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*How the enlargement challenges the institutions - or the existence - of  
the European Economic Area*

By

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## Abstract:

In May 2004 the European Union (EU) was enlarged to include ten new member states. In this article, I discuss how the EU enlargement affects the member states of the European Free Trade Association (EFTA). The empirical focus is the impact on the Agreement on the European Economic Area (EEA), which is of key importance in regulating the relationship between the EU and EFTA. I argue that the enlargement process has not challenged fundamentally the existence of the EEA Agreement nor its institutions. The legality of the Agreement has not been challenged, nor has enlargement triggered protests or strong desires for terminating the Agreement. On the contrary, the enlargement of the EU has been followed by a parallel enlargement of the EEA, and has been warmly supported by the EFTA states. However, I discuss three issues that in the longer run could make the legitimacy and the fulfillment of the principal aims of the EEA more difficult. First, I argue that the enlargement has increased the costs for the EFTA countries. Second, I argue that the enlargement is likely to further reduce the possibility of the EFTA countries to influence EU decision making. Finally, I argue that the enlargement has increased the administrative heterogeneity in the EU to such an extent that it is likely to challenge the notion of homogeneous implementation and application of rules and regulations.

## **1. Introduction<sup>1</sup>**

In May 2004 the European Union (EU) was enlarged to include ten new member states. This enlargement has implications for the internal developments in the EU, as well as for the role of the EU towards third-countries. In this article, I discuss how the EU enlargement affects the member states of the European Free Trade Association (EFTA). The empirical focus is the impact on the Agreement on the European Economic Area (EEA), which is of key importance in regulating the relationship between the EU and EFTA.<sup>2</sup>

The focus is not so much on the legal challenges stemming from the enlargement; instead it discusses the implications of the changes in the larger political and administrative context of the EEA Agreement. I argue that the enlargement process has not challenged fundamentally the existence of the EEA Agreement nor its institutions. The legality of the Agreement has not been challenged, nor has enlargement triggered protests or strong desires for terminating the Agreement. On the contrary, the enlargement of the EU has been followed by a parallel enlargement of the EEA, and the enlargement of the EU and the EEA has been warmly supported by the EFTA states.

However, the EU enlargement has still created some new obligations and opportunities for the EEA Agreement and its functioning. These challenges are all primarily related to

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<sup>1</sup> The title of this paper was given to me by the organizers of the E-on Ruhrgas German-Norwegian Seminar on European Law seminar in Stavanger in 2004. I thank the participants at the seminar for good comments, in particular, Peter Behrens, Peter Christian Müller-Graff, Hans Petter Graver, Erling Selvig, Jörn Sack, as well as Maria Martens and Morten Egeberg at ARENA.

<sup>2</sup> By EFTA states I here refer to the EFTA states that are members of the EEA (Iceland, Liechtenstein and Norway). Switzerland is member of EFTA member but not a formal member of the EEA.

the main goals of the Agreement. According to Article 1, the Agreement shall “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”. In this article I discuss three issues that in the longer run could make the fulfillment of these goals more difficult and less legitimate. First, I argue that the enlargement has increased the costs for the EFTA countries. Second, I argue that the enlargement is likely to further reduce the possibility of the EFTA countries to influence on EU decision making. Finally, I argue that the enlargement has increased the administrative heterogeneity in the EU to such an extent that it is likely to challenge the notion of homogeneous implementation and application of rules and regulations. However, before discussing these three aspects a bit more in detail, let me first make a few remarks regarding the concept of enlargement and the concept of challenge.

## ***2. The many enlargements of the EU***

The enlargement in 2004 was a historical decision, but it was also just a component part of a larger enlargement process that is still ongoing. Studies show that the decisions to enlarge the EU was not a result of cautious calculations of costs and benefits, but rather rooted in ethical-political reasons, based on some kind of kinship-based duty combined with a sense of an historical opportunity and obligation (Sjursen 2002). The enlargement is indeed a risky process. It can be seen both as an historic opportunity to unite the European continent, but also as stumbling block, potentially undermining the integration project and the dynamics that have enabled integration in West Europe (Lippert 2004).

The sometimes EU-critical *The Economist* recently argued that: “Enlargement is another example of a success that makes the EU a riskier place. By increasing the diversity of political interests and views within the Union, it has made them much harder to contain within a single framework” (Economist 2004).

It is reasonable to assume that the enlargement is likely to change the very dynamics of the European Union, and have major implications on third-countries. In the following, I focus on the Eastern enlargement of the EU which took place in May 2004. However, this is not the only EU enlargement affecting the EEA. In fact we can talk about three other kinds of enlargements that already have, and will continue to, pose serious challenges to the EEA. First, the enlargement to include Austria, Sweden and Finland in the EU in 1995 faced the EEA institutions with severe challenges. All of these three states were former EFTA countries. By joining the EU, they changed side almost before the EEA agreement had been implemented. This enlargement shifted the balance of power between the EU and EFTA dramatically, and it also led to significant downscaling of the size of the EEA institutions as well as changing their actual workings.

A second kind of enlargement has been the considerable task expansion in the EU. The EEA Agreement was initially designed as a response to the Internal Market and the Single European Act. Since then, the EU has developed from a mere market regulating project in the direction of a full blown polity. Since the signing of the EEA Agreement, five intergovernmental conferences have been held in the EU, altering the decision making process in the EU. Combined with the dynamics of day-to-day politics, these

treaty revisions have paved the way for a formidable task expansion in the EU. For instance, during the last decade the EU has launched the Euro, intensified the co-operation in the field of justice and home affairs, strengthened its efforts to co-ordinate its external policy and initiated the Lisbon-process, just to mention a few initiatives falling outside the scope of the EEA agreement. Consequently, the EEA Agreement today covers a much smaller relative share of the total fields of co-operation in the EU, compared with its scope at the time it was signed.

