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JOINT PARLIAMENTARY COMMITTEE

REPORT

on

Homogeneity in the European Economic Area

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I INTRODUCTION

1. The basic aim of the EEA Agreement “to establish a dynamic and homogeneous European Economic Area, based on common rules and equal conditions of competition...” is expressed in the Preamble of the EEA Agreement. In practice this means that the same rules apply and are given the same interpretation throughout the whole EEA and, in particular, that individuals and economic operators are treated in the same way throughout the EEA, regardless of whether Community law or EEA rules are applied.

2. The whole project of one market with common rules could risk being jeopardised if the application and interpretation of those rules were to develop along different lines in the EU Member States on the one hand and the EEA EFTA States on the other hand. Thus, the importance of maintaining a homogeneous European Economic Area cannot be sufficiently underlined. Preserving EEA homogeneity requires a dynamic approach taking into account, inter alia, political developments, new treaty dimensions and case law. This report will focus on the decision-making and implementation aspects of maintaining a homogeneous EEA, as well as on some political aspects of retaining homogeneity in a European Economic Area of fifteen EU Member States and three EEA EFTA States.

II DEVELOPMENTS IN THE EU AND THEIR IMPACT ON THE EEA

3. There are a number of important developments in EU policy areas which affect the Internal Market and the EEA but in relation to which the EEA EFTA States have no direct institutional link to the EU. In addition to new Treaty dimensions, which may have an impact on the functioning of the EEA Agreement, enlargement of the EU and thus the EEA (according to Article 128 EEA) will be of great significance for the Single Market. It is vital that the current Single Market serving the eighteen EEA States is streamlined and geared up to function as part of a larger market serving, in due course, a much larger number of countries and people.

4. Implications of the amendments to the EC Treaty, made by the Amsterdam Treaty and earlier by the Maastricht Treaty, on the EEA will most likely evolve gradually, as the Community progresses and develops new strategies based on the amendments. New issues arising from the Maastricht and Amsterdam Treaties, which do not have any clear corresponding legal basis in the EEA Agreement can create formal legal gaps between the two pillars. Furthermore, additional competencies are given to the Community by virtue of new enabling clauses in areas both within and outside the present scope of the EEA Agreement.

5. Following the completion of the EU’s third stage of monetary union with the launch of the euro, co-ordination of economic, budgetary and fiscal policies is consolidated for participating EU Member States within the ambit of ECOFIN. The introduction of the euro will bring along important changes in economic and monetary life within the EU. Although the EEA EFTA States are not part of the euro-zone, their

association to the EU by means of the Single Market will influence economic and monetary practices in the EEA EFTA States. The EEA EFTA States must consider preparing for these challenges and take appropriate decisions regarding their own currencies, for example the exchange rates.

6. Under the Amsterdam Treaty, measures that emanate partly from the former Schengen cooperation, such as in the field of migration and asylum, will increasingly be looked at together with already existing provisions dealing with free movement of persons. Consequently, EEA cooperation in the area of free movement of persons at large may face complex challenges of a legal and political nature.

7. Implications of the new Treaties are, moreover, felt in the decision making procedures of the EU, mainly in the increased powers of the European Parliament. In the absence of direct institutional links between EFTA and the European Parliament (with the exception of the EEA JPC), the question of how to take into account the strengthened parliamentary dimension on the EU side for the decision shaping under the EEA requires some further analysis and reflection on the EFTA side.

8. Having noted that the Amsterdam Treaty, inter alia, integrates environmental considerations into all Community policies and activities, an informal meeting of EU and EEA EFTA Ministers of Environment took place in late 1999. The EEA Council agreed to consider future meetings at political level also in other areas. This is a good example of a flexible and constructive way of dealing with new dimensions of the EEA cooperation within the existing framework.

III NEW STRATEGY FOR THE INTERNAL MARKET

9. The Commission's Communication of February 1999 draw to a close the Single Market Action Plan whilst identifying the actions that remained incomplete. The new Strategy for the Internal Market, which was endorsed by the Helsinki European Council in December 1999, will carry forward some of the actions left over and monitor progress in meeting newly-set targets over the next 5 years (2000-2004).

