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## Chapter 7

### **Less than Membership but More than Association: Establishing the European Economic Area, 1989–1993**

*Juhana Aunesluoma*

The latter 1980s and early 1990s are generally understood as a pivotal moment in the history of European integration. While the following decades would give rise to a series of basic treaty revisions to refine the decision-making and power-sharing arrangements of the European Union (EU), it was in this earlier period that the still European Community (EC) took the decisive turn towards a more deeply integrated and geographically expanding bloc. The tremendous speed in which economic integration had progressed over previous decades, and the further commercial benefits that might be accrued from creating still wider and deeper markets, provided the necessary momentum for the Community to agree the Single European Act (SEA) in 1986. Its aim was to create an integrated single market in goods, services, financial capital and labour by 1992. Popularised as the EC's four freedoms, this would require the removal of a large variety of physical, technical and fiscal barriers of cross-border trade and economic activity.<sup>1</sup> As the so-called Project 1992 got underway, debates over adding to this already ambitious agenda began in earnest. The outcome was a meeting of the European Council in Maastricht in December 1991, where member states agreed not only to establish a single currency and work towards the full realisation of an Economic and Monetary Union (EMU) but also to extend and strengthen their cooperation in both foreign and security policy and home and justice affairs, in what by 1993 would officially come to be known as the EU. And with it came the additional opportunity for the Community to open its doors to new members. Three Cold War neutrals – Austria, Sweden and Finland – would consequently join in 1995, followed by further waves of enlargement in 2004, 2007 and 2013.<sup>2</sup>

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<sup>1</sup> The origins of the SEA and its implementation are covered in Wilfried Loth, *Building Europe: A History of European Unification* (Berlin: De Gruyter, 2015), 271–89.

<sup>2</sup> *Ibid.*, 310–22; Johnny Laursen, 'The Enlargement of the European Community, 1950–95', in Wilfried Loth (ed.), *Experiencing Europe: 50 years of European Construction 1957–2007* (Baden-Baden: Nomos, 2009), 269–304; Antonie Marès, 'Central Europe in the "Fifth" Enlargement of the European Union', in Loth (ed.), *Experiencing Europe*, 326–45; Michael Gehler, 'A Newcomer Experienced in European Integration: Austria', in Wolfram Kaiser and Jürgen Elvert (eds.), *European Union Enlargement. A*

At first sight, this path from the 1980s to the 2000s seems straightforward. This was seemingly a period that saw a dramatic rise in the comparative political and economic weight of the EC/EU. Supported by predominantly pro-integration, even enthusiastic, elites and electorates, the EC/EU and the ideas that underpinned it emerged as one of the champions of the great systemic and ideological struggles of the twentieth century. Freed from the geopolitical constraints of the Cold War international system and riding the tide of liberalisation and growing flows of trade and capital, international cooperation in Europe came to be dominated by the ‘European project’, a process of regional integration that had started in the 1950s in continental Western Europe but now seemed to be spreading throughout the continent. Understood as institutionalised, in part intergovernmental and in part supranational governance of economic and political interdependence among sovereign nation states, such was its appeal that ‘integration’ in common parlance became synonymous with both ‘Europe’ and, most explicitly, ‘the EU’. When it came to economic and political cooperation and its institutionalisation, at the turn of the millennium, the EU looked like the only game in town.

A closer look of course tells a more complicated story. Later experiences have shown that developments in the EU fell short of the kind of a fundamental transition of the state system, collective identities and societal norms towards a post-national Europe, that many had hoped. The single market, for example, was arguably created without due concern to the social policy challenges and socio-economic displacement that the implementation of freedom of movement would cause in the lives of ordinary citizens. Nor is it unreasonable to suggest that the EMU was built on compromises that hamstrung its economic policy coordination capacity and made it ill-equipped to face the consequences of the global financial crisis of 2008. The EU’s enlargement in the 2000s was likewise accompanied with overly optimistic expectations of the ability of the newcomers to complete their post-socialist or post-conflict transitions and catch up with prosperous, established liberal democracies of the West. Ambitions to develop the EU into a new kind of global actor, resting upon ‘normative power’ and a record of institutional successes and values as the foundation of its international influence, were contrasted with the weakness of its collective agency in the global military and geopolitical rivalries of the 2010s.

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*Comparative History* (London and New York: Routledge, 2005), 131–49; Hanna Ojanen, ‘If in “Europe”, then in its “core”?’ Finland’, in *ibid.*, 150–69; Maria Gussarsson, ‘Combining Dependence with Distance: Sweden’, in *ibid.*, 170–88.

As the gap between earlier, more optimistic expectations and the realities of the subsequent decades has widened, scholars have become increasingly interested in the foundations of the continent's post-Cold War order. Developments from the 1980s to the new millennium, when the hegemonic ideas and institutional practices of post-Cold War European politics and societal conditions took their form, have been studied from a variety of perspectives.<sup>3</sup> In the field of security policy, a vigorous debate has emerged on the consequences of the decision to expand NATO to include ex-Warsaw Pact countries and modernize it as the primary vehicle of transatlantic security cooperation.<sup>4</sup>

One of the major issues that have aroused scholarly interest is the extent to which there existed alternatives to the ways in which the strategic outlook of EU members changed and its economic and political integration proceeded after the Cold War. Without engaging in counterfactual history writing, scholars have been keen to explore and reconstruct actual decision-making processes and identify possible alternative plans and competing designs for known historical outcomes. A full understanding of historical developments requires not only the explanation of how and why certain things happened but also why other developments did not. We cannot confine ourselves to the study of only known outcomes; to paraphrase historian A.J.P. Taylor, we also need to look into historical turning points and when history failed to turn.<sup>5</sup>

In this regard, particular attention has been given to the immediate aftermath of the political upheavals of 1989.<sup>6</sup> A question that spurred competing plans and visions in the EC was how to engage and include Cold War neutrals in the building of the EU

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<sup>3</sup> Recent developments in the EU has been popularized in Luuk van Middelaar, *The Passage to Europe: How a Continent Became a Union* (New Haven, CT, and London: Yale University Press, 2013) and in Luuk van Middelaar, *Alarums & Excursions: Improvising Politics on the European Stage* (Newcastle upon Tyne: Agenda Publishing, 2019). A perspective stressing the significance of neoliberal ideas in the post-Cold War transition of European states is found in Philipp Ther, *Europe Since 1989: A History* (Princeton, NJ: Princeton University Press, 2016).