The third kind of enlargement has not yet formally taken place. The EU has continuously attracted outsiders, and is currently faced with a long list of applicants. Already in December 2004, the heads of state and government have to decide whether or not to start talks with Turkey on membership "without delay". In 2007 Bulgaria and Romania could become members of the European Union. In addition, it was recently suggested by the Austrian Chancellor that the Western Balkan states of Albania, Bosnia-Herzegovina, Croatia, Macedonia and Serbia and Montenegro should join the EU by 2014.<sup>3</sup> Although the scope and speed of these future enlargements remains uncertain, it is not unimaginable that the EU could have as many as close to 35 member states during the next decade or so. Some, like the Belgian Europe Minister Didier Donfut, has also argued that the EU in the future should turn towards the Mediterranean countries, especially Morocco..."even if this goes beyond the historical European geographical limits"<sup>4</sup>. Needless to say, any further enlargement is likely to increase the cost of enlargement and

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<sup>3</sup> <http://euobserver.com/?sid=15&aid=17018>, "South Eastern states in EU by 2014, says Schüssel", 29 July 2004.

<sup>4</sup> See EuObserver.com, "Belgian Europe Minister: EU should 'turn to Morocco'" 5. August 2004, <http://www.euobserver.com/?sid=15&aid=17051>.

challenge the relationship between deeper European integration and enlargement (Vobrubá 2004).

To sum up, there has been a series of enlargements that has challenged the EEA. In spite of the fact that the EEA agreement was initially designed for organized co-operation in a cold war Europe, with a radically different EU, and with a larger and more important EFTA, the EEA Agreement has survived without any major crisis. Compared with the radical changes and dynamics in the EU during the last decade, there has been a striking element of continuity and stability in the EEA-configuration. Although the Agreement covers less of the total EU co-operation and misses much of the political dynamics of integration, it has not been renegotiated and there has been limited interest in upgrading it. One of the reasons for this is that the EEA Agreement has functioned fairly well in relation to the internal market, and it has produced few severe difficulties in the EFTA states or in the EU. Another factor easing the co-operation between EFTA and the EU, has been the firm support on both sides of the general ideological frame of promoting liberal free trade and the increased use of markets in governing political. The EEA Agreement has to some extent also functioned as a stepping stone for extending the co-operation between EU and EFTA in new policy areas, such as the Schengen-Agreement and various fields of program co-operations. Nevertheless, the enlargement of 2004 adds to the increasing gap between the EU and the EEA Agreement. Let me turn to discuss a few of these challenges.

### ***3. The many challenges of enlargement***

The EEA has been challenged by the 2004 enlargement. But the character of these challenges depends upon what we mean by the term. At least three different meanings are worth considering.

First, to challenge can mean to question formally the legality or legal qualifications of something. The relevant synonym is to here to *demand* or *require* something. In this sense the EEA Agreement has not been challenged. According to Article 128 in the EEA Agreement “(a)ny European State becoming a member of the Community shall ... apply to become a party to this Agreement. It shall address its application to the EEA Council. The terms and conditions for such participation shall be the subject of an agreement between the Contracting Parties and the Applicant State. That agreement shall be submitted for ratification or approval by all Contracting Parties in accordance with their own procedures”. In the recent enlargement of the EEA this procedure was followed. The EU started their accession negotiations with the candidate countries in March 1998. The EFTA countries were not invited to participate in them, but were briefed regularly in the EEA committee about the progress. The formal application for membership in EEA was submitted after the EU membership negotiations were completed in December 2003. The EEA enlargement negotiations opened in January 2003, were completed in July 2003, and formally signed during the fall of 2003. These negotiations were short and rapid. Although there were some delays at the end, they had limited practical consequences, except from the EFTA states being unable to participate in any formal ceremonies. In May 2004 the EEA enlargement took place concurrently with the EU enlargement.

This process illustrates that the enlargement has not challenged the EEA agreement, in the strictest and most formal sense of the term. However, some Norwegian negotiators have expressed that during the negotiations, they felt that they were *de facto* negotiating on whether or not to terminate the EEA agreement (Rieker and Sverdrup 2004; Sverdrup 2004). But this perception was perhaps more a result of the increasing power asymmetry between the EU and the EFTA, and it is not reasonable to argue that the existence of the EEA agreement was seriously challenged by the EU enlargement.

Another, and second, meaning of the term challenge is to *protest or call in to question*. The enlargement has not challenged the EEA Agreement in this sense either. In the EU, none have expressed desires for terminating the EEA Agreement. For instance, during the Convention on the Future of Europe there was very limited talk about the EEA agreement and none aired the possibilities or desire for ending the EEA agreement. Instead, the few remarks that were made on the EEA, expressed the importance for the EU to maintain good relationship with the EEA countries. Moreover, the EU has intensified its efforts at building good relationships with its neighbors. For instance, the so-called “Neighborhood policy” of the EU has become an important topic for the EU.<sup>5</sup> Finally, the inclusion of an exit clause in the new Constitutional Treaty could also increase the attention to other forms of organized co-operation with the EU.

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<sup>5</sup> First launched in 2003, the “Neighborhood policy” is now supposed to be supported by Action Plans, where the EU and various states engage in a co-operation seeking to promote shared values and secure commitments to respect for human rights, including minority rights, the rule of law, good governance, the promotion of good neighborly relations, and the principles of market economy and sustainable development as well as to certain key foreign policy goals. See “Beyond Enlargement: Commission shifts European Neighborhood Policy into higher gear,” <http://europa.eu.int/rapid/pressReleasesAction.do?reference=IP/04/632&format=HTML&aged=0&language=en&guiLanguage=en>, 12. May 2004.