10. The primary goals of the new Strategy are to enhance the competitiveness of the European economy and to improve the quality of life of European citizens. In order to achieve these goals the Strategy centres on four main objectives, namely improving the quality of life of citizens, enhancing the efficiency of the EU's product and capital markets, improving the business environment and exploiting the achievements of the Internal Market in a changing world. Within each of these objectives, the Strategy includes operational objectives with specific target actions whose implementation and level of priority will be evaluated periodically. The process of monitoring, dialogue, analysis and review is to be an annual one.

11. For the EEA Agreement and the EEA EFTA States, the new Strategy represents some obvious challenges. Firstly, the Strategy does not make any explicit reference to the extension of the Internal Market to the EEA EFTA States, although meetings on the

review of the Strategy will take place between the Commission and the EFTA side. Secondly, the new Strategy has a much wider scope than the former Action Plan had, linking the Internal Market policies to economic and taxation policies, areas not included in the EEA Agreement. To ensure parallel development and equal conditions of competition throughout the EEA, the EEA EFTA States could consider following target actions not directly relevant to the EEA Agreement with the necessary parallel actions.

IV EC COMMITTEES WITH EFTA PARTICIPATION

12. In order to safeguard homogeneity in the EEA, it is important that particular experiences or conditions in the EEA EFTA States are taken into account in the shaping of common rules. It is therefore crucial that representatives and experts of the EEA EFTA States are ensured the right to be involved in the work of EC Committees entrusted with the daily implementation, management and development of Community rules of relevance to the EEA Agreement, as provided for in Articles 81 (b), 99, 100 and 101 EEA. Such involvement can contribute significantly to preserve the smooth functioning of the Agreement and facilitate implementation of Single Market Directives throughout the EEA.

13. In order to exploit the EEA EFTA States' possibilities to influence EU decisions, it would be valuable to examine current EFTA participation in EC Committees, with a view to improve efforts in the future.

V DECISION MAKING IN THE EEA JOINT COMMITTEE

14. As laid down in Article 102 (1) EEA, there should be no delays in relation to entry into force of an amendment of an Annex to the EEA Agreement and entry into force of the corresponding Community rule. From the homogeneity point of view this principle is evidently very important. An analysis was conducted on both the EFTA and the EU sides during the second half of 1999 which led to the introduction of a number of measures to enhance and further accelerate the process of integration of EU legal acts into the EEA Agreement.

15. Disregarding the veterinary field, the accelerated rate of decision-making has led to a significant reduction in the backlog and the time the average legal act spends in the EEA pipeline has been shortened. However, concerns about a number of long outstanding legislative acts remain. Moreover, late fulfilment of constitutional requirements in the EEA EFTA States has continued to pose a problem for the homogeneity of the EEA.

16. A further persisting problem concerns delays in the publication of Joint Committee Decisions. Increased resources on the EFTA side for translation of acts into Icelandic and Norwegian will remedy the situation gradually and henceforth at least the

decisions themselves will be published more swiftly. However, it will take some time to absorb the backlog of translation of acts.

VI IMPLEMENTATION

Scoreboards

17. The task of the EFTA Surveillance Authority is to ensure, together with the European Commission, the fulfilment of the obligations laid down in the EEA Agreement. The *Single Market Scoreboard for the EFTA States* is issued by the EFTA Surveillance Authority biannually, concurrently with the *Commission's Single Market Scoreboard* for the EU Member States.

18. The *Commission's Scoreboard No. 5*, published in November 1999, deals with the effectiveness of the Single Market rules in the EU Members States and in the EEA EFTA States. It also covers the Commission's and (for the first time) the EFTA Surveillance Authority's infringement proceedings against these States with respect to failures to comply with the relevant Single Market rules applicable to them. The information on the EFTA States is taken from the *EFTA Surveillance Authority's Scoreboard No. 5*, also published in November 1999. The Commission Scoreboard has, however, a somewhat wider scope than the EFTA Scoreboard, monitoring prices across the Union and following up the Financial Services Action Plan Commitments, in addition to presenting feedback from the annual Business Survey.

