the access to and integration in the European internal market provided for the three EFTA states by the EEA Agreement, will probably be of even greater importance in the future than at present. Future challenges to be met by the European Union and its internal market will at least indirectly also be challenges also to be faced by the EFTA states, however not on a stand-alone basis, but as a part of the European side. Potential problems related to key issues such as a Brexit event and new economic policies developed by the present US administration, will require collective responses. Shifts in politics and public sentiment in any of the EU member states may also create Union and EEA problems.

At present, however, uncertainties prevail. The character of challenges which may have to be met by EU and EEA, cannot yet be ascertained. Future events may, of course, require some adjustment also in the EEA Agreement. Neverthe-

less, unless the developments should constitute an actual threat to the European Union itself, it is unlikely that the continued existence of the EEA Agreement may be threatened by events outside the control of the EFTA states themselves. The great importance of the EEA Agreement has continuously been fully recognised by all Norwegian governments during the 25 years after its adoption.

Erling Selvig

Contents

Part III: Free Movement of persons

PART III:
The Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice

Part IV: The EFTA Court

Part V: General and final provisions

PART IV
Agreement on a standing committee of the EFTA states

List of authors

Editors

Finn Arnesen, Professor dr. juris (Oslo), Director of the Centre for European Law, University of Oslo (1997-2002 and 2012-): Introduction, Preamble, Arts. 1, 2, 17-20, 119, 126 and 129 EEA, Preamble and Art. 1 SCA.

Halvard Haukeland Fredriksen, Professor Dr. iur. (Göttingen), Ph.D. (Bergen), University of Bergen:
Introduction, Report "EEA law beyond the text of the Main Part of the Agreement", Preamble, Arts. 1, 2, 105-107 and 110-114 EEA, Preamble and Art. 1 SCA, Agreement on a Standing Committee.

Hans Petter Graver, Professor dr. juris (Oslo), Dr. h.c. (University of Helsinki), Dr. h.c. (University of Heidelberg), Dean of the Faculty of Law, University of Oslo (2008-2015): Introduction.

Ola Mestad, Professor dr. juris (Oslo), University of Oslo, ad hoc Judge at the EFTA Court since 2006, former Director of the Centre for European Law, University of Oslo (2006-2007), Director of the Scandinavian Institute of Maritime Law (2017-): Introduction.

Christoph Vedder, Professor em. Dr. iur. (Göttingen), formerly Chair for Public Law, Public International Law and European Law as well as Sports Law, Jean Monnet Professor ad personam, University of Augsburg: Introduction, Report "The EEA in the Union's Legal Order".

Authors

Tarjei Bekkedal, Professor Ph.D. (Oslo), Centre for European law, University of Oslo: Art. 59 EEA.

Per Andreas Bjørgan, Advocate, Partner Lund & Co law firm, former Director of the Competition and State Aid Directorate and Deputy Director of the Legal department of the EFTA Surveillance Authority: Arts. 4-26 SCA.

Henrik Bull, dr. juris (Oslo), Justice, Supreme Court of Norway; Legal Adviser in the Norwegian Ministry of Justice, involved in the negotiations on the EEA Agreement; Director of the Centre for European Law, University of Oslo 2002-2005, Judge of the EFTA Court 2006-2010: Arts. 21-26, 40-45 and 124 EEA.

Per Christiansen, dr. juris (Oslo), Judge at the EFTA Court; former Chancellor, Ministry of Foreign Affairs, and Director General, Ministry of Finance; Registrar of the EFTA Court; Professor, University of Tromsø: Art. 46 EEA, Arts. 115-117 EEA, Arts. 27-41 SCA.

Marthe Kristine Fjeld Dystland, cand. jur. (University of Oslo), LL.M. (Europa-Institut, University of Saarbrücken), Legal secretary at the EFTA Court,

on leave from the Legislation Department, Norwegian Ministry of Justice and Public Security: Art. 7, Arts. 97-104 EEA, Arts. 27-41 SCA.

Margrét Einarsdóttir, Associate Professor, Reykjavik University, Advisor for the Steering Group set up under the Prime Minister's Office in Iceland to address the execution of the EEA Agreement from 2014; Director of the European Law Institute, Reykjavik University 2010-2013: General Report on Iceland.