The enlargement of the EU and the EEA has not triggered protests in the EFTA countries either. In both Norway and Iceland the enlargement has been supported by a majority of the voters and politicians. Few have advocated a rapid termination of the EEA Agreement, or for rapidly developing alternative forms of connection between the EFTA states and the EU, such as becoming full members of the EU or for developing some alternative modes of bilateral arrangements. In Norway, even parties generally against the EEA agreement, such as the Center party (Senterpartiet) and the Socialist Left (Sosialistisk Venstreparti), did not vote against enlarging the EEA.<sup>6</sup> The immediate termination of the EEA Agreement was only supported by the single vote from the Coastal Party (Kystpartiet).<sup>7</sup> The support for enlargement among the elites seems consistent with findings in opinion polls, showing that Norwegians in general tend to be favorable towards enlargement. According to a survey conducted in 2003, Norwegians were clearly favorable to the EU enlargement (Hagen and Sverdrup 2003). Approximately 50 percent were positive, with less than 20 per cent being negative. Compared with data on the EU citizens, we find that these positive attitudes in Norway corresponds with the attitudes in Denmark and Sweden, but Norwegians seems more positive towards enlargement than the average EU citizen, and much more than the average German or French (EurobarometerNo58 2003).

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<sup>6</sup> Although both the Center party and the Socialist Left argued that the outcome of the negotiations were unfortunate and they proposed that the Norwegian government reopened the negotiations regarding transit of fishing vessels, and that alternatives to the EEA agreement should be evaluated and explored. See Innst. S. nr 103 (2003-2004), <http://www.stortinget.no/inns/2003/200304-103-002.html>

<sup>7</sup> See Stortingets forhandling, meeting 29 January 2004, <http://www.stortinget.no/stid/2003/sv040129.html#sak2>

Hence, we can conclude that enlargement has not challenged the legality of the EEA Agreement or caused political protest or strong desires for terminating it.<sup>8</sup> However, the EEA Agreement has indeed been challenged if we employ a third meaning of the term, that is, *as being faced with some new problems and opportunities*. In the rest of the article, I will discuss three such challenges a bit more in detail.

#### **4. The increasing financial costs**

One of the most important immediate challenges of the enlargement is to secure a financial framework for the enlargement process. This is first and foremost a challenge for the EU. The financial framework should secure sufficient funds for growth and prosperity in the new member states, but at the same time not drain the ‘old’ member states and the European economy. Experiences from German unification, the first Eastern enlargement, have demonstrated the potential economic risks involved in major transitions. It is therefore no surprise that the issue of securing a new budget for the EU is one of the most difficult issues facing the Union.

The financial dimension of enlargement has affected the EFTA states. The EFTA states have acknowledged the financial obligation that the ‘old’ member states have taken on. And prior to the negotiations the EFTA governments prepared themselves for

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<sup>8</sup> However, one should note that in the eyes of many Norwegians, the EU has become more attractive and membership is seen as more appealing. Polls have shown an increasing support for membership, and many point to the enlargement as one factor increasing their support for Norwegian membership, which in the longer run could change the support for the EEA Agreement. For instance; an opinion poll conducted by Opinion and published by NRK in May 2004 showed approximately 35 percent of the voters became more positive to Norwegian membership, while less than 10 percent became more negative, close to 40 per cent found the enlargement to be irrelevant for their position on the issue.

contributing financially to the enlargement, however, they were caught by surprise by the size of the amount the EU demanded. Historically the EFTA has contributed to redistribution in the EU through the so-called “financial mechanism” of the EEA Agreement. This mechanism was initially designed for allocating money to Greece, Spain, Portugal and Northern Ireland in the period 1994 to 1999, and was later modified and extended to 2003. Within this mechanism the EFTA states allocated approximately 120 million euros in a five year period or approximately 24 million euros annually. Internally EFTA has distributed the financial burden according to the GDP, thus, Norway has contributed with approximately 94,5 per cent, Iceland 4,5 per cent, and Liechtenstein the last 1 per cent.

Prior to the EEA enlargement negotiations between the EU and the EFTA, the European Commission signaled a wish for a significant increase in the financial contribution from the EFTA states. Their initial proposal was roughly equivalent to what the EFTA states would contribute with to the EU budget, if they were full member states. The EFTA states acknowledged the need for support in financing the enlargement, but disputed the claims made by the Commission and the methods of calculating them. However, EFTA was faced with a united and strong EU which pressed for significant increase. The outcome of the negotiations resulted in a significant contribution, amounting to 1,167 million euro in the period between May 2004 and April 2009. An almost ten time increase in the cost of maintaining the EEA agreement. Moreover, this financial agreement is expected to be continued and renegotiated at a later stage and with further enlargements.

The solution was a two-tiered financial agreement; with a specific EFTA solution and a separate Norwegian solution. The EFTA financial contribution is 600 million euro, which shall be made available for commitment in annual tranches of 120 million euro. While the Agreement between Norway and the EU obliges Norway to make available 567 million euro, in annual tranches of 113, 4 million euros over the same period. The funds are aimed at reducing the economic and social disparities in the European Economic Area, through financing and grants to investment and development projects. Areas entitled to support are listed in specific articles in the agreements. The funds will be distributed to the new and existing member states according to a formula based on the size of the economies. Table 1 show the distribution of these funds.

**(Insert table 1 about here)**

As we see, Poland will become the most important recipient, receiving 558 million euros during a five years time. Hungary and the Czech Republic will also be among the largest recipients. Spain, Greece and Portugal will receive an annual amount equal to the amount distributed in the former EEA Financial mechanism, which is terminated. Norway will finance close to 97 per cent of the total amount, hence the Norwegian contribution will be approximately 227 million euro annually.