<sup>4</sup> Joshua R. Itzkowitz Shiffrin, 'Deal or No Deal? The End of the Cold War and the US Offer to Limit NATO Expansion', *International Security* 40, no. 4 (2016): 7–44; Mary Elise Sarotte, 'A Broken Promise? What the West Really Told Moscow about NATO Expansion', *Foreign Affairs* 93, no. 5 (2014): 142–49; Mary Elise Sarotte, 'Not One Inch Eastward? Bush, Baker, Kohl, Genscher, Gorbachev, and the Origin of Russian Resentment toward NATO Enlargement in February 1990', *Diplomatic History* 34, no. 1 (2010): 119–40; Mary Elise Sarotte, 'How to Enlarge NATO: The Debate inside the Clinton Administration, 1993–95', *International Security* 44, no. 1 (2019): 7–41; Mark Kramer, 'The Myth of a No-NATO-Enlargement Pledge to Russia', *Washington Quarterly* 32, no. 2 (2009): 39–61.

<sup>5</sup> In 1848 "German history reached its turning-point and failed to turn", A.J.P. Taylor wrote in *The Course of German History: A Survey of the Development of German History since 1815* (London: Hamish Hamilton, 1945), 69.

<sup>6</sup> Mary Elise Sarotte, *1989: The Struggle to Create Post-Cold War Europe* (Princeton, NJ: Princeton University Press, 2009); Frédéric Bozo, *Mitterrand, the End of the Cold War, and German Unification* (New York: Berghahn Books, 2009).

after 1989. A relatively well-studied case is the French President Francois Mitterrand's plan for a European confederation consisting of a consolidated Western European core and a looser pan-European structure stretching to East.<sup>7</sup> As it happened, Mitterrand's plans were abandoned in 1991, but in the first years of the 1990s various alternatives were devised both in capitals like Paris and Bonn but also the European Commission, as to how to include the former Eastern bloc countries into the EU project.<sup>8</sup>

The most pressing question for policymakers, however, was how to accommodate the deepening of the EC/EU with its widening. Was it possible to expand the old Community without diluting its purpose to create an 'ever closer union among the peoples of Europe'? Many of these plans took their cue from European Commission President Jacques Delors' musings of a Europe of 'concentric circles'. According to Delors, European nations would find their place in the integration process either at the core, participating in the deepest levels of supranational integration, or the outer rings, with various degree of detachment and more selective participation in the EU project. Similar ideas were put forward by a team of advisors around West German Chancellor Helmut Kohl in the summer of 1989.<sup>9</sup> Even after the Maastricht summit and the decision to open membership to countries fulfilling the necessary criteria, the idea of a 'core Europe' persisted. This was seen in the idea outlined in 1994 by German centre-right politicians Wolfgang Schäuble and Karl Lamers for a 'Kerneuropa'.<sup>10</sup> In that same year two advisors to Kohl, Michael Meters and Norbert J. Prill, called for a 'Europe of Olympic rings' rather than one of concentric circles.<sup>11</sup> And British Prime Minister John

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<sup>7</sup> Frédéric Bozo, 'The Failure of a Grand Design: Mitterrand's European Confederation, 1989–1991', *Contemporary European History* 17, no. 3 (2008): 391–412.

<sup>8</sup> In addition to German designs for a quick, but territorially limited enlargement (Poland, Czech Republic and Hungary), the Commissioner for Enlargement, Frans Andriessen (1989–1993), put forward his own suggestion (the Andriessen Plan) and the French Prime Minister Édouard Balladur his own plan in 1993 (the Balladur Plan). Michael Gehler, 'Revolutionäre Ereignisse und geoökonomisch-strategische Ergebnisse. Die EU- und NATO- "Osterweiterungen" 1989–2015 im Vergleich', *ZEI Discussion Papers* no. 239 (2019), 13–16; Marcin Zaborowski, 'Germany and EU Enlargement: From Rapprochement to "Reapproachment?"', in Helene Sjursen (ed.), *Enlargement in Perspective* (Oslo: Arena, 2005): 41–68; Kristina Spohr, 'Precluded of Precedent-Setting? The NATO Enlargement Question in the Triangular Bonn-Washington-Moscow Diplomacy of 1990/1991 and Beyond', *Journal of Cold War Studies* 14, no. 4 (2012): 4–54.

<sup>9</sup> Michael Meters and Norbert J. Prill, 'Der verhängnisvolle Irrtum eines Entweder-Oder. Eine Vision für Europa', *Frankfurter Allgemeine Zeitung* (19 July 1989).

<sup>10</sup> Karl Lamers and Wolfgang Schäuble, 'Überlegungen zur europäischen Politik', CDU/CSU policy brief, 1 September 1994, available at <https://web.archive.org/web/20160318173446/https://www.cducusu.de/upload/schaeublelamers94.pdf> (accessed 1 October 2019).

<sup>11</sup> 'Es wächst zusammen, was zusammengehören will. "Maastricht Zwei" muss die Europäische Union flexibel machen', *Frankfurter Allgemeine Zeitung* (9 December 1994).

Major was also well known to be an advocate of a rapidly enlarging but highly differentiated union.

What they all had in mind was dubbed ‘differentiated integration’ and came to be analysed in the 1990s in a surge of studies by political scientists and integration theorists.<sup>12</sup> The principles of ‘variable geometry’ and ‘multispeed Europe’, as two different forms of differentiation, were even enshrined in the Treaty of Amsterdam in 1997 and the Treaty of Nice in 2001.<sup>13</sup> Though the general premise was that the overall direction should remain geared towards gradual deepening, this did not require all EU nations to adopt wholly symmetrical positions or participate in the deepest forms of integration either at the outset or with permanent opt-outs. This principle has been followed through in a number of ways in today’s EU. Despite the prevalence of ideas such as these during the post-Cold War transition, though, surprisingly little historical research has been conducted on them. This chapter therefore aims to contribute to the limited body of historical, archive-based works that exist on the question of differentiated integration in the 1980s and 1990s. In line with the broader objectives of this volume, which seeks to highlight other forms of integration, it asks more specifically the extent to which ideas of multi-speed European unity were developed into actual plans, attempted or implemented at the turn of the 1990s.

One of the principal forms of differentiated integration today is the European Economic Area (EEA), which consists of the EU and three European Free Trade Association (EFTA) members: Norway, Iceland and Liechtenstein. Following negotiations in 1989-93, the EEA came into force in 1994. The agreement was devised to provide EFTA countries – with the exception of Switzerland, which narrowly rejected the agreement in a referendum in December 1992 – with access to the European single market and its four freedoms. Significantly, it left these countries outside a

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<sup>12</sup> According to Alexander Stubb, the discussion of differentiated integration started with the Tindemans Report in 1976, but then received scant attention until the CDU/CSU report by Lamers and Schäuble in 1994. Alexander Stubb, ‘A Categorization of Differentiated Integration’, *Journal of Common Market Studies* 34, no. 2 (1996): 283–95. Scholarly interest in differentiated integration weakened in the 2000s, but re-emerged in the 2010s as its policy relevance increased. See for instance Kenneth Dyson and Angelos Sepos, *Which Europe? The Politics of Differentiated Integration* (Basingstoke and New York: Palgrave Macmillan, 2010); Dirk Leuffen, Berthold Rittberger and Frank Schimmelfennig, *Differentiated Integration: Explaining Variation in the European Union* (Basingstoke and New York: Palgrave Macmillan, 2012); Benjamin Leruth and Christopher Lord, ‘Differentiated Integration in the European Union: A Concept, a Process, a System or a Theory?’, *Journal of European Public Policy* 22, no. 6 (2015): 754–63.