Ólafur Jóhannes Einarsson, M.Jur. (Oxon), M.Phil. (Oxon), advocate at BBA law firm, Reykjavik; Ad-hoc College Member, EFTA Surveillance Authority; former Director of the Internal Market Affairs Directorate, EFTA Surveillance Authority: Arts. 30-33, 35-39 and 110 EEA.

Ingvald Falch, Justice, Supreme Court of Norway since September 2015, formerly at the Office of the Norwegian Attorney General (Civil Affairs); former partner in the law firm Schjødt: Art. 4 EEA.

Fredrik Bøckman Finstad, Deputy Director General, Legislation Department, Norwegian Ministry of Justice and Public Security; formerly justice and home affairs counsellor at the Mission of Norway to the EU and member of the government-appointed committee analysing the agreements between the EU and Norway (NOU 2012: 2): General Report on Norway, Arts. 7, 99-104 EEA.

Karin Fløistad, Ph.D. (European University Institute, Florence), Partner Simonsen Vogt Wiig law firm; chair of the Norwegian Competition Appeals Tribunal: Arts. 28, 29 EEA.

Christian Franklin, Professor Ph.D. (Bergen), University of Bergen, Head of the Research Group for Competition and Market law; Barrister (Gray's Inn), board member of the Norwegian Association for European Law; joint manager of the Bergen Centre for Competition Law and Economics (Beccle): Art. 3 EEA, Art. 2 SCA.

Christian Frommelt, Ph.D. (ETH Zurich), research fellow at the Liechtenstein Institute (Bendern), Director for Brexit Studies at the Ministry of Foreign Affairs of Liechtenstein: General Report on Liechtenstein.

Ronny Gjendemsjø, Associate Professor Ph.D. (Bergen), University of Bergen, Co-director of the Bergen Centre for Competition Law and Economics (Beccle), member of the Norwegian Competition Appeals Tribunal: Arts. 53-58 and 60 EEA.

Simen Hammersvik, Advocate, Senior Associate, Schjødt law firm, Oslo, Norway: Art. 65(1) EEA.

Ragnhildur Helgadóttir, Professor, S.J.D. (Virginia), Dean of the School of Law, Reykjavik University. chairperson of the Negotiation Team on Justice and Home Affairs and member of negotiation committee for Iceland's application for membership of the EU, 2009-2013: General Report on Iceland.

Martin Hennig, Postdoc; Ph.D. (Tromsø), The Arctic University of Norway: Arts. 14 and 15, 47-52, 76 EEA.

Christophe Hillion, Professor Dr., Universities of Leiden and Göteborg; Swedish Institute for European Policy Studies (Stockholm) and Norwegian Institute of International Affairs (Oslo): Arts. 118, 127, 128 EEA.

Jóhanna Jónsdóttir, Dr., Advisor at the Icelandic Ministry for Foreign Affairs, affiliated Senior Researcher at the Icelandic Institute of International Affairs: Arts. 78-88 EEA, Agreement on a Standing Committee of the EFTA States.

Christian Jordal, Deputy Director, Competition and State Aid Directorate, EFTA Surveillance Authority: Arts. 61-64 EEA.

Berte-Elen R. Konow, Professor dr. juris (Bergen), University of Bergen, member of the Working Group preparing DCFR IV B Lease of Goods, member of editorial board of Restatement of Nordic Contract Law, Vice Dean for Research at the Faculty of Law (2013-2017): Art. 72 EEA.

Gjermund Mathisen, Dr., LL.M. (Heidelberg), Ph.D. (Bergen), Director, Competition and State Aid Directorate, EFTA Surveillance Authority, former Legal Secretary at the EFTA Court, former Legal Officer at the EFTA Surveillance Authority: Arts. 61-64 EEA.

Peter-Christian Müller-Graff, Professor Dr. habil., Dr. h.c. mult., Chair for Private Law, Commercial Law, Company Law, Economic Law, European Law and Comparative Law, Director of the Institute for German and European Corporate Law and Economic Law, Honorary Jean Monnet Professor, University of Heidelberg, Co-Editor of the Skriftserie for Tysk-Norsk Rett: Arts. 34, 77 EEA.