Although Norway is a rich country this is still a considerable amount. Let me illustrate this with making some comparisons.

*Compared with Norwegian development aid.* Norway will allocate almost three times as much to Poland as they did to Tanzania in 2002, the development country that receives the most, or an amount equaling all Norwegian development support to the region of Asia in 2002.<sup>9</sup>

*Compared with Norwegian domestic politics.* For instance, the amount equals more than 2/3 of the much disputed *Kontantstøtten* – a much disputed cash support arrangement for parents tending their children at home.

*Compared with the agreement other third countries have with the EU.* During the spring of 2004 Switzerland - an EFTA member which is not an EEA member - had to engage in negotiations on financial contribution to enlargement in order to complete their bilateral agreements. Although Switzerland is almost double the size of Norway, the outcome of the Swiss negotiations ended on 650 million euro over a five years period of time, or 130 million euro per year, close to half of the contribution by Norway.<sup>10</sup>

*Compared with the contribution by the EU member states.* The EU the member states have agreed to allocate 24, 6 billion euro in the period from 2004 to 2006.<sup>11</sup> The size of further allocations is not yet decided and depends on several factors, such as the current budgetary debate and the reforms in the agricultural policy.<sup>12</sup> The contributions from the

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<sup>9</sup> See overview over recipients of Norwegian development aid at Norad Statistics 2002, [http://www.norad.no/default.asp?V\\_ITEM\\_ID=1264](http://www.norad.no/default.asp?V_ITEM_ID=1264)

<sup>10</sup> See "Dyr sveitsisk EU-avtale", Dagens Næringsliv, <http://www.dn.no/template/ver1-0/gfx/dn/logoBottom.gif>

<sup>11</sup> See [http://europa.eu.int/comm/enlargement/negotiations/pdf/negotiations\\_report\\_to\\_ep.pdf](http://europa.eu.int/comm/enlargement/negotiations/pdf/negotiations_report_to_ep.pdf)

<sup>12</sup> For instance, the negotiations over EU enlargement highlighted the difficulties in extending the CAP - and in particular direct payments - to the applicant countries, given the spending limits agreed in Berlin in

EFTA states in the period until the end of 2006 amounts to approximately 700 million euro, or 2, 5 per cent of the total funds allocated. However, both the funding from the EU and the EFTA depends upon the quality of the projects applying for support. It is therefore difficult to determine the exact amount of money actually allocated to the new member states. A study conducted by Richter, estimated that the real transfer of money from the EU will amount to 60% of the budgetary frames (cited in (EuropeanEconomicAdvisoryGroup 2004). He also expects that the old member states will benefit from these projects. Hence he calculates that only 30 per cent of the allocated fund will be transferred to the new member states. If these calculations are correct, the net transfer will amount to approximately 7, 44 billion euro. However, the similar constraints are not related to the EFTA mechanism.<sup>13</sup> If we assume that there will be sufficient projects for the EFTA money, and that such funding will not be exploited by EFTA firms, the share of the contribution from the EFTA countries could potentially be as high as approximately 8 per cent of the net transfers to the new member states in this period.

In spite of the significant increase in the size financial contribution, it has not, at least so far, raised serious protest or concerns in EFTA. The financial contribution is generally regarded as an act of solidarity with the new member states, as well as to the ‘old’

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1999. Based on estimates of direct payment costs some argue that the only way all member states in an enlarged EU can receive the same level of payments is if the payments currently prevailing in the EU15 are reduced” (Ackrill 2003).

<sup>13</sup> According to article 4 “the EFTA contribution in the form of grants shall not exceed 60% of the project cost except in projects otherwise financed by central, regional or local government budget allocations, where the contribution may not exceed 85% of total cost. Community ceilings for co-financing shall not be exceeded in any case. The European Commission shall screen the proposed projects for their compatibility with Community objectives”

[http://secretariat.efta.int/Web/EuropeanEconomicArea/EEAAgreement/protocols/changed\\_protocols/protocol38a.pdf](http://secretariat.efta.int/Web/EuropeanEconomicArea/EEAAgreement/protocols/changed_protocols/protocol38a.pdf)

member states who take on considerable economic and political responsibilities into creating stability and growth in Europe. For instance the EFTA consultative committee states that it saw the contribution on behalf of the EEA EFTA States as a clear expression of solidarity. The committee argued that the funds will help the new EEA Members to catch up with the rest of Europe, to improve their competitiveness, and to provide higher standards of living for their populations.<sup>14</sup>

In Norway the responses to the financial solutions were similar. It was generally regarded as an act of solidarity, and few, if any, protested against the size of the contribution. However, some politicians expressed concerns why the government did not allocate the funds to the most needed countries, and a joint Norwegian parliament requested its government to work for an active involvement in governing the spending of the money, and to explore the possibilities of including Norwegian participants in relevant projects.<sup>15</sup> During the parliamentary debate the governments was also criticized for not expressing a strong enough interest during the negotiations into how to attend to Norwegian interests when spending of these funds.