<sup>13</sup> Alexander Stubb, *Negotiating Flexibility in the European Union: Amsterdam, Nice and Beyond* (New York: Palgrave, 2002).

number of supranational policy fields such as the EU's customs union and the common agricultural and fisheries policies. With its own institutional structures, the EEA countries also stood outside the formal institutions and decision-making processes of the EU. As a Finnish official, Paavo Kaarlehto, described the suggested arrangement already in 1989, it meant something 'less than membership and more than association'.<sup>14</sup> This is for good reason. For while they did not assume all the rights and responsibilities of EU members, the EFTA countries were nonetheless bound to its legal and institutional order in return for access to its single market. A two-pillar system of supervision and judicial control was established, consisting of an EFTA Surveillance Authority and an EFTA Court exercising judicial control of the agreement in the EFTA countries, mirroring the roles of the European Commission and the Court of Justice of the European Union (ECJ).

Despite the complexity of its institutional and legal design, the EEA has slowly become a routine feature of the European institutional landscape. Since Sweden, Austria and Finland – all former EFTA members – joined the EU, it has provided Norway, Iceland and Liechtenstein with continuous access to the EU's market. Given the limitations it places on the internal sovereignty of the EFTA countries in single market-related legislation and the peculiarities of its legal oversight arrangements, the EEA's longevity in itself has become a topic for scholarly interest and has resulted in several studies.<sup>15</sup> Long a relatively little known aspect of European integration, the EEA also became a topic of lively discussion after the referendum in the United Kingdom to leave the EU in 2016. After the vote, various alternatives, including the so-called 'Norway model' – which in reality referred to accessing the EU market via the EEA – were explored for the United Kingdom's future relationship with Brussels.<sup>16</sup>

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<sup>14</sup> Cited in Mauno Koivisto, *Witness to History: The Memoirs of Mauno Koivisto, President of Finland 1982–1994* (London: Hurst & Company, 1997), 224.

<sup>15</sup> Halvard Haukeland Fredriksen, 'Bridging the Widening Gap between the EU Treaties and the Agreement on the European Economic Area', *European Law Journal* 18, no. 6 (2012): 868–86; Halvard Haukeland Fredriksen and Christian N.K. Franklin, 'Of Pragmatism and Principles: The EEA Agreement 20 Years On', *Common Market Law Review* 52, no. 3 (2015): 629–84; Tom O. Johnsen and Pernille Rieker, 'The EEA and Norway Grants: A Source of Soft Power?', *Journal of European Integration* 37, no. 4 (2015): 417–32. In 2012 the Norwegian government published an exhaustive study of the functioning of the EEA treaty. For more see Norges Offentlige Utredningar, *Utenfor og innenfor. Norges avtaler med EU* (Oslo: NOU, 2012). An earlier exercise with a similar task was carried out by Dag Harald Claes and Bent Sofus Tranøy, *Utenfor, annerledes og suveren? Norge under EØS-avtalen* (Bergen: Fagbokforlaget, 1999).

<sup>16</sup> John Erik Fossum and Hans Petter Graver, *Squaring the Circle of Brexit: Could the Norway Model Work?* (Bristol: Bristol University Press, 2018).

The institutional setup, the legal order and the functioning of the EEA have all been extensively covered in existing research.<sup>17</sup> Comparatively less work has been done on the actual negotiation process itself, however.<sup>18</sup> This chapter charts the course of the EEA negotiations from the beginning of the process in 1989 until 1994, when the EEA came to force. It utilises materials stored in EFTA's own archives, interviews and declassified national archives where these have been made accessible.<sup>19</sup> Taking advantage of the possibility to reconstruct the negotiation process with access to primary documentation on the EFTA side, the chapter looks at the critical junctures of the negotiations and their course. What is of interest are the positions of the various actors and the linkages of the EEA negotiations with the preparations of the EU's 1995 enlargement. Placing it within a broader frame of the institutional development of European integration at the time, it explores the EEA's origins and founding principles, and analyses how contemporary policymakers defined and saw its long term aims as either a bridge or an alternative to a geographically expanded EU.

Besides showing how the EEA eventually took the shape it did, the chapter also looks at the EEA's structural weaknesses and how ultimately a realisation of its

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<sup>17</sup> Cédric Dupont, 'The Failure of the Nest-Best Solution: EC-EFTA Institutional Relationships and the European Economic Area', in Vinod K. Aggarwal (ed.), *Institutional Designs for a Complex World: Bargaining, Linkages and Nesting* (Ithaca NY: Cornell University Press, 1998): 124–60; Sieglinde Gstöhl, 'The Nordic Countries and the European Economic Area (EEA)', in Lee Miles (ed.), *The European Union and the Nordic Countries* (London: Routledge, 1996), 47–62; Sven Norberg, 'The Agreement on a European Economic Area', *Common Market Law Review* 29, no. 6 (1992): 1171–98; Leif Sevón, 'The EEA Judicial System and the Supreme Courts of the EFTA States', *European Journal of International Law* 3, no. 2 (1992): 329–40; Armando Toledano Laredo, 'The EEA Agreement: An Overall View', *Common Market Law Review* 29, no. 6 (1992): 1199–1213; Helen Wallace (ed.), *The Wider Western Europe: Reshaping the EC/EFTA Relationship* (London: RIIA, 1991).

<sup>18</sup> Eyewitnesses and contemporary actors have written a good part of the existing history. For instance Eric Hayes, a European Commission official involved in the EEA negotiations, has covered his experiences in 'From Cold War to Common Currency. A Personal Perspective on Finland and the EU', *Finnish Foreign Policy Papers* 1 (2011): 19–22. Ulf Dinkelspiel, Sweden's main negotiator, has covered the negotiations in his memoirs *Den motvillige europén. Sveriges väg till Europa* (Stockholm: Atlantis, 2009). Paal J. Frisvold, from the Norwegian negotiating team, provides a brief account of the origins of EEA in *Towards Europe: The Story of Reluctant Norway* (Brussels: Peter Lang, 2018), 93–98. The Finnish perspective has been summarised by Päivi Luostarinen and Pertti Salolainen, who led the Finnish negotiation team, in 'Euroopan talousalue: kylmän sodan jaloista aidoksi eurooppalaiseksi toimijaksi', in Alexander Stubb (ed.), *Marginaalista ytimeen. Suomi Euroopan unionissa 1989–2003* (Helsinki: Tammi, 2006), 16–32. This author has covered the negotiations in the context of Finnish integration policy in Juhana Aunesluoma, *Vapaakaupan tiellä. Suomen kauppa- ja integraatiopolitiikka maailmansodista EU-aikaan* (Helsinki: Suomalaisen Kirjallisuuden Seuran Toimituksia, 2011), 410–32.