Jonas W. Myhre, Scandinavian Institute of Maritime Law, Supreme Court Advocate (until 2012); guest researcher at the Centre for European Law, UiO, Partner in the law firm Hjort (1971-2001), cand. iur. (1963, University of Oslo), MCL 1966 (University of Illinois, USA): Art. 16 EEA.

Ernst Nordtveit, Professor dr. juris (Bergen), University of Bergen, former Dean of the Law School, former Head of the Research Group of Natural Resources, member of the National Ethical Committee for Natural Science and Technology, Ministry of Education and Research; Member of the Norwegian Academy of Science, Committee on Climate, Environment and Natural Resources Use (2015-): Arts. 73-75 EEA.

Håvard Ormberg, Research fellow, University of Bergen, Bergen Centre for Competition Law and Economics (Beccle), former Officer of EFTA Surveillance Authority, Competition and State Aid Directorate: Arts. 120-123 EEA.

Gunnar Thor Pétursson, Professor, Ph.D. (Lund), Reykjavik University, Director of the Internal Market Affairs Directorate, EFTA Surveillance Authority: Arts. 8-13, 27 EEA.

Benedikt Pirker, LL.M. (Bruges), Ph.D. (IHEID Geneva), Privatdozent, Senior Lecturer, Institute for European Law, Université de Fribourg: Report on Switzerland.

Thomas Chr. Poulsen, Judge, Borgarting Court of Appeal, former Legal Secretary at the EFTA Court: Art. 125 EEA, Arts. 42-53 SCA.

Ole-Andreas Rognstad, Professor dr. juris., University of Oslo, former Director of Department of Private Law (2008-2011), since 2016 associated with the Centre for European Law: Art. 65(2) EEA.

Sigrid Eskeland Schütz, Professor dr. juris (Bergen), University of Bergen, Head of the Research Group for Natural Resource Law, Environmental Law and Development Law: Arts. 73-75 EEA.

Erling Selvig, Professor em. dr. juris (Oslo), University of Oslo, Chairman of the Board for the Centre for European Law, University of Oslo (1997-2012); ad hoc Judge of the EFTA Court (1997-2002); chairman of the Norwegian Banking Law Commission (1991-2017): Foreword.

Ida Sørebø, Legal Advisor, Legislation Department, Norwegian Ministry of Justice and Public Security, with responsibility for EEA implementation and constitutional issues, former Officer at the EFTA Surveillance Authority, Legal Department: Art. 7, Arts. 99-104 EEA.

Karl Harald Søvig, Professor dr. juris (Bergen), University of Bergen, Dean of the Faculty of Law (2017-), Vice President of the European Association of Health Law (2015-); temporary Judge at the District Court (2002) and Gulating Court of Appeals (2005): Arts. 69, 70 EEA.

Tron Løkken Sundet, Vice-President, Labour Court of Norway: Arts. 66-68 and 71 EEA.

Dora Sif Tynes, LL.M. (EUI, Florence), Attorney-at-law in Iceland, former Head of EEA Legal Services at the EFTA Secretariat, previously legal officer at the EFTA Surveillance Authority: Arts. 5, 89-96, 108, 109 EEA.

Pål Wennerås, Ph.D. (Amsterdam), Advocate, Office of the Attorney General (Civil affairs): Arts. 6 EEA, Art. 3 SCA.