So far, I have focused on the increasing costs of enlargement, but what about the benefits? This is more difficult to calculate. In fact, there are few good calculations of the benefits of economic and political integration in the EU in general. Calculations made by the European Commission ten years after the launch of the Internal Market, showed that

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<sup>14</sup> See “An Opinion of the EFTA Consultative Committee on EEA enlargement & the new financial mechanism”, [http://secretariat.efta.int/Web/EFTAAtAGlance/social%20partners/Opinions/Opinion\\_on\\_EEA\\_enlargement\\_and\\_Financial\\_Mechanism.pdf](http://secretariat.efta.int/Web/EFTAAtAGlance/social%20partners/Opinions/Opinion_on_EEA_enlargement_and_Financial_Mechanism.pdf)

<sup>15</sup> See parliamentary debate on the issue: <http://www.stortinget.no/stid/2003/sv040129.html#sak2>

the total GNP for the EU had increased by 1,8 per cent as a result of the Internal market (EuropeanCommission 2003). These results are significantly less than the 4,5 per cent annual benefit suggested by the report “The Cost or No-Europe” or the so-called “Cecchini-report”, published in 1988 prior to the launch of the Internal Market. On the EFTA-side, the economists Taran Fæhn and Erling Holmøy calculated in 1999 the welfare benefit for Norway of the EEA agreement and three other trade agreement to be approximately 0,8 per percent (Fæhn and Holmøy 1999).

The costs and benefits of enlargement are even more difficult to make. It is generally assumed that the enlargement will extend the zone of peace, stability and prosperity in Europe and thereby enhance the security of all its peoples. It is also likely that the addition of more than 100 million people will increase economic growth and create jobs in both old and new member states. A report published in the spring of 2004 suggested that in ten years time the GDP in the new applicant countries could rise with approximately 8-9 per cent due to enlargement (EuropeanEconomicAdvisoryGroup 2004). The report concluded that the effect on the ‘old’ members is, at best, of the order of one tenth of the corresponding effect on the accession countries, that is less than 1 %. In addition, there are likely to be differences among the current member countries. The largest benefits are likely to be received by countries having geographic proximity to, and extensive trade links with, the new members. Germany and Austria are examples of higher than average impacts.

It suffices here to say that, since Norway and Iceland are in the periphery of Europe, and have limited trade links to the new member states, it is not likely that they will benefit much from the enlargement. However, the EFTA states are likely to benefit in a more indirect way. For some time there has been a serious challenge for the EEA Agreement that there was limited knowledge and awareness of the EEA Agreement in the new member states, as well, as among the 'old' member states. The introduction of the new financial mechanism is likely to increase the awareness of the EEA Agreement among the new countries. Already, people in the EFTA institutions have reported a growing awareness and interest in the EEA.

The financial mechanism also raises some management challenges for EFTA. An EEA Financial Mechanism Committee has been established for the EFTA fund, and the Norwegian Ministry of Foreign Affairs operate the Norwegian Fund, both are supported by a newly established EFTA Financial Mechanism Office, responsible for the day-to-day implementation of both funds. The Office is established in Brussels and is supposed to consider and evaluate relevant projects. The EFTA Financial Mechanism Office aims at being a small and effective team, and considers itself as a 'clearing house' for information.<sup>16</sup> However, it is likely that this office will face serious challenges. In short term, there will be the challenges of finding projects suitable for support. In the longer run it would face the challenges of securing sound management, reporting and auditing of the funds.<sup>17</sup> It is likely that the support for the financial contribution in the EFTA states is

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<sup>16</sup> See 'Deler ut milliarder' Dagens Næringsliv, 30. august 2004.

<sup>17</sup> There will be a requirement of between 15 to 40 per cent financing from the recipient in order to receive the funds, which of course will also affect the priorities in the areas entitled for support. Experiences from

likely to depend upon the management of these funds. The challenges of finding good projects and securing sound administration is of course not unique to EFTA, but is shared by the EU. The new member states must absorb a considerable amount of money over a relatively short time period. In periods of increased focus on effective spending of public money, as well increased focus on fraud and mismanagement in the EU, the process of is indeed a challenge for the EU.

## **6. Participation and legitimacy**

The enlargement has also challenged the possibilities for the EFTA states to participate in decision making. Although there are no formal changes to this in the EEA Agreement, there are some dynamics that is likely to *de facto* decrease the level of participation.

However, let me at first make it clear that Norway and the other EFTA states so far have exercised very limited influence on EU decision making. Furthermore, the institutional reforms in the EU during the last decade, which have shifted the decision making powers in the EU, have reduced the relative importance of the EFTA participation. For instance, decision making power has formally been shifted to the European Parliament, and there has been an increased number of areas where qualified majority voting applies in the Council.<sup>18</sup> Another administrative development in the EU is the emergence of new European agencies, in for instance the field of Maritime Safety, Aviation and Food

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the EFTA financial Mechanism prior to enlargement shows that it is not certain that all the funds allocated will be used.

<sup>18</sup> The EFTA states have not been involved in these treaty revision. Instead they have played the role of passive outsiders to the institutional reforms during the last decade. For instance, during the Convention on the Future of Europe, Norway and the other EFTA countries did not seek to participate as observant in the process, like for instance Turkey did.

regulation. The role of the EFTA countries in these agencies has been disputed and the European Commission has been reluctant finding a place for the EFTA countries. In addition, there has been a long-term general development where the meetings in the EEA structure have become gradually shorter in duration, and they are gradually being attended by people from lower ranking positions of the European Commission.

Still, the EEA agreement has allowed for some limited participation in the day to day activities in the EU, particularly in the early preparatory stages of decision making in the European Commission. For instance Article 99-1 states that: "As soon as new legislation is being drawn up by the EC Commission in a field which is governed by this Agreement, the EC Commission shall informally seek advice from experts of the EFTA States in the same way as it seeks advice from experts of the EC Member States for the elaboration of its proposals". And Article 100-1 states that "The EC Commission shall ensure experts of the EFTA States as wide a participation as possible according to the areas concerned, in the preparatory stage of draft measures to be submitted subsequently to the committees which assist the EC Commission in the exercise of its executive powers. In this regard, when drawing up draft measures the EC Commission shall refer to experts of the EFTA States on the same basis as it refers to experts of the EC Member States".