<sup>19</sup> The author has had access to previously classified documents in EFTA archives in Geneva and in foreign ministry archives and presidential papers in Finland, where a 25-year rule is applied to classified government papers. At the time of writing, archival materials from the EC on the EEA have not yet been made available. An interview with Eric Hayes, a Commission official responsible for EFTA affairs at the time, has however provided welcome information. Future research will undoubtedly find EC documentation on the origins of the EEA informative.

institutional inadequacy paved the way for EU enlargement. The creation of the EEA exemplified how difficult it was to give coherent institutional or legal form to any ideas of a Europe of concentric or Olympic circles. Not surprisingly, the EEA has not been adopted as a model for other non-members to arrange their access to the EU's single market. And despite some attention being given attention during Britain's Brexit debate, the EEA has not emerged as an attractive or a realistic alternative to free trade agreements with the EU's closest geographic partners. Yet the negotiations leading to it are an important part in the history of European cooperation as a process distinct from or something different to today's EU, and its existence shows the multitude ways in which non-EU countries planned and eventually arranged their positions in it in the 1990s.

### **Jacques Delors and the Idea of a 'Third Way'**

As the post-Second World War division of Europe came to its end, the institutional architecture of European cooperation was changing rapidly. Whereas the countries of the former Eastern bloc were in the early 1990s already focused on their political and economic transition to the West and, as part of this, negotiated bilateral trade and cooperation agreements with the EC, the economically advanced EFTA members had a broader range of options to consider.

Prior to the signing of the SEA, the EFTA countries moved closer to the EC through gradual, free trade integration. A significant milestone in closing their trade policy gap was the bilateral free trade agreements between the EFTA countries and the EC finalised in 1972.<sup>20</sup> Addressing the need to access the EC markets following the implementation of the common commercial policy and the common external tariffs of the EC's customs union, the 1972 agreements covered only industrially manufactured goods. They came into force on the eve of the Community's first enlargement when Denmark and EFTA's hitherto leading economic power, Britain, left the Association in favour of the EC. Portugal, a member of EFTA since its creation in 1960, followed suit in 1986. EFTA's remaining members were, then, all small, advanced economies: Sweden, Norway, Austria, Switzerland, Iceland, and Finland, which upgraded its associate status in EFTA to full membership in 1986.

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<sup>20</sup> Finland's free trade agreement with the EC came to force in 1973. See Tapani Paavonen, *Vapaakauppaintegraation kausi. Suomen suhde Länsi-Euroopan integraatioon FINN-EFTAsta EC-vapaakauppaan* (Helsinki: Suomalaisen Kirjallisuuden Seura, Historiallisia Tutkimuksia, 2008).

Fuelled by growing cross border investments and trade, the economic integration process between the members of EFTA and the EC accelerated in the 1980s. After an EC-EFTA summit held in Luxembourg in April 1984, a declaration bearing the name of the host country kicked off a procedure aiming to reduce remaining non-tariff barriers to trade.<sup>21</sup> The aim was to create a ‘European economic space’ through incremental, step-by-step harmonisation of administrative practices, regulations and laws governing economic activity in the EC-EFTA area. As the EFTA and EC negotiators soon found out, the task was daunting. Even minor achievements to remove obstacles of trade and commercial activity took months or more of painstaking, detailed administrative work between the six EFTA countries, the EFTA Secretariat in Geneva and the European Commission in Brussels.<sup>22</sup> In comparison with the comprehensive approach of the SEA, the so-called Luxembourg process looked a hopelessly dated trade liberalisation mechanism better suited to the circumstances of earlier decades than the 1980s.

Implied in the Luxembourg process however was that this new relationship would go well beyond mere free trade integration. Economic integration in this sense was no longer a matter of dismantling tariff-based or other traditional barriers to trade. Rather, it now focused on deepening economic integration on a broad front. This implied establishing the free movement of the factors of production, goods and services, increasing capital and labour mobility, and harmonising industrial norms and competition policy regulations. All this required synchronising of domestic legislation and regulations in EFTA states, and called for more efficient intra-EFTA coordination.<sup>23</sup>

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<sup>21</sup> The Luxembourg declaration highlighted the importance of ‘further actions to consolidate and strengthen co-operation, with the aim of creating a dynamic European economic space of benefit to their countries’. EFTA Archives, Geneva (hereafter EFTA-Geneva), EFTA Consultative Committee: CSC Documents 1985–1987, EFTA/CSC 3/85, ‘Progress report on the follow-up of the Luxembourg declaration, Note by the Secretariat’, 5 March 1985.

<sup>22</sup> The EFTA Secretariat noted already a year after the declaration that ‘[t]he implementation is of necessity a time-consuming process’. Progress report on the follow-up of the Luxembourg declaration, Note by the Secretariat, 5 March 1985. In the following autumn concerns were raised in the EFTA Consultative Committee about slow progress and “a lack of urgency” in the talks. EFTA-Geneva/EFTA/CSC/13/85, ‘Consultative Committee 53<sup>rd</sup> Meeting Geneva 15 and 16 October 1985, Report by the Chairman’, 25 October 1985.

<sup>23</sup> The need for a unified approach on the EFTA side to deal with the implications of the SEA was stressed in the EFTA Consultative Committee in October 1986: ‘EFTA should be used as a joint platform to provide strength in negotiations with the Community’, see EFTA-Geneva/EFTA/CSC/ES/3/86, EFTA/CSC 11/86 (Annex IV) ‘Consultative Committee 55<sup>th</sup> Meeting, Geneva 27 and 28 October 1986’, 26 November 1986.

Business lobbying organisations exerted pressure on their national governments to devise new institutional arrangements with the EC or to seek its full membership. Foreign direct investments from the EFTA countries to the EC grew significantly in the late 1980s, creating an outflow of capital and tensions within the business and political elites in the EFTA countries. The Swedish government was most obviously nervous about the situation, but concern was visible elsewhere.<sup>24</sup> In the eyes of contemporary observers, powerful structural forces – such as growing regionalism in global markets, the EC’s internal consolidation and the lessening of the geopolitical tensions and the roles of the United States and the Soviet Union in European affairs –all pushed the EFTA countries towards the EC.<sup>25</sup> By 1988-89 a wide expectation in expert circles was that the EFTA countries would eventually find it hard to resist the pull from the EC to join it as full members.<sup>26</sup>

The problem was that nobody knew how long this might take, or in what order and when the EFTA countries might seek EC membership. The EC was still digesting its Iberian enlargement from the mid-1980s. Furthermore, it had plenty on its plate regarding its own internal affairs. After all, the autumn of 1989 brought to the fore the question of German reunification and the repercussions of the overthrow of the pro-Soviet regimes in Central and Eastern Europe. What heightened concerns in EFTA member states were the messages emanating from the Commission that the EC was not about to open its doors for another round of enlargement for quite some time. After the implementation of the SEA began, the Community signalled that deepening of intra-Community integration and the completion of the single market were its priorities, and thus that there was no wish to open negotiations with potential new members. Commission President Jacques Delors was well known for his critical views against taking on new members, especially Cold War neutrals, lest their presence would hamper the evolution of the Community towards a deeper political union. In his eyes, what

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<sup>24</sup> Raimo Väyrynen, ‘Finland and the European Community: Changing Elite Bargains’, *Cooperation and Conflict* 28, no. 1 (1993): 31–46.