Abbreviations

AAA	Ankara Association Agreement
AAMS	Administration of State Monopolies
ACER	Agency for the Cooperation of Energy Regulators
ADR	Alternative Dispute Resolution
ADM	Administration
AFMP	Agreement on the Free Movement of Persons
AFSJ	Area of freedom, security and justice
AG	Advocate General
Art.	Article
BEREC	Body of European Regulators for Electronic Communications
BGH	Bundesgerichtshof
CCS	Carbon capture and storage
CEDAW	UN Convention on the Elimination of All Forms of Discrimination against Women
CEDEFOP	European Centre for the Development of Vocational Training
CEEP	European Centre of Enterprises with Public Participation and of Enterprises of General Economic Interest
CESL	Common European Sales Law
CETA	EU-Canada Comprehensive Economic and Trade Agreement
CFI	Court of First Instance of the European Communities
CFP	Common Fisheries Policy
CFSP	Common Foreign and Security Policy
CISG	United Nations Convention on Contracts for the International Sale of Goods
CMLR	Common Market Law Review (Journal)
COM	Communication from the European Commission
Commission	European Commission
COREPER	Committee of the Permanent Representatives of the Governments of the Member States to the European Union
COSME	Competitiveness of Enterprises and Small and Medium-sized
CJEU	Court of Justice of the European Union (the institution, not the court)
CS	Continental Shelf
CSA	Competition and State Aid Directorate
Dir.	Directive
DSB	Danske Statsbaner (Danish State Railways)
EAFRD	European Agricultural Fund for Rural Development
EASA	European Aviation Safety Agency
EBA	European Banking Authority
EC	European Communities
ECB	European Central Bank
ECC-Net	European Consumer Centres Network
ECDC	European Centre for Disease Prevention and Control
ECHA	European Chemicals Agency
ECHR	European Convention of Human Rights
ECtHR	European Court of Human Rights
ECJ	Court of Justice of the European Union (the court, not the institution)
ECJ RoP	Rules of Procedure of the Court of Justice of the European Union
ECN	European Competition Network
ECOFIN	Economic and Financial Affairs Council
ECR	European Court Report
ECSC	European Coal and Steel Community
ECSR	European Committee of Social Rights
ECU	European Currency Unit
EDA	European Defence Agency
EDPB	European Data Protection Board

EEA	European Economic Area/EEA Agreement
EEAS	European External Action Service
EEC	European Economic Community
EECMA	European Electronic Communications Market Authority
EEIG	European Economic Interest Grouping
EES	European Economic Space
EESC	European Economic and Social Committee
EEZ	European Economic Zone
EFSA	European Food Safety Authority
EFTA	European Free Trade Association
EFTA States	Iceland, Liechtenstein and Norway (in the context of EEA Law); Iceland, Liechtenstein, Norway and Switzerland (outside the scope of EEA Law)
EIA Directive	Environmental Impact Assessment Directive
EIB	European Investment Bank
e.i.f	entry into force
EIOPA	European Insurance and Occupational Pensions Authority
EJIL	European Journal of International Law
ELRev	European Law Review (Journal)
EMA	European Medicines Agency
EMFF	European Maritime and Fisheries Fund
EMU	Economic and Monetary Union
ENP	European Neighbourhood Policy
EPC	European Professional Card
EPC	European Patent Convention
ERA	European Railway Agency
ERDF	European Regional Development Fund
ERIC	European Research Infrastructure Consortium
ESA	EFTA Surveillance Authority
ESF	European Social Fund
ESIF	European Structural and Investment Funds
ESMA	European Securities and Markets Authority
ESO	EFTA Statistical Office
ESS	European Statistical System
ETUC	European Trade Union Confederation
EU	European Union
EUCJ	European Union Court of Justice (the institution)
EU ESAs	European Financial Supervisory Authorities
EU ETS	EU Emission Trading Scheme
EU-OSHA	European Agency for Safety and Health at Work
EUR	Euro
EuR	Europarecht (Journal)
Euratom	European Atomic Energy Community
EURES	European Employment Services
EUROFOUND	European Foundation for the Improvement of Living and Working Conditions
Europol	European Union Agency for Law Enforcement Cooperation
Eurostat	Statistical Office of the European Union
FMC	Financial Mechanism Committee
FMG	Free Movement of Goods
FMO	Financial Mechanism Office
FTA	Free Trade Agreement
GATT	General Agreement on Tariffs and Trade
GBER	General Block Exemption Regulation
GC	General Court
GDP	Gross domestic product
GMO	Genetically modified organism