19. The *Commission's Single Market Scoreboard No. 5* deals with 1441 Single Market Directives that were part of the *acquis communautaire* on 1 November 1999. On the same date, the number of Single Market Directives that were part of the EEA Agreement, and form the basis of the statistics set forth in the *EFTA Single Market Scoreboard No. 5*, was 1267. There are mainly two reasons for the number of Single Market Directives being lower in the Authority's Scoreboard than in that of the Commission. Firstly, some Single Market Directives fall outside the scope of the EEA Agreement. Secondly, while EEA relevant, some of the Single Market Directives included in the Commission's Scoreboard have not yet been made part of the EEA Agreement through an EEA Joint Committee decision amending the Annexes and Protocols of the Agreement.

Implementation of Internal Market Directives

20. During the last years, the EU Member States' transposition record has greatly improved bringing the fragmentation factor (the percentage of Directives not yet implemented by all Members States) down from 26,7% in November 1997 to 12,6% in November 1999. This dramatic improvement was mainly achieved by eliminating the backlog of older Directives, which had not been transposed. When the Single Market Directives with effective derogations and transition periods in November 1999 are excluded, 9,2% of the Directives included in the EEA Agreement are not transposed across the EEA EFTA States (see figure 1).

Figure 1: Percentage rate of Single Market directives not transposed across the whole of the EU and across the EEA EFTA States on 1 November 1999

	EU	EEA EFTA States
Nov 1999	12,6%	9,2%
Nov 1998	14,9%	12,2%
Nov 1997	26,7%	16,2%

21. In most EEA States, the backlog of non-transposed directives has greatly improved. A comparison of rates of failure to implement Internal Market Directives between the 18 EEA States shows that Iceland (3,1%) and Liechtenstein (3,2%) hold the 8th and 9th place after Germany (2,9%), and that Norway (4,7%) has slipped from 7th place to 14th between Ireland (4,4%) and Portugal (5,0%). Six countries continue to have a transposition deficit above 4%: Luxembourg, Greece, France, Portugal, Norway and Ireland (see figure 2).

Figure 2: Comparison of the EEA States' rates of failure to implement Internal Market Directives (in %)

	DK	FIN	S	E	NL	UK	D	ISL	LIE	B	A	I	IRL	NOR	P	F	L	EL
Nov 1999	1,3	1,7	2,1	2,2	2,8	2,8	2,9	3,1	3,2	3,5	3,7	3,9	4,4	4,7	4,9	5,6	5,7	6,2
Nov 1998	1,5	0,9	1,5	2,7	3,8	2,1	2,7	5,4	7,2	5,2	4,2	5,7	5,8	3,8	5,6	5,5	6,2	5,2
Nov 1997	3,2	4,3	6,2	4,7	4,6	3,5	8,5	5,6	10,8	8,5	10,1	7,6	5,4	6,9	5,9	7,4	6,5	7,5

Implementation delays

22. The pace of implementation has accelerated in the majority of the EEA States. The average delay in implementing overdue legislation in 1999 was 9,6 months compared to 13,5 months in 1998. For each EEA State the average delay incurred by 15 November 1999 ranges from 3,1 months (Liechtenstein) to 15,8 months (France). When all the EEA States are put in a ranking order, Norway (8,3 months) qualifies as 7th after Iceland (7,5 months) and before the UK (8,4 months) and the Netherlands (8,5 months). Spain (6,5 months) has, like Liechtenstein and Iceland, improved its record dramatically, moving from the 14th place to the 5th (see figure 3).

Figure 3: EEA States' average delay of notification per directive (measured in months)

	LIE	FIN	DK	S	E	ISL	NOR	UK	NL	P	D	I	A	L	IRL	B	EL	F
Nov 1999	3,1	4,9	4,9	5,7	6,5	7,5	8,3	8,4	8,5	10,6	11,2	11,3	11,5	12,5	12,8	14,2	14,4	15,8

Oct 1998	21.9	2.7	4.4	8.6	16.8	15.7	13.1	9.6	13.5	12.3	10.8	14.0	13.9	14.4	14.7	20.6	17.9	17.4
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Homogeneity across sectors

23. When the delays are broken down by sector the pattern of implementation varies between the eighteen EEA States. Of particular concern are the following sectors: veterinary legislation in France and Greece, intellectual and industrial property in Ireland, motor vehicles and transport in Portugal and telecommunications in Belgium, France and Italy (see figure 4a). In Norway important gaps remain in medicinal products, legislation on health and safety at work, and transport. In Liechtenstein problems concentrate on company law and insurance and in Iceland on chemicals (see figure 4b). It is evident that difficulties occur in both the EU and the EEA EFTA States in the sectors Transport, Environment, Telecommunications, Intellectual Property and Public Procurement, but the remaining “problem sectors” are different for the two sides.

