

E U R O P E A N E C O N O M I C A R E A

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JOINT PARLIAMENTARY COMMITTEE

REPORT

on

Consumer issues in the EEA

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I THE EEA AGREEMENT

1. The EEA Agreement is based on the “*aquis communautaire*”, the body of relevant EU law, which the EFTA states agreed to accept. Contracting parties to the agreement are the European Union and the EFTA states Norway, Iceland and Liechtenstein.

2. The Agreement implies that two separate legal systems are applied in parallel within the EEA, the EEA Agreement to relations between the EFTA and EU member states, as well as between the EFTA states themselves, and EU law between the EU Member states. In order to be homogeneous the two legal systems must develop in parallel and be applied and enforced in a uniform manner. The Agreement provides that most of its provisions shall in their implementation and application be interpreted in conformity with the relevant rulings of the European Court of Justice. Secondary EU legislation in areas covered by the EEA Agreement is brought into the EEA by means of direct references in the EEA Agreement to the relevant Union acts. This method is called the reference method and the Annexes of the EEA Agreement in which the references are listed, contain only the complete title and document number of the EU CELEX databank and make reference to the publication of these acts in the Official Journal of the EU. The method of reference was developed in order to make sure that the law of EEA is homogeneous with EU law. Thus through the EEA Agreement all member states of EEA have the same legal basis.

The scope of the EEA Agreement

3. The EEA Agreement is applicable both to trade between the EU and its Member States and EFTA states and to the trade between the latter. The EEA Agreement encompasses co-operation in the field of the four freedoms and contains basic provisions, which are drafted as closely as possible to the corresponding provisions of the EU Treaty on the free movement of goods, persons, services and capital. The contracting parties have also agreed to cooperate in many non-economic fields outside the four freedoms, such as education, social policy and consumer protection. However such important EU matters as the customs union and common commercial policy, structural funds, VAT and other fiscal legislation, Economic and Monetary policy, European Political Co-operation (EPC), Common Agricultural Policy (CAP) and new policy areas defined in the Treaty of Maastricht, are *not* covered by the EEA Agreement.¹

4. Since agriculture is not an integrated part of either EFTA co-operation nor of the EEA Agreement, it was agreed that trade in agricultural products should be extended. This was achieved through bilateral agreements between each of the EFTA states and the EU covering specific agricultural products. In addition, Article 9 of the Agreement provides for regular reviews of trade in agricultural products with the aim of achieving progressive liberalisation.²

¹ Weiss; Yearbook of European Law 1992, Clarendon Press Oxford 1993, page 400

² www.efta.int 13/01/99

5. The *EEA* agreement means that the participating countries are fully integrated in the single market. This has serious effects on consumer policy. Goods produced in one Member State must be sold without hindrance in the others. This does not only impact on the product but also on such questions as labelling, responsibility of producers and product guarantees. EU legislation, and the *EEA Agreement* imply that the possibility of introducing or maintaining specific national legislation is seriously diminished.

6. The EU market is regulated via different sorts of rules.

(a) The free market and the "Cassis de Dijon" principle mean that goods sold legally in one country can be sold legally in all member countries. This can limit the application of national standards if any producer or exporter objects to them.

(b) The harmonisation of standards, according to *Article 100A*, means that all national rules must be harmonised. This in practice means setting maximum regulations. National legislation in the interest of the consumers that limits the free trade of goods is generally not permitted. There is a limited possibility for EU-states to maintain stricter national rules (*Article 100A4*), but only if that is approved by the Commission. This possibility is limited to environmental and workers' health reasons (*Amsterdam Treaty Art 95.4*).

(c) *Article 129A*, directly concerning consumer issues, becomes a strengthened *Article 153* in the Amsterdam Treaty. Legislation based on this article sets minimum standards, but gives Member States the explicit right to maintain and introduce stricter rules as long as they are in accordance with other parts of the treaty. *Art. 153* stresses consumer's health, safety and economic interest as well as his right to information and education.

7. *Art. 3* of the Treaty aims to strengthen consumer protection. New directives are being introduced and existing ones revised in order to improve consumer protection legislation. Conflicts concerning consumer issues are generally resolved according to the "Cassis de Dijon" principle with directives using *Art 100A*, rather than *Article 153* as a legal base. Therefore it is in the consumer's interest that as many directives as possible are based on the principle of setting minimum standards, rather than total harmonisation.

II GENERAL CONSUMER POLICY WITHIN THE EUROPEAN UNION

8. The legal basis for consumer protection is found in Article 129 a of the TEU. The policy has been broadened beyond single market issues and includes access to goods and services, and aspects of nutrition, food, housing and health policy. TEU also states that no Member State is prevented from introducing or maintaining more stringent measures providing that they do not violate the Treaty.