<sup>25</sup> The implications of the SEA were clear from the start to EFTA in 1985: ‘Unless some initiatives are forthcoming from the EFTA side for parallel developments, the EFTA countries would miss the bus as regards participating in the creation of an benefiting from the European economic space’, Finland’s Minister for Foreign Trade Jermu Laine pointed out as Chairman of the EFTA Consultative Committee in its meeting in Geneva in October 1985. See EFTA-Geneva/EFTA/CSC/13/85, ‘Consultative Committee 53<sup>rd</sup> Meeting Geneva 15 and 16 October 1985, Report by the Chairman’, 25 October 1985.

<sup>26</sup> Susan Wilson, ‘Austria’s Application for Membership in the European Community and Delors’ Call for A New EC-EFTA Relationship’, *University of Georgia Journal of International and Comparative Law* 20, no. 1 (1990): 241–51.

ought to come first was the SEA's implementation and a revision of the basic treaties. Nothing specific would therefore be said about possible enlargement before the existing twelve EC member states had resolved their own future.

Thus, the EFTA countries found themselves on the horns of a dilemma. The alternatives were either to seek a revision to the existing bilateral free trade agreements between EFTA countries and the EC by incorporating at least some of the EC's four freedoms, or to negotiate some kind of multilateral EFTA-EC wide framework agreement. Few knew however how these kinds of agreements would look or how they could be governed given the unique legal order underpinning the EC's single market. Neither was it obvious prior to 1989 whether the EC would even be interested in such arrangements.

Complicating matters for many EFTA states was that, as the implementation of the SEA begun in earnest from 1988, it became clear that the EC was not enthusiastic about continuing the Luxembourg process. Behind this lay the belief that the whole scheme was out of step with the new thinking on the sort of comprehensive economic liberalisation that had been embodied in the SEA. Suddenly, the only option that really remained open to EFTA countries was full membership in the EC. And thanks both to the stance of the EC and the domestic political circumstances of the EFTA states themselves, this, of course, was a choice not yet on the table.

This made the search for an alternative approach all the more urgent. And it likewise required EFTA members to work far more closely with one another. After the 1984 declaration that launched the Luxembourg process, EFTA states had in fact already gradually strengthened their internal organisation and had started coordinating their negotiating positions vis-à-vis the EC.<sup>27</sup> Whereas the 1972 free trade agreements had been a bilateral affair between individual EFTA members and the EC, the Luxembourg process was the start of a multilateral approach, with a High-Level Contact Group consisting of EFTA and EC representatives handling the process.<sup>28</sup> However, instead of acting as a unified group towards the EC, the EFTA states also continued to deal bilaterally with the European Commission. Besides obvious technical

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<sup>27</sup> The EFTA Secretariat stressed the need for a unified approach on the EFTA side to deal with the implications of the SEA: 'EFTA should be used as a joint platform to provide strength in negotiations with the Community'. EFTA-Geneva/EFTA/CSC/11/86, EFTA/CSC/ES 3/86 (Annex IV), 'Consultative Committee 55<sup>th</sup> Meeting, Geneva 27 and 28 October 1986, 26 November 1986.

<sup>28</sup> Ibid.

difficulties, it proved hard to reach consensus on major negotiating items on the EFTA side and the whole process was considered inadequate.<sup>29</sup>

It was in this context that Delors took the initiative in early 1989. In his inaugural address to the European Parliament in Strasbourg on 17 January 1989, he proposed opening negotiations with EFTA on a so-called third road; that is, a new type of comprehensive Western-European common market that would consist of both the EC and EFTA. As with the SEA, Delors remarked, the aim of this would be to find a more holistic approach than had been customary in previous rounds of trade liberalisation in the EC or in GATT. In practice this meant that instead of an item-by-item or sector-by-sector approach, there needed to be a reorganization of cross-border economic activity in its entirety, supported by new institutional and legal structures. Referring to the progress already made between the EC and EFTA, Delors stated that: ‘With each step we take the slope is getting steeper. We are coming up to the point where the climber wants to stop to get his breath, to check that he is going in the right direction and that he is properly equipped to go on’. For him, there were two options going forward. First was to ‘stick to our present relations, essentially bilateral, with the ultimate aim of creating a free trade area encompassing the Community and EFTA’. Alternatively there existed the chance to ‘look for a new, more structured partnership with common decision-making and administrative institutions to make our activities more effective and to highlight the political dimension of our cooperation in the economic, social, financial and cultural spheres’.<sup>30</sup> Should EFTA ‘strengthen its own structures’, Delors continued, the options would change:

In that case the framework for cooperation would rest on the two pillars of our organizations. If it did not, we would simply have a system based on Community rules, which could be extended – in specific areas – to interested EFTA countries and then perhaps, at some date in the future, to other European nations.<sup>31</sup>

And for the arrangement to work, EFTA countries would have to acknowledge that ‘the single market forms a whole with its advantages and disadvantages, its possibilities and

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<sup>29</sup> Author interview with Veli Sundbäck (Finnish Ministry for Foreign Affairs), 17 October 2007.

<sup>30</sup> Address given by Jacques Delors to the European Parliament 17 January 1989, *Bulletin of the European Communities*, No. 1/89 (Luxembourg: Office for the Official Publications of the European Communities, 1989).