GNI	Gross national income
GPA	Agreement on Government Procurement
GPG	Gender Pay Gap
HS	International Convention on the Harmonized Commodity and Coding System
HSE	Health, safety and environment
IEA	International Energy Agency
ILO	International Labour Organisation
IMA	Internal Market Affairs Directorate
IMF	International Monetary Fund
IMI	Internal Market Information System
IMO	International Maritime Organisation
IOSCO	International Organisation of Securities Commissions
IP	Intellectual Property
IPCEI	Important Projects of Common European Interest
IPR	Intellectual Property Right
IPrax	Praxis des Internationalen Privat- und Verfahrensrechts (Journal)
ISA	Interoperability for Public Administrations
JC	Joint Committee
JCD	Joint Committee Decision
LEA	Legal and Executive Affairs Department
MA	United Nations Millennium Ecosystem Assessment
MEIP	Market Economy Investor Principle
MEO principle	Market Economy Operator principle
MFF	Multiannual Financial Framework
MFN	Most Favoured Nation
MFSD	Marine Strategy Framework Directive
mn.	margin number (Randnummer)
MoU	Memorandum of Understanding
MRA	Mutual Recognition Agreement
MSP	Marine Spatial Planning
NAP	National Allocation Plan
NATO	North Atlantic Treaty Organisation
NCA	National competition authority
NGO	Non-governmental Organisation
NIMIC	National IMI (Internal Market Information) Coordinator
NOK	Norwegian Krone
NUPI	Norsk Utenriskspolitisk Institutt (Norwegian Institute of International Affairs)
NZZ	Neue Züricher Zeitung (Newspaper)
ODR	Online Dispute Resolution
OECD	Organisation for Economic Co-operation and Development
OJ	Official Journal of the European Union
OLG	Oberlandesgericht (Higher Regional Court, Germany)
Para.	Paragraph
PEM Convention	Regional Convention on pan-Euro-Mediterranean preferential rules of origin
PIL	Private International Law
Prot.	Protocol
PSO	Public Service Obligation
PWD	Posting of Workers Directive
RoP	Rules of Procedure of the EFTA Court
SAM	State Aid Modernisation
SCA	Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice
SCE	European Cooperative Society

SE	European Company
SEA Directive	Strategic Environmental Assessment Directive
SERA	Single European Railway Area
SGEI	Services of General Economic Interest
SIEC-test	Significant Impediment of Effective Competition test
SME	Small and medium sized enterprise
SNE	Seconded National Expert
SPC	Supplementary Protection Certificate
St.prp.	Proposisjon til Stortinget
State Aid Guidelines	Procedural and Substantive Rules in the Field of State Aid
TAA	Transitional Arrangements for a period after the Accession of certain EFTA States to the European Union
TBT	Technical Barriers to Trade
TCN	Third Country National
TEC	Treaty Establishing the European Community
TEDIS	Trade Electronic Data Interchange Systems
TEEC	Treaty Establishing the European Economic Community
TEN-T	Trans-European Transport Network
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union
TfR	Tidsskrift for Rettsvitenskap (Journal)
TMD	Trade Mark Directive
TRIPS	The Agreement on Trade-Related Aspects of the Intellectual Property Rights
TTIP	EU-US Transatlantic Trade and Investment Partnership
UEAPME	European Association of Craft, Small and Medium-Sized Enterprises
UNCITS	Undertakings for collective investment in transferable securities
UK	United Kingdom
UNCLOS	United Nations Convention on the Law of the Sea
UN/EDIFACT	The United Nations rules for Electronic Data Interchange for Administration, Commerce and Transport
UNICE	Union of Industrial and Employers' Confederations of Europe
VAT	Value Added Tax
VIS	Visa Information System
WFD	Water Framework Directive
WG	Working Groups
WIPO	World Intellectual Property Organisation
WTO	World Trade Organisation
ZJS	Zeitschrift für das Juristische Studium (Journal)

General bibliography

The following books are referred to in abbreviated form throughout the commentary

Catherine Barnard, *The Substantive Law of the EU – The Four Freedoms* (5th ed., Oxford University Press, Oxford 2016)

Carl Baudenbacher (ed.), *The Handbook of EEA Law* (Springer, 2015)

Thérèse Blanchet, Risto Piipponen and Maria Westman-Clément, *The Agreement on the European Economic Area* (Clarendon Press, Oxford 1994)

Henrik Bull, *Norsk lovkommentar (Rettsdata.no), Comments on the Norwegian EEA Act and the Main Part of the EEA Agreement.*