9. Five internationally accepted basic consumer rights are recognised by the European Union:

- the right to protection of health and safety,
- the right to protection of financial interests,
- the right to protection of legal interests,
- the right to representation and participation,
- the right to information and education.

10. The focus has been on two areas: information and purchasing. Information, because it is imperative for consumer for self-protection. Broad policy lines include the transparency of product information, the development of consumer information services and increased comparative testing of products. The policy developed regarding purchasing is based on the principle that the purchaser should be able to assess the basic features of the goods, such as the nature, quality, quantity and price. In order to emphasize the importance of consumer protection the autonomous Consumer Policy Service became a full Directorate General in April 1995 - DG XXIV.

III CONSUMER PROTECTION WITHIN THE EEA

11. Article 6 (1) of Protocol 31 of the EEA Agreement states that contracting parties are to strengthen the dialogue between them in the field of consumer protection. Article 72 of the EEA Agreement states that all adopted secondary EU law concerning consumer protection is listed with references in Annex XIX to the EEA. Annexed to this report are the EEA Joint Committee decisions adopted to date in 1998.

12. Both Iceland and Norway have fully implemented the Directive on Purchase of Timeshare (94/47/EEC), whereas a letter of formal notice was sent to Liechtenstein for failure to implement the Directive. Liechtenstein has however fully implemented the Unfair Terms Directive (93/13/EEC).³

IV CONFLICTS BETWEEN EU LAW AND THE EEA AGREEMENT WITHIN THE FIELD OF CONSUMER PROTECTION

13. The EEA Agreement provides for consultation of and information to the EEA EFTA states during the preparation of Union legislation by the Commission, EFTA experts are consulted on the same basis as EU experts in the preparatory phase of legislation. Through the Joint Committee structure, the EEA EFTA states are consulted on proposals for legislation once they have been presented to the EU Council.⁴ Furthermore the EEA Joint Committee is constantly reviewing the development of case law of the European Court of Justice and the EFTA court. For this purpose, judgements of these two courts are transmitted to the EEA Joint Committee so they can act in order to preserve the

³ www.efta.int 990113

⁴ www.efta.int 990114

homogenous interpretation of the Agreement.⁵ If a difference were to occur between the case law of the European Court of Justice and the EFTA court, then the EEA Joint Committee is to act to preserve the homogenous interpretation of the Agreement.⁶

14. The contracting parties have a possibility of intervention in the European Court of Justice and the EFTA Court in order to be able to express their opinions on the interpretation of the EEA Agreement or the corresponding provisions of Union law. This possibility has proved to safeguard uniformity in the application of Community law.⁷

15. According to research in the CELEX database, the European Current Law Yearbook back to 1994, the EFTA International homepage and Internet, no cases involving consumer protection arise. It appears that the system construed in the EEA Agreement to ensure homogenous legislation and interpretation of current European Union case law has so far been successful. The same problems that might arise within the Union and its Member states can of course also arise regarding the EEA Agreement, but there are no problems relating specifically to the EEA Agreement.

16. The EEA Agreement does not cover the Common Agricultural Policy (CAP) and the product coverage is limited to processed agricultural products specified in Protocol 3 of the EEA Agreement.⁸ Regarding the increasing focus on consumer protection and consumer and public health there is a possibility that problems might arise within this field but Protocol 3 is to be revised and the revision is expected to begin in a near future.⁹ A new strengthened co-operation regarding veterinary matters and remaining EU veterinary aquis has also been incorporated by the EEA Joint Committee in decision No 69/68 in order to ensure homogenous conditions of trade in this area.¹⁰ The national rules in this field are usually designed to protect public health and the rules can also be used to protect domestic agricultural production.¹¹

17. The consumer protection in the EEA market depends on the manufacturers respect for the EU legislation concerning products. The CE label should only be used when the products fulfil the demands set by product safety directives in the EU. This is not always the fact today. Studies and controls in different states in the EEA show that products not fulfilling the directives' demands are common on the market. It is, therefore, important to strenghten the national control of the products in many states.

18. The rules set by the WTO are becoming increasingly important to consumers. It is important that national or EEA rules set to protect consumer interests not become abolished by the WTO rules. It is a common interest for the EU and the EFTA states to develop the WTO so that they strenghten product and food safety

⁵ Norberg, Hökborg, Johansson, Eliasson, Dedichen; The European Economic Area; EEA law, a commentary on the EEA Agreement, Fritzes 1993, page 195

⁶ ibid

⁷ ibid page 197

⁸ ibid page 358

⁹ Protocol of the 10th meeting of the EEA Council 6 October 1998, C/98/330

¹⁰ ibid

¹¹ ibid, page 360

V RECENT INITIATIVES IN THE AREA OF CONSUMER PROTECTION

19. In December of 1998, the Commission adopted a Consumer Policy Action Plan from 1999 to 2001. The rapid technological change revolutionizing transport, telecommunications and data processing networks is just one of many factors which are transforming consumer policy. In order to meet the new demands, the Commission's Action Plan builds on the new Article 153 of the Amsterdam Treaty.