Figure 4 Non-implemented Single Market Directives by sector (ranked according to the number of directives not yet transposed in all EU Member States or EEA EFTA States), November 1999

4a EU Member States

	EU ***	B	DK	D	EL	E	F	IRL	I	L	NL	A	P	FIN	S	UK
Veterinary checks (207)	36	4	5	5	24	11	27	18	13	14	9	15	7	4	5	11
Transport (64)	32	7	2	5	12	4	10	11	9	19	8	6	18	4	7	5
Motor vehicles (156)	13	10	1	2	9	1	3	6	7	10	5	1	13	7	6	3
Chemical products (81)	12	5	3	6	5	2	3	3	1	1	4	5	5	2	4	3
Plant-health checks (180)	12	3	1	4	9	4	3	-	3	10	3	8	6	1	2	2
Environment (92)	10	6	2	4	7	3	4	3	3	3	1	3	3	1	2	4
Social Policy (39)	10	1	-	-	1	-	3	1	5	4	-	3	-	-	-	-
Food legislation (106)	9	1	-	4	5	2	3	7	3	1	1	3	3	-	-	1
Telecommunications (17)	7	4	1	-	2	-	4	1	3	1	-	-	1	-	-	2
Intell. & ind. Property (8)	4	-	1	1	1	1	1	4	-	2	1	-	1	-	-	1
Public procurement (11)	4	-	-	2	3	1	2	-	1	2	-	2	2	-	-	2
TOTAL	149	41	16	33	78	29	63	54	48	67	32	46	59	19	26	34

**** Number of Directives

(#) Total number of Directives concerned in each sector

(Figure 4 continues on page 9)

4b EEA EFTA States

	EFTA ***	ISL	LIE	NOR
Medicinal Products (34)	11	1	-	10
Company Law (11)	10	-	10	14
Health and Safety at Work (20)	10	1	2	9
Insurance (22)	9	-	8	1
Transport (57)	9	4	-	7
Dangerous Substances (87)	9	9	-	-
Environment (31)	6	4	1	5
Public procurement (6)	2	2	-	-
Intellectual Property (6)	2	1	1	1
Telecommunications (14)	2	1	2	-
Banking (21)	2	-	1	1
Postal Services (1)	1	-	1	1
Cultural Objects (1)	1	1	-	-
Machinery (2)	1	1	-	-
Information Technology (2)	1	1	-	1
Audio-visual Services (2)	1	1	-	1
Lifting and mechanical handling Appliances (3)	1	1	-	-
Pressure Vessels (9)	1	1	-	-
TOTAL	79	29	26	51

**** Number of Directives
(#) Total number of
Directives concerned in each
sector

VII INFRINGEMENTS

24. As transposition improves the spotlight turns to correct implementation of Internal Market rules. The infringement procedures in the EU and EEA EFTA contexts are identical, although the institutional arrangements are different. The infringement procedure provides for a dialogue between the European Commission and the EU Member States concerned or, in the EEA context, between the EFTA Surveillance Authority and the EEA EFTA State failing to fulfil an obligation under the Agreement.

25. Infringement activity on both sides remains high. For the EEA EFTA States, the number of letters of formal notice sent during the period September 1998 to September 1999 has almost tripled compared to the number of letters dispatched between September 1997 and September 1998. On the other hand, the number of reasoned opinions has decreased between the two periods in question as well as compared to previous periods since September 1996. Finally, no infringement case had to be referred to the EFTA Court in the last 18 months. An opposite development has taken place in the EU, where the number of letters of formal notice has fallen, whereas the number of reasoned opinions is higher in 1998 - 1999 than a year earlier. The number of cases referred to the European Court of Justice has also increased (see figure 5).