However, studies of actual participation shows that national experts from EFTA behave in a passive manner, and see this as primarily an opportunity for being informed, rather than as an arena for influence. Furthermore, there is no clearly developed political strategy from the EFTA governments for behavior in these groups. In Norway, few of the

national experts have clear instructions and often the feed-back reporting mechanisms are poor (Trondal and Veggeland 2003). In addition, there are few, if any, examples where Norway has been successful in influencing EU decision making. For instance, in the “White paper” on the EEA, the government, highlighted only two rather marginal examples, an official from an agricultural agency in Norway influencing some of the decisions regarding additives to animal food, and another example related to decisions regarding maritime safety (St.meld.nr.27 2001-2002).

Enlargement is likely to further reduce this limited participation in EU decision making. Three simple mechanisms are at play. First, the increase in size of the EU challenges the decision making in the EU. With more member states, there are more interests to attend to internally in the EU. With more member states the EU also have to devote more energy into finding compromises and solutions internally. Hence, the time and energy for attending to interests expressed by third countries, such as the EFTA countries, is decreasing.

Second, the gradual empowerment of the European Parliament and the increased use of qualified majority voting in the Council, is likely to affect the relative power of the European Commission. The long term consequences of these shifts are still unclear. One potential development is that the possibility of influencing the Commission is becoming less relevant, since more decision makers powers are resting in the Parliament and the Council. Since the Parliament and the Council have the ultimate decision making power they can easily change the proposals. Moreover, one can imagine that gradually also the

search for consensus in the early stages of decision making in the Commission is becoming less important, since the parties are well aware that a proposal might be passed without the support of all member states or parties. We lack empirical data supporting such claims. However, two recent studies might lend some support for these ideas. First, Rainer Eising (2004) has studied the arenas the business interests orient their activities towards. He finds that there is a general increase in the attention paid to EU institutions in general, due to the fact that the EU is becoming increasingly important. In addition, he also find that the business interests have increasingly allocated their attention to the European Parliament. For instance, a clear majority of the interests studies argue that the European Parliament has increased its importance. Hence, what we observe is on the one hand an absolute increase in the attention devoted to the EU in general, including the Commission, and on the other hand a relative increase in the attention allocated to the Parliament and the Council. A second indication is found in the study by Henry Farrell and Adrienne Héritier (2004). They study the interesting institutional developments following from increased co-decision making in the EU. The new rules implies that the Council and Parliament, when they disagree on a proposal, have to interact sequentially reacting to each other's legislative proposals in turn. To facilitate this process the "trialogues" have been established. That is, meetings between top-level figures of the Council, Parliament, and Commission to thresh out compromises informally, between the second reading and the meeting of the so-called Conciliation Committee. They find an increased use of this procedure, and that this procedure skews decision making powers in favour of the European Parliament, leaving the Council and the Commission with less power (Farrell and Héritier 2004). As pointed to above, this is a part of a long-term

development, but it is likely that the enlargement will accentuated these mechanisms, shifting decision making powers to the institutions where EFTA states has limited access. However, needless to say, the European Commission still plays a most important role in the EU in preparing decisions and managing the EU.

Finally, the enlargement has also given the EU institutions a legitimate argument for not paying attention to the EFTA countries, since they have been busy attending to the interests and concerns of the candidate countries. The unwillingness of the European Commission to allow special exceptions for the candidate countries, have also reduced the likelihood for allowing such special exceptions for the EFTA states. Moreover, the EFTA states will have to develop ties with the new member states, which are holding considerable decision making powers in the new EU, but at the same time have limited knowledge of the EEA agreement. Experiences so far have showed that the knowledge of the EEA has been limited even among the 'old' member states, and even decreasing. Hence this could be a very difficult challenge. The enlargement also alters the balance between the small and larger states in Europe, and most likely also introduce new cleavages and alliances (Beichelt 2004). These developments isolated and when taken together paint a picture of even less possibilities of participation for the EFTA states. For an agreement that already suffers from limited democratic legitimacy, such developments represent a serious threat.

## **6. The workings of the EEA**

A third challenge of enlargement is to secure that rules and regulations are implemented and interpreted in homogeneous ways. Naturally, this challenge is not unique to the EEA, but it is shared with the rest of the European Union.

In the EU and the EEA, it is the responsibility of the member states and the domestic administrations to ensure that the obligations that are stemming from EU membership are actually implemented. In the history of the EU, implementation of rules has always been contested. In general, attention and energy have been devoted to the creation of new legislation, and less attention have been devoted to securing proper and homogeneous interpretation of EU legislation. The European institutions have been tolerant of non-compliance. They have been careful when exploiting their powers *vis-à-vis* the member states and they have been reluctant to demand increased monitoring and sanctioning powers. Typically, the European Commission has often sought informal solutions with member states rather than opening proceedings or letting all initiated cases run the full course (Tallberg 1999). Equally, the member states have demonstrated reluctance to allocating strong enforcement powers to the European institutions and they have carefully monitored whether the European institutions act within their competencies.

However, during the last few years there has been an increasing focus into making sure that the rules are applied properly. The average deficit in transposition of Community legislation into national legislation in the period between 1997 and 2003 has decreased, indicating that the states transpose more directives now than before. However, during the

same period of time we observe an increasing number of infringement proceedings. There are more Letters of Formal Notice, more Reasoned Opinions, and more cases are being referred to the Court (Sverdrup 2004). In general, the EFTA states have been implementing at rate 'better' than the average EU, and they have settled disputes at an earlier stage and with fewer involvements of the courts. The EFTA Surveillance Authority (ESA) has also operated much in line with the developments of the European Commission (Graver and Sverdrup 2002). A recent study also shows that in the reception of the jurisprudence of the EFTA Court and the ECJ, the Norwegian Supreme Court does not distinguish according to legal obligations, but seems to take an approach similar to national courts in Member States of the EU (Graver 2004). Hence, it is reasonable to argue that the EFTA states have been willing and able to secure the principle of homogeneity.