Christian Calliess and Matthias Ruffert (eds.), *EUV/AEUV – Das Verfassungsrecht der Europäischen Union mit Europäischer Grundrechtecharta – Kommentar* (5th ed., CH.Beck, Munich 2016)

Paul Craig and Gráinne de Búrca, *EU Law – Texts, Cases and Materials* (6th ed., Oxford University Press, Oxford 2015)

EFTA Court (ed.), *The EEA and the EFTA Court – Decentred Integration* (Hart Publishing, Oxford and Portland, Oregon 2014)

EFTA Court (ed.), *Judicial Protection in the European Economic Area* (German Law Publishers, Stuttgart 2012)

Niels Fenger, Michael Sánchez Rydelski and Titus van Stiphout, *European Free Trade Association (EFTA) and European Economic Area (EEA)* (Wolters Kluwer, Alphen an den Rijn 2012)

Halvard Haukeland Fredriksen and Gjermund Mathisen, *EØS-rett* (2nd ed., Fagbokforlaget, Bergen 2014)

Peter-Christian Müller-Graff and Erling Selvig (eds.), *The European Economic Area – Norway's Basic Status in the Legal Construction of Europe* (Berlin Verlag Arno Spitz, Berlin 1997)

Peter-Christian Müller-Graff and Erling Selvig (eds.), *EEA-EU Relations* (Berlin Verlag Arno Spitz, Berlin 1999)

Olivier Jacot-Guillarmod (ed), *Accord EEE – Commentaires et réflexions* (Schultess, Zürich 1992)

Sven Norberg, Karin Hökborg, Martin Johansson, Dan Eliasson and Lucien Dedichen, *EEA Law – A Commentary on the EEA Agreement* (Fritzes, Stockholm 1993)

Fredrik Sejersted, Finn Arnesen, Ole-Andreas Rognstad and Olav Kolstad, *EØS-rett* (3rd ed., Universitetsforlaget, Oslo 2011)

Christoph Vedder and Wolff Heintschel von Heinegg (eds.), *Europäisches Unionsrecht – EUV/AEUV/Grundrechte-Charta – Handkommentar* (Nomos, Baden-Baden 2012)

Finding the sources of EEA Law

EEA legal texts

EEA legal texts can be accessed through the EEA's official website, www.efta.int.

In the section called "The EEA Agreement" one can find:

- the text of the Main Part of the EEA Agreement
- updated versions of Annexes 1 to 22 to the EEA Agreement
- updated versions of Protocols 1 to 49 to the EEA Agreement
- the full text of the Final Act to the EEA Agreement
- a chronological archive of the Decisions of the EEA Joint Committee
- the Decisions adopted by the EEA Council
- a list of adopted EU acquis marked as EEA relevant by the EU or considered as such by the EEA EFTA States currently under discussion for incorporation into the EEA Agreement
- a list of adopted EU acquis considered as EEA relevant and for which draft Joint Committee Decisions have been formally submitted and are under consideration by the two sides
- an updated list of adopted Decisions of the EEA Joint Committee where constitutional requirements have been indicated by one or more EFTA States in accordance with Art. 103(1) EEA
- an updated list of adopted Decisions of the EEA Joint Committee where indicated constitutional requirements have not yet been fulfilled
- a list of veterinary acts subject to simplified procedures

Particularly helpful is the interactive EEA-lex database (www.efta.int/eea-lex), which can be used to check the current EEA law status of any EU legal act.

The EFTA homepage further provides access to:

- the updated version of the Agreement between the EFTA States on a Standing Committee, www.efta.int/eea/eea-institutions/standing-committee
- the updated version of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, including its Protocols and Annexes: www.efta.int/legal-texts/the-surveillance-and-court-agreement.

Decisions from the EFTA Court

Cases from the EFTA Court can be accessed free of charge through the Court's official website, www.eftacourt.int.

Decisions and guidelines from the EFTA Surveillance Authority

Decisions and guidelines from the EFTA Surveillance Authority can be accessed free of charge from ESA's official website, www.eftasurv.int.

EU-sources of EEA-relevance

EU-sources of EEA-relevance can be obtained from the usual EU law databases (EUR-lex, InfoCuria etc.)