**Figure 5: Infringement statistics for alleged breaches of Internal Market rules
Comparison between Sept. '97 – Sept. '98 and Sept. '98 – Sept. '99**

		EU total	EU average per country	EFTA total	EFTA average per country
Letters of formal notice	9/98 – 9/99	344	22,9	94	31,3
	9/97 – 9/98	429	28,6	38	12,7
Reasoned opinions	9/98 – 9/99	238	15,9	15	5
	9/97 – 9/98	219	14,6	29	9,7
Cases referred to the ECJ/EFTA Court	9/98 – 9/99	63	4,2	0	0
	9/97 – 9/98	48	3,2	1	0,3

(Note that a strict comparison is not possible as EFTA numbers include letters of formal notice for non-transposition, while EU figures for letters of formal notice include only alleged breaches of rules)

26. Four countries, France, Italy, Belgium and Greece, together account for more than half of the reasoned opinions issued by the Commission between September 1998 and September 1999. The high share of some EU Member States in the number of infringement procedures reflects their difficulty in solving infringement cases quickly. This may result from political or legal problems or, more simply, from the fact that administrations take a long time to take the necessary measures to resolve the problem. On the EEA EFTA side, Norway accounts for two thirds of the reasoned opinions issued by the EFTA Surveillance Authority between September 1998 and September 1999. In general, however, EEA EFTA States appear to take action in response to the letters of formal notice, thereby avoiding that the infringement procedure goes to further stages.

27. The EFTA Scoreboard now follows the good example of the Commission Scoreboard and analyses the statistics on infringements by breaking down the numbers of reasoned opinions by sectors. These analyses show sensitivity of sectors in application of Internal Market rules and willingness of States to resolve problems. The sectors with the largest number of infringement procedures in the EU are environment, right of establishment and free provision of services and free movement of goods. In the EEA EFTA States the sectors with the largest numbers of reasoned opinions are transport and medicinal products (see figure 6).

Figure 6: Breakdown by sector of reasoned opinions sent between 1 September 1998 and 1 September 1999

Reasoned opinions	EU total	EU average per country	EFTA total	EFTA average per country
Free movement of persons	17	1,1		
Free movement of goods	44	2,9		
Establishment and provision of services	49	3,3		
• <i>Transport</i>	10	0,7		
• <i>Telecommunications</i>	22	1,5		
Free movement of capital	7	0,5		
Taxes	24	1,6		
Public procurement	16	1,1		
Social Affairs	22	1,5		
Consumer Affairs	7	0,5		
Environment	52	3,5		
Mutual recognition of diplomas			1	0,3
Medicinal products			3	1
Insurance			2	0,7
Transport			4	1,3
Telecommunications			2	0,7
Health and Safety			2	0,7
Company Law			1	0,3

28. The Commission Scoreboard examines the rate of closed cases at each stage of infringement procedures and notes that in general disputes continue to take too long to resolve but that performance is uneven among Members States. Future Commission Scoreboards will continue to measure progress in accelerating the pace of resolution of legal disputes. Considering the crucial importance of early resolution of legal disputes to the efficient functioning of the Internal Market, corresponding work regarding the EEA EFTA States would be valuable.

VIII FEEDBACK FROM CITIZENS AND BUSINESSES

29. The Commission's Annual Business Survey, which is reported on in the Commission Scoreboard, confirms the view of a continuing improvement in the functioning of the Internal Market. The majority of business persons interviewed perceive a reduction in barriers to doing business in other countries of the Union over the past two years. The increase in positive answers is striking particularly among SMEs.

30. Business operators and citizens encountering obstacles in the efficient application of common rules may turn to Single Market Co-ordination Centres and Contact Points, which have been set up in all EU Member States and the EFTA States parties to the EEA Agreement. The purpose of these Centres and Contact Points is to promote fast and informal resolution of day-to-day problems within the Single Market, without resorting to official complaint procedures.

31. Feedback from the EU Member States' Co-ordination Centres and Contact Points, which is included in the *Commission Scoreboard No. 4*, reinforces findings elsewhere, such as in the business survey. It shows that many problems result from a lack of mutual recognition of national standards, discrimination against non-nationals, or overly restrictive national technical regulations. The experience of this new mechanism so far is encouraging but its full potential has yet to be realised. In particular, more efforts are needed to increase public awareness of the existence and role of Co-ordination Centres and Contact Points.