<sup>31</sup> *Ibid.*

limitations'. There would be no picking and choosing, no optional menus, and members of the wider single market would have to accept the principle of harmonisation of national legislation. As Delors put it: 'Are our partners willing to transpose the common rules essential to the free movement of goods into their domestic law and, in consequence, accept the supervision of the Court of Justice, which has demonstrated its outstanding competence and impartiality?'<sup>32</sup>

The immediate reaction in EFTA to Delors' proposal was mixed. In Austria, the government was somewhat reserved since Delors seemed to have hardened his stance against new membership bids. Delors, after all, used the same speech to state that 'internal development takes priority over enlargement'.<sup>33</sup> Similar concerns existed in Norway, although Prime Minister Gro Harlem Brundtland made clear from the beginning that her government welcomed the opportunity to review EFTA's relations with the Community.<sup>34</sup> The Swedes, aware that an opening of some kind from the Commission was forthcoming, were nonetheless taken by surprise by the boldness of Delors' suggestion and the prominence of the EC-EFTA nexus within the speech. In any case, the response in Stockholm was enthusiastic, and similar reactions came from Iceland and Finland. As Sweden's main negotiator to the EC, Ulf Dinkelspiel, put it, the mood in Stockholm was that the proposed deepening of relations with the EC fitted Swedish interests 'like a hand in glove'.<sup>35</sup>

Despite initial misgivings in some quarters, on a general level the idea of concentric circles and the widening of the single market with a comprehensive agreement suited the EFTA countries quite well. According to Finnish President Mauno Koivisto, 'For us, the new situation was unexpected, but it was well suited to us', not only because the plan made economic sense but because it was particularly well suited to the needs of neutral EFTA states. As the view of the Soviet Union still carried weight in Finland, Delors' ideas were attractive as they 'did not mean that Finland needed to deviate from its established and growing neutrality line.'<sup>36</sup> As researcher Hanna Ojanen

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<sup>32</sup> Ibid.

<sup>33</sup> Ibid; Dinkelspiel, *Den motvillige europén*, 119–21. Finland's President, Mauno Koivisto, used stronger language in his memoirs: 'To Austria, and in particular to its foreign minister Alois Mock, who represented the Christian Democratic People's party, the speech of Delors came as a shock'. See Koivisto, *Witness to History*, 224.

<sup>34</sup> Dinkelspiel, *Den motvillige europén*, 119–21.

<sup>35</sup> Ibid.

<sup>36</sup> Koivisto, *Witness to History*, 225.

later put it, it was as if Delors' proposal for a 'third way' had been invented by Finns themselves.<sup>37</sup>

Problematic however was how little thought had been given by either EFTA or the EC to the practicalities of this sort of arrangement. As an official who at the time handled the EC desk at the Finnish Ministry of Foreign Affairs, Antti Kuosmanen, described the situation at the end of 1988, EFTA officials in Geneva and the member states had been aware that ideas regarding a new approach to EFTA-EC relations had been aired in Brussels at a high level, but a general feeling was that they had been abandoned.<sup>38</sup> In the autumn of 1988, the Swedish government had drafted a model for a possible bilateral Swedish-EC framework agreement for its own internal use, where among other things the institutional questions had been discussed. As the crucial issue would be how to secure at least some influence in the EC's internal decision-making, the Swedes had devised a solution where they would have a right to participate in the preparatory stages of decision-making but would have no formal position in the EC's institutions. As a model for this, the Swedes had discovered the FINEFTA agreement from 1961, where EFTA countries had made a separate agreement with Finland with its own institutional structure to enable its participation in the Association's activities.<sup>39</sup> Similar work had been conducted in the EFTA Secretariat in Geneva, where officials had sketched out ideas for broadening the single market but with the inclusion of a joint EC-EFTA institution overseeing the whole structure.<sup>40</sup>

In the summer of 1988, Delors, in discussions with EFTA leaders and a speech during a visit to Helsinki, had hinted that there would be an agreement that would improve the conditions to access the EC's markets.<sup>41</sup> In the following autumn, Commission officials had asked their EFTA counterparts that they would come up with a proposal for a comprehensive solution, but this had not led to further discussions at that time.<sup>42</sup> In November 1988, Eric Hayes, a Commission official responsible for EFTA affairs, explained his own private thinking to EFTA representatives about a 'framework agreement' to be negotiated between the EC and EFTA. What in Hayes'

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<sup>37</sup> Ojanen, 'If in "Europe", then in its "core"?', 156.

<sup>38</sup> Antti Kuosmanen, *Finland's Journey to the European Union* (Maastricht: European Institute of Public Administration, 2001), 5–6.

<sup>39</sup> Dinkelspiel, *Den motvillige europén*, 116–18.

<sup>40</sup> Author interview with Eric Hayes (EC Commission), 11 October 2018.

<sup>41</sup> Author interview with Erik Forsman (Federation of Finnish Industries), 18 February 2010.

<sup>42</sup> Kuosmanen, *Finland's Journey*, 5–6.

view was essential was that EFTA should take the initiative in the matter.<sup>43</sup> As the general feeling was that the ball was in EFTA's court, a meeting of EFTA officials on 11 January 1989 revealed that few anticipated a move from the EC regarding the idea of a new framework agreement. It was decided that the whole matter of a possible framework agreement would not be made public and that internally the issue would be considered 'very confidential' for the time being.<sup>44</sup>

Speculation was rife regarding Delors' actual motivations. Was he merely trying to forestall EFTA countries' membership applications by creating a temporary stop-gap measure? Or did his initiative reflect a more thought-through plan for the future institutional architecture of European integration, consisting of the concentric circles he had been talking about earlier, each with their own organisational structures and legal arrangements? The overall consensus in EFTA capitals was that the EC was trying to achieve two simultaneous goals. First, the aim indeed was to forestall the opening a new enlargement round before deepening of cooperation among the twelve had taken place. What the Commission in particular had in mind was a membership application from Austria, but possibly also from Norway. According to Dinkelspiel, the second motivation was to develop cooperation with EFTA 'to strengthen Europe's role in the world'. This was in line with Delors' thinking of a (Western) Europe of 'concentric circles, with EC countries as its core – though not necessarily all the twelve – who were willing to proceed towards a federation'.<sup>45</sup>

As the talks eventually started, more clarity emerged on what the EC's motivations were. In November 1989, Commission officials gave their EFTA counterparts several reasons why they had felt 'compelled to establish more structured links'. These are worth citing in full:

Firstly, the swifter pace of Community integration raised immediate questions about our relations with our neighbours. Secondly, criticism by some EC Member States and by certain social partners had confirmed that the case-by-case approach

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<sup>43</sup> Archives of the Finnish Ministry for Foreign Affairs, Helsinki (hereafter AFMFA), Telegram Geneva-Helsinki, 'Efta-EC-yhteistyö; EC-komission ajatuksia puitesopimuksen tekemisestä', 1 December 1988.

<sup>44</sup> AFMFA, Memorandum by Veli Sundbäck, 'Efta-EC; Mahdollinen uusi puitejärjestely', 11 January 1989. From their direct personal contacts to Delors it appears that both the Swedish premier Ingvar Carlsson and Norway's premier Gro Harlem Brundtland expected Delors to use his inaugural speech in Strasbourg as an occasion to propose a new approach, but had no knowledge of what its details might be. Dinkelspiel, *Den motvillige europén*, 118–19; Hayes, *From Cold War to Common Currency*, 20, n.43.