The enlargement has increased the focus on administrative quality and capacity. In fact, administrative quality was for the first time included as one of the conditions for accession.<sup>19</sup> All the ten new member states passed this first test. In addition, the ten made huge attempts at complying with the requirements and implement the *acquis*, even before becoming members of the European Union. The dominant mechanism of change in the new member states have been the external pressure and conditions posted by the EU. A recent study argues that "the impact of the EU's external governance has been

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<sup>19</sup> According to the so-called Copenhagen criteria the candidate countries had to ensure; a) stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities; b) the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union; and c) the ability to take on the obligations of membership including adherence to the aims of political, economic and monetary union. For more on these criteria see <http://europa.eu.int/comm/enlargement/intro/criteria.htm>

particularly pervasive in relation to implementing the *acquis*” (Schimmelfennig and Sedelmeier 2004). They observe some rule adoption before the EU’s conditionality was spelled out, but it was then patchy and selective. However, as soon as a given-issue area became the subject of the EU’s conditionality, rule adoption increased dramatically and became a consistent feature across countries and issue-areas. Although recognizing the achievement and the very strong motivation demonstrated by the applicants, the authors question whether this short-term effectiveness in transposition was achieved at the expense of long-term inefficiency in actual compliance. In many policy areas, rule adoption consists primarily of formal transposition into national legislation, while actual implementation and effective enforcement in everyday policy-making is lacking. In addition, since the key driving mechanism was the EU conditionality the authors ask what will happen when the ‘engine’ of the prospect of future membership is gone.

Hence, there are serious concerns regarding whether the new member states actually have the capacity to comply with the norms and rules. There are at least two factors pulling in this direction, costs and administrative capability. First, the costs of implementing EU regulations are high. Since the new member states have limited administrative resources and weaker economies we can expect them to have limited abilities to implement and secure a homogeneous implementation of legislations. Although some of the regulations are not costly, others like the regulations regarding environmental protection are considered as major expenditure items. Transport and public infrastructure are other area for which the compliance costs are likely to be significant. Since the new member states have limited economic capability, we could expect difficulties in implementing the EU

regulations, and also the obligations stemming from the EEA Agreement. In addition to these factors, Schimmelfennig and Sedelmeier (2004) also point to the fact that, in the absence of high conditional external benefits, the issue of costs and domestic veto players - which were superseded in the conditionality context - will gain impact and potentially slow down the process.

Second, studies conclude that several factors are important for explaining variation in non-compliance in the EU. Contrary to what many seem to believe, it seems that non-compliance is not so much the result of lack of willingness and political support for the EU, but a result of the general 'cultures' for compliance as well the capabilities (Mbaye 2001; Börzel, Hofmann et al. 2004; Falkner, Treib et al. 2004; Sverdrup 2004; Falkner, Treib et al. 2005). In general, it seems that the higher the quality of the domestic administration, the better the implementation of EU regulations.

In the new member states the administrative capabilities are more limited than in the former EU 15.<sup>20</sup> Let me illustrate the increasing administrative heterogeneity by using data from the so-called "Government Effectiveness indicators" developed by the World Bank.<sup>21</sup> For each country a specific value is calculated for different aspects of government effectiveness. Each indicator varies between -2, 5 and 2, 5, with higher

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<sup>20</sup> In addition, in the new member countries it is also likely that many of the policy-makers or 'core executives' responsible for the quick transposition of EU rules and knowledgeable in EU affairs will move to Brussels to assume the posts in the European organizations allotted to the new member states, in (Schimmelfennig and Sedelmeier 2004)

<sup>21</sup> The World Bank has created an advanced model for aggregating and fusing data from many different sources regarding administrative quality and effectiveness (Kaufmann, Kraay et al. 2003)

scores corresponding to better outcomes. Table 2 show the average score for the old and new EU on the key indicators.

**(insert Table 2 about here).**

As we see, with the enlargement the average score on ‘government effectiveness’ and ‘rule of law’ in the EU has dropped. The administrative quality of the ten new member states is far lower than the average level of the EU 15. I have also included the score for the three applicants Bulgaria, Romania, and Turkey. As we see, these three countries have an even lower score than the EU 15 average, and they have far less capability than the average 10 newcomers in 2004. In fact, the distance between the newcomers in 2004 and the applicants, is as big as the difference between the EU 15 and the newcomers. Not included in this list of indicators, but the new member states also have a much higher rate of corruption than the EU average (Kaufmann, Kraay et al. 2003).

Increased administrative heterogeneity is likely to increase the number of infringement proceedings in the EU. The growth is partly a result of the share increasing size of the EU. However, since the new states also score lower on the government effectiveness and rule of law indicators, and the score of these indicators are correlated with the number of infringement cases, the number of cases is expected to increase further. When taking into account the fact that the capacity of monitoring and sanctioning non-compliance in the EU is already put under considerable stress, and that there is considerable backlog in cases for the courts, such developments point to a rather dim future for EU compliance

and the likelihood for homogeneous interpretation and application of the rules and regulations.