20. The three main objectives of the Plan are to have a more powerful voice for the consumer throughout the EU by means of more effective consumer associations, better dialogue between consumers and business and improved education for consumers. Second element rests on a high level of health and safety for Europe's consumers that emphasizes science-based policy making, safer products, safer services and better enforcement, monitoring and response to emergencies. The last point concerns full respect for the economic interests of EU consumers and is based on financial services and single currency for consumers, a more up-to-date regulatory framework, better enforcement and better integration of consumer economic interests in other EU policies.

21. Specific initiatives which are currently under discussion for incorporation into the EEA Agreement include Directive 98/27/EC on injunctions for the protection of consumers' interests. The Directive gives formal rights to competent bodies such as consumer organizations and consumer ombudsmen to take action in another Member State whenever a practice contrary to Directives set out in the Annex occurs in one Member State but has originated in another.

22. A general framework for Community activities in favor of consumers has, moreover, recently been adopted by the EU allocating 112.5 MECU from 1999 to 2003 for activities such as consumer health and safety, protection of economic interests of consumers and education and information of consumers. The framework envisages participation of the EFTA EEA States and the matter is consequently being studied in the EFTA capitals.

23. Other issues which are currently on the table and very relevant for the consumers in the EEA is the proposal on the distance contracts between suppliers and consumers concerning financial services. The proposal, which the Commission adopted in 1998, sets out total harmonization of the rules specified in the directive and host country control. The former is a single market principle but the latter in conformity with consumer protection emphasis. EFTA EEA States have on earlier occasions emphasized that financial services are perhaps the most important services offered to consumers and in this context stressed that the principle of minimum harmonization should be maintained.

24. A proposal for a European Parliament and Council Directive on the sale of consumer goods and associated guarantees is also in the pipeline and it is envisaged that a Directive might emerge at the end of this year. The newly adopted proposal on electronic commerce and the introduction of the EURO will also have consequences for consumers in the EEA and therefore are matters that need continued scrutinisation.

25. In the aftermath of the BSE crisis, which caused a decline in consumer confidence, the Commission presented a Green Paper on “The General Principles of Food Law in the European Union” (COM (97)176), defining the basic goals of EU Food Law in ensuring i.a. a high level of consumer protection. Furthermore, a Commission Communication, “Consumer Health and Food Safety” (COM (97) 183) has been adopted where one of the main objectives is to develop a true food policy for the protection of the consumer and consumer health, based on the most recent and complete scientific evidence.

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RESOLUTION

on Consumer Issues in the EEA

The EEA Joint Parliamentary Committee of the European Economic Area:

- A. whereas there is a significant impact on consumers of the single market and the *EEA Agreement*,
- B. whereas the strengthening of consumer protection is a primary objective for the EU (*Article 3 TEU*),
- C. whereas *Article 153* of the Treaty of Amsterdam strengthens consumer protection,
- D. whereas *Article 72 EEA* concerns consumer protection,
 - 1. stresses the importance of early involvement of the EEA/EFTA States when new directives effecting consumers' interests are discussed in the EU;
 - 2. stresses that as many directives as possible affecting consumer rights should be framed as directives setting basic minimum standards;
 - 3. requests that the EU, when there are conflicts concerning consumer protection and free movement of goods, to respect as far as possible stricter national legislation;
 - 4. stresses the importance of clear and informative labelling;
 - 5. emphasises the importance of a strong EU system on Eco labelling, which also respects the existing national Eco labelling systems;
 - 6. asks the EEA to thoroughly supervise and control that the EU directives on product safety are respected and that goods not meeting the standards are not allowed on the market;
 - 7. asks the EU and the EEA/ EFTA to defend consumers' interests in negotiations and decision-making in the WTO;
 - 8. welcomes the Commission's newly adopted Action Plan from 1999 to 2001;
 - 9. emphasises the importance of the new general framework for Community activities in favour of consumers and welcomes the possible participation of the EEA/EFTA in the programme;

10. reiterates the importance of financial services to consumers and stresses that a directive adopted in the future should fully protect the consumers in the EEA;
11. calls for the speedy adoption of the proposal on the sale of consumer goods and associated guarantees;
12. underlines the importance of the EEA/EFTA States to fully scrutinise the newly adopted proposal on electronic commerce.

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