<sup>45</sup> Dinkelspiel, *Den motvillige europén*, 120–21.

was too piecemeal and that a more comprehensive approach was necessary. Accession applications were a third factor. Austria, Turkey and others would soon be knocking at the door. Fourthly, the events in the Eastern bloc. Fifthly, and perhaps most importantly, bureaucrats and politicians sometimes lagged behind political realities; the political reality in this case was that they had an 18- or 19-member market and needed to adopt a modern approach taking account of this.<sup>46</sup>

While it is obvious from this that there were several background factors on the EC side motivating its approach, we should be careful overemphasising the EC's need to avoid new membership applications.<sup>47</sup> Indeed, it seems clear from the available evidence that what Delors had in mind was not merely to use the EEA as a tactical ploy to prevent or slow down possible membership applications from EFTA countries. As Eric Hayes has said, the Commission would have had no trouble in dealing with new membership applications; so too did it have all the administrative requirements to prevent any membership bid progressing until the EC was ready.<sup>48</sup> Delors' proposal thus more likely reflected a profound sense that Europe's whole institutional architecture would soon need to be rethought and a new overarching structure was required to arbitrate with those countries orbiting the EC.

Delors' view, then, was strategic, and the EEA for him represented a key building block for a future where 'the European Community would form the core or a hub, and there would be different arrangements for the other, peripheral countries'.<sup>49</sup> The characteristics of this sort of broader structure were clarified in an internal EFTA memorandum later in the autumn:

the 'inner circle' would be constituted by the 12 Community Member States aiming to reach economic and political union. The next circle would be constituted by the countries making up the EES [European Economic Space, the original name of the EEA] ensuring free movement of goods, capital, services and persons, accompanied by cooperation in other fields between the EC and the

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<sup>46</sup> EFTA-Geneva/EFTA/CSC/INF/20/90 '19th Joint Meeting of the Delegations representing The Economic and Social Committee of the EC and the EFTA Consultative Committee held in Paris on 27/28 November 1989. Act of Proceedings', 11 May 1990.

<sup>47</sup> Hayes, *From Cold War to Common Currency*, 19.

<sup>48</sup> Author interview with Eric Hayes, 11 October 2018.

<sup>49</sup> *Ibid*; Hayes, *From Cold War to Common Currency*, 19–20.

EFTA countries. Individual Eastern countries which have succeeded in their reforms could then become part of that circle or form a wider one.<sup>50</sup>

What Delors, who had sounded out his ideas in the EC capitals in advance, had in mind was a permanent solution to the dilemma caused by the conflicting demands of deepening the Community with the widening of its geographic scope. The answer lay in finding an alternative that allowed for the single market to be extended to EU members and non-members alike. Eventually, the Community would likely accept new members who fulfilled the necessary criteria into their fold but the EEA proposal appeared to indicate that Brussels was not prepared to enlarge at the detriment of its internal cohesion. And it also assumed that Cold War Western European neutrals might not be the first to join this enlarged EC. According to West Germany's then Foreign Minister, Hans-Dietrich Genscher, it was feasible that those ex-Soviet bloc countries transitioning towards democracy and a market economy were better candidates to join the EC since membership would strengthen this development. Poland and Hungary, rather than Austria or Sweden, thus for a time looked more certain to accede.<sup>51</sup>

### **Hopes and Cracks in the EFTA Camp**

Despite the opening of talks between EFTA and the EC, there was little indication that the two sides would proceed with haste. A formal response from the EFTA side to Delors' proposal had emerged from an EFTA ministerial meeting in Oslo in March. This sanctioned preparations for more formal negotiations to begin, which in turn were initiated on the official level in Brussels in June 1989. Besides agreeing that the scope of the negotiations was likely to be wide, however, views differed about what the end result should be. Delors, for his part, was keen to agree on a statement of principle in favour of an EFTA-EC structure. But there was no consensus about what this meant in practice.<sup>52</sup> While Finland, Iceland and Norway appeared happy with pursuing a more pragmatic, undefined approach, the Swiss government were decidedly cool to the idea. Having been aware of what Delors had previously said about the necessity of accepting

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<sup>50</sup> EFTA-Geneva/EFTA/CSC/W/12/89, 'Consultative Committee 62nd Meeting, Geneva, 16 and 17 October 1989 and 19th Joint Meeting with the Economic and Social Committee: The development of EFTA-EC relations and the particular role of the EFTA Consultative Committee and the Economic and Social Committee of the EC. Discussion paper by Mr. K. Sandegren', 10 October 1989.

<sup>51</sup> Ibid.

<sup>52</sup> Hayes, *From Cold War to Common Currency*, 20.

the evolving *acquis communautaire* as the foundation of the arrangement, Berne foresaw serious difficulties in going along with an ill-defined process that could wind up with it being forced to accept unfavourable policies and institutional arrangements. Complicating matters further, Sweden, supported by Austria, indicated early on that the goal should be to join the EC's customs union rather than simply the single market. This, though, would require closer alignment with the core political purpose of the EC of the sort that neither Finland nor Switzerland was willing to accept. Eventually, as the negotiations began in early 1990, this demand was dropped and the goal was set to participate in the EC's single market programme only.<sup>53</sup>

Given these initial difficulties, progress in the negotiations was surprisingly rapid – even if it did take a while for the Commission to put together its negotiating team and thereafter determine the part of the *acquis* which was relevant to the EEA.<sup>54</sup> From the start, it was envisaged that the agreement ought to enter into force at the same time as the full implementation of the EC's single market programme due at the beginning of 1993. The principle was to apply EC legislation in various categories with immediate effect and to deal with any problems in a transitional period. The point of departure was that the EEA agreement was to become an instrument that easily transposed relevant EC legislation into EFTA countries' national legislation. Likewise from the off, the Commission made it clear that there could be very few exceptions to adopting EC legislation in the EEA. The so-called negotiating mandate mainly concerned formal derogations and transitional periods in the single market. As the substantive matters mostly concerned the trade of goods and were already familiar from the Luxembourg process, the negotiations proceeded surprisingly smoothly from one area of single market-related legislation to another. What the negotiators found, somewhat to their surprise, was how far their economies and regulatory frameworks had already converged during the preceding years of free trade integration and global trade liberalisation. The comprehensive approach, mirroring the principles of the SEA, worked unexpectedly well, although the broad range of issues meant long hours for the negotiators and their assisting staff in order to shift through an almost unfathomably large corpus of Community law. As the EFTA countries were all highly developed, open economies with a liberal trade policy outlook, the EEA agreement focused largely

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<sup>53</sup> EFTA-Geneva/Ministerial Meetings Working Papers 1989–1990/CS/29/90, 'Informal EFTA ministerial meeting, Geneva, 3 April 1990', 30 April 1990.

<sup>54</sup> *Ibid.*

on how they would operate within, rather than adapt to, the single market. The bulk of the agreement was hence negotiated with speed during the course of 1990, and finishing touches were given to it in the first half of 1991.