The recent enlargement has brought the focus of administrative quality at the forefront. Compared to previous enlargements this round was well prepared and it was a gradual process of almost 12 years. A separate DG for enlargement was established in the European Commission, the applicants were faced with administrative requirements and several programs were aimed at building administrative capacity. Programs such as the “Twinning arrangements” and the TACIS and the PHARE programs, as well as the experiences from the membership negotiations have contributed to reduce the administrative gap, and led to rapid learning in the new member states. Although the EU and the new member states have invested a lot in building administrative capabilities, the enlargement has still introduced significant heterogeneity in to the administrative apparatus of Europe, which is likely to last for quite some time (Steffens 2003; Bailey and De Propriis 2004). Studies of the degree of administrative convergence, when analyzed by looking at past experiences and measured with various indicators, concludes that administrative convergence seems to be a gamble on the future (Olsen 2002; Duboz, Edjo et al. 2003). It is also likely that the motivation for making reforms could be reduced since continued pressure for domestic adaptation could decrease public support in the new members states (Cameron 2004).

This heterogeneity in administrative capability is likely to challenge the idea homogeneous implementation. This is of course primarily a challenge for the EU, but it

also challenges the Article 1 of the EEA Agreement. One can imagine two possible future developments in the EU. On the one hand, the ambition of securing homogeneous implementation of rules and regulation can be *relaxed* and postponed temporarily, so that the new member states can catch up. Previous enlargements have been followed by ‘grace periods’. On the other hand, the focus on securing proper implementation, including increased monitoring and sanctioning of non-compliance in the EU can *increase* further. It is easy to foresee that both of these processes can take place simultaneously, within different policy fields and sectors. Such developments are likely to have implications also for the EEA. First, businesses and interests seeking activities in the new member states should be careful in expecting that all the rules will be complied with in a rapid and prompt manner. Second, the legitimacy of the EFTA institutions is dependent upon the balancing act and ‘tuning in’ with the European Commission. For instance, if the EFTA Surveillance Authority is more “eager”, or “restrictive”, in monitoring and sanctioning non-compliance than the European Commission it could undermine the legitimacy of the EEA agreement. A study of the infringement proceedings in EFTA and EU tend to support the idea that ESA so far has acted more or less in a similar fashion as the European Commission (Graver and Sverdrup 2002), for ESA, it is a serious challenge to harmonize its activities with the activities of the European Commission operating in a more heterogeneous European Union..

## **7. Conclusions**

As discussed in this article, the enlargement has not challenged the legality of the EEA agreement. Moreover, the enlargement has not triggered protest or desires for terminating

or renegotiating the EEA Agreement, neither by the EU nor by the EFTA states. In fact, the enlargement process has proceeded with strong political and financial support by the EFTA states. Moreover, the EEA Agreement seems to have stronger political support in EFTA, at least in Norway, than ever before. The public opinion in Norway seems to be more supportive for EU membership now after enlargement, but at the same time there are few strong political initiatives for bringing the issue on the top of the agenda. Hence, at the outset the EEA agreement looks as strong as ever.

The EEA agreement marks its ten years anniversary this year. In some sense, it is a surprise that this initially disputed agreement has survived without significant changes. The efforts of Norway, Iceland and Liechtenstein to keep up with a changing internal market, maintaining the institutions in the face of treaty change and enlargement, and accommodating new developments related to the justice and home affairs, as well as external security, represent considerable challenges. It could well be that there are limits to this “model” of integration (Eliassen and Sitter 2003). As discussed, there are some serious challenges ahead for the EFTA countries. I have pointed to at least three such factors; the challenge of maintaining political support and good administration of the funds; the challenge of responding to the further decrease in participation in decision making; and the challenge of adapting to the increased heterogeneity in implementation of rule and regulations. It could well be that the handling of these three challenges will be critical in determining the duration of the EEA Agreement. In this indirect sense, the enlargement can determine the existence of the EEA agreement.

**Table 1: Contributions by EFTA in the period from 2004-2009<sup>22</sup>**

	EFTA agreement		Norwegian agreement		Sum total
	Percent	Mill euro	Percent	Mill euro	Mill euro
Czech Republic	8,09 %	48,54	11,00 %	62,37	110,91
Estonia	1,68 %	10,08	4,00 %	22,68	32,76
Cyprus	0,21 %	1,26	0,60 %	3,402	4,66
Greece	5,71 %	34,26			34,26
Latvia	3,29 %	19,74	6,00 %	34,02	53,76
Lithuania	4,50 %	27	7,10 %	40,257	67,26
Hungary	10,13 %	60,78	13,10 %	74,277	135,06
Malta	0,32 %	1,92	0,30 %	1,701	3,62
Poland	46,80 %	280,8	49,00 %	277,83	558,63
Portugal	5,22 %	31,32			31,32
Slovenia	1,02 %	6,12	2,20 %	12,474	18,59
Slovak	5,39 %	32,34	6,70 %	37,989	70,33
Spain	7,64 %	45,84			45,84
<b>SUM</b>	<b>100,00</b>	<b>600</b>	<b>100,00</b>	<b>567</b>	<b>1167,00</b>

<sup>22</sup> Calculations based on (St.prp.nr.3 2003-2004).

**Table 2: Government effectiveness in EU, numbers from 2002, average<sup>23</sup>**

	<i>Gov.</i>		<i>Rule of</i>		<i>N</i>
	<i>effectiveness</i>		<i>Law</i>		
	Mean	std	Mean	std	
<b>EU 15</b>	1,67	0,43	1,58	0,41	15
<b>EU 25</b>	1,3	0,58	1,24	0,55	25
<b>10 New</b>	0,75	0,21	0,74	0,24	10
<b>Applicant 2007+</b>	-0,37	0,2	0,001	0,03	3

<sup>23</sup> Data constructed on the basis of the data presented by (Kaufmann, Kraay et al. 2003) For more on the methods used for this calculation see (Sverdrup 2004)

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