RESOLUTION

On Homogeneity in the European Economic Area

The Joint Parliamentary Committee of the European Economic Area:

- A. In accordance with its task laid down in the EEA Agreement (Article 95, paragraph 4),
- B. Noting that the aim of the EEA Agreement as stated in Article 1 (Objectives and principles) is to " promote a continuous and balanced strengthening of trade and economic relations between the Contracting Parties with equal conditions of competition, and the respect of the same rules, with a view to creating a homogeneous European Economic Area...",
- C. Noting that a homogeneous EEA implies that in the area covered by the Agreement individuals and economic operators should be treated in the same way regardless of whether Community law or EEA rules are applied,
 1. Urges the EFTA Surveillance Authority and the Commission to be vigilant in their roles as guardians of the Single Market in the light of developments in the EU, such as the single European currency, which affect the functioning of the EEA and the Single Market but where no institutional links exist between the EEA EFTA States and the EU;
 2. Urges the EU Member States and the EEA EFTA States to ensure that the adoption of Single Market rules is as near completion as possible at the time of the next EU/EEA Enlargement;
 3. Notes with satisfaction that an informal meeting of EU and EEA EFTA Ministers of Environment has taken place and calls on the governments of the EEA States to hold meetings at political level also in other areas where EU cooperation has been strengthened by the Maastricht and Amsterdam Treaties;
 4. Calls on the EFTA side to find ways to take the strengthened parliamentary dimension on the EU side into account for the decision shaping under the EEA;
 5. Calls on the EEA EFTA side to examine closely EFTA participation in EC Committees, with a view to improve decision-shaping efforts in the future;
 6. Urges the EEA EFTA side to follow closely the target actions of the new Strategy for the Internal Market, also those not directly relevant to the EEA Agreement, and to consider necessary complementary actions;
 7. Notes that significant progress on implementing Single Market Directives has been reported in the Single Market Scoreboards in November 1999;

8. Welcomes the regular and simultaneous publication of the Single Market Scoreboards, both from the Commission and the EFTA Surveillance Authority and notes that they contain comparable figures for many of the indicators shown;
9. Calls on the Commission and the EFTA Surveillance Authority to include all available and relevant data on the EEA EFTA States in the corresponding sections of the Commission's Scoreboard in order to improve transparency;
10. Calls on the EFTA Surveillance Authority to expand the assessment of the Single Market performance of the EEA EFTA States, in particular regarding feedback from citizens and businesses, using monitoring and reporting methods, which allow comparison and co-publication with the Commission's Scoreboard;
11. Urges the Commission and the EFTA Surveillance Authority to maintain the pressure on the EEA States to eliminate the backlog of transposition of Single Market legislation into national laws and regulations;
12. Calls on the EEA Joint Committee to continue its efforts to reduce back-logs incorporating EEA relevant legislation into the Agreement;
13. Welcomes increased resources for translation of Joint Committee Decisions into Icelandic and Norwegian but urges the EEA EFTA States to secure the necessary resources to eliminate the backlog of translation of legal acts;
14. Notes with concern the slow pace of implementation of recent legislation and the poor prospects for complete elimination of the transposition backlog;
15. Calls on EU Member States and the EEA EFTA States to honour their obligations and to accelerate the implementation of Internal Market legislation in order to bring the transposition deficit down;
16. Urges the Commission and the EFTA Surveillance Authority to maintain similar policies when making decisions to initiate infringement proceedings;
17. Notes with concern that infringement activity in the EEA remains relatively high and disputes continue to take too long to resolve;
18. Welcomes the inclusion of statistics concerning the EFTA States' infringement procedures in the Commission's 5th Scoreboard and notes with satisfaction that the EFTA Surveillance Authority's 5th Scoreboard breaks down infringement statistics by sectors;
19. Calls on the EEA Council to urge the governments of the eighteen EEA States to undertake efforts to increase public awareness of the existence and role of Single Market Co-ordination Centres and Contact Points.