This, it would soon prove, was the relatively easy part. For problems arose on the EFTA side regarding its own capacity to deliver the institutional stability and efficiency to run the EEA. As EFTA's internal divisions and occasional clashes between the member states were well known, the Commission stressed that EFTA as an organisation would need to strengthen itself internally in order to shoulder its share of the burden of the practical operative work. However, what would happen if any one of its members decided to change course and seek for full EC membership? What would that do to the internal cohesion of the Association, and how much of a voice could a fracturing and diminishing EFTA have in its future dealings with an expanding Community, if its members started to jump ship?<sup>55</sup>

As the preparations for the opening of the negotiations at the official level commenced over the summer of 1989, it was thus not unexpected that the EEA talks would encounter some sort of hitch. This happened most spectacularly when, breaking ranks with its partners, Austria submitted its membership application to the EC in July 1989.<sup>56</sup> Austria's move came as no surprise, as it had already earlier indicated its willingness to explore opportunities to join the EC while maintaining its permanent neutrality. It was in a joint meeting of the EFTA Council and the EC ministerial conference in Tampere, Finland, in June 1988, that Austria's Foreign Minister Alois Mock informed his EFTA counterparts of his government's intentions. According to a Finnish official present in the meeting, Mock's announcement 'spoiled the celebratory mood of some of his colleagues', as the other participants had entertained hopes for strengthening the internal cohesion of EFTA before a long-awaited opening of new talks with the EC.<sup>57</sup> And certainly the prospect that one, and perhaps even several, EFTA members might be changing course in their integration policy while the EEA negotiations were still underway, did increase tensions. As the thinking went, if EFTA was to secure its influence in the suggested 'common decision-making and administrative institutions', it would have to be strengthened institutionally and learn to speak with one voice. But the Austrian move appeared to do little more than show

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<sup>55</sup> Author interview with Veli Sundbäck (Finnish Ministry for Foreign Affairs), 17 October 2007.

<sup>56</sup> Gehler, 'A Newcomer Experienced in European Integration', 137–39.

<sup>57</sup> Kuosmanen, *Finland's Journey*, 5.

the EEA to be a mere bridge to full EC membership. Perhaps worse still, it seemed to indicate a preference for EFTA states to deal with the Community bilaterally rather than multilaterally. Hopes for enhanced intra-EFTA cooperation thus faded.

It did admittedly help that Austria's application did not meet with an immediate response from the EC. This ensured that the pace of the EEA talks was not seriously interrupted. But the question of EFTA's internal cohesion was again thrown into doubt when in October 1990 the Swedish government announced that it too planned to seek full EC membership. The manner of this announcement was in fact arguably more fatal for EFTA unity than Mock's earlier announcement. For unlike Austria, Sweden's decision to launch a membership bid took its partners in EFTA by complete surprise. Coming at a sensitive moment in the EEA negotiations, the Swedish government was thus forced to expend significant energy reassuring its EFTA colleagues that it was still committed to the EEA concept.<sup>58</sup> Unavoidably, though, the momentum for a more institutionally ambitious agreement began to weaken. The cracks in the EFTA camp increasingly suggested that, far from becoming a permanent feature in the European institutional landscape, the EEA would simply serve as a waiting room for countries on their way to joining the Community in full.

These internal squabbles paled into relative insignificance however when compared to the challenge caused by the Commission's outlining of the EC agenda in 1990. First, since the concept of the single market needed to be adopted as a whole, it was deemed necessary that the relatively wealthy EFTA economies would have to contribute to the Community's cohesion funds. Second, Switzerland and Austria would have to open their borders for transit traffic through the Alps. Third, Norway and Iceland, while not part of the common fisheries policy, would be obliged to allocate fishing quotas to EC countries. Fourth, capital movements would have to be 'liberalized completely', which Switzerland, among others, had difficulties in accepting from the outset.<sup>59</sup> EFTA, for its part, put its own demands on the table regarding decision-making. As the talks opened, they were 'concerned that the question of full participation in the decision-shaping and decision-making process, as proposed so far by the Commission, would not lead to a satisfactory solution for the EFTA countries'. If

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<sup>58</sup> EFTA-Geneva/HLNG Documents, 'Annex II to HLNG 34/90', 19 October 1990, and EFTA Working Documents/EFTA/NG/V4/90, 'Note on Comitology', 11 October 1990.

<sup>59</sup> EFTA-Geneva/EFTA/CSC/INF/20/90, '19th Joint Meeting of the Delegations representing The Economic and Social Committee of the EC and the EFTA Consultative Committee held in Paris on 27/28 November 1989. Act of Proceedings', 11 May 1990.

special care was not taken to ‘ensure that the agreement would have an evolutionary character’, it might ‘at worst [...] mean their satellization’. As the EFTA Consultative Committee – the body in EFTA comprising trade unions and business organisations – put it in a report in October 1989, ‘it was not enough that the EFTA countries had to take over the hard core of the *acquis communautaire*, they also needed to have a say in its further development, as it was hardly likely that the train of integration would stop where it stood at the end of 1992’.<sup>60</sup>

From what they had heard in 1989 and early 1990, the EFTA negotiators were hopeful that the Community would indeed be interested in creating the ‘common decision-making and administrative institutions’ Delors had spoken so warmly about in his Strasbourg speech. Even in spring 1990, the feeling on the EFTA side was that the Community would eventually modify its rigid stance and seek to build an overarching body covering the whole structure. As EFTA’s Secretary-General Georg Reisch made clear, the Association’s members were sure that ‘result [i.e. the EEA agreement] must be a balance of rights and obligations. There will of course be exceptions. Exceptions are not unknown to members of the European Community themselves.’<sup>61</sup> The EFTA countries understood full well that by adopting the *acquis* they would have to ‘accept policies which they themselves had no part in the design of’. But for future legislation certain to affect the countries of EFTA and the EC alike, ‘EFTA would insist on discussing the question jointly. A partnership of the kind would mean that the views of both the EFTA and the Community countries are fully taken into account when legislation is [e]nvisaged’.<sup>62</sup>

With Delors himself leading the way, the Commission disappointed the EFTA negotiators by hardening its positions even further during the course of 1990. As Delors said in April, ultimately there would be no place for EFTA in EC decision-making. Referring to the easier items in the negotiations regarding EFTA’s market access, and also making clear that no economic benefits would be forthcoming unless the institutional questions were settled, Commission officials stressed that ‘the economic

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<sup>60</sup> EFTA-Geneva/EFTA/CSC/18/89, ‘Consultative Committee, 62nd Meeting, Geneva, 16 and 17 October 1989. Report by the Chairman’, 2 November 1989.

<sup>61</sup> EFTA-Geneva/EFTA/CSC/INF 20/90, ‘19th Joint Meeting of the Delegations representing The Economic and Social Committee of the EC and the EFTA Consultative Committee held in Paris on 27/28 November 1989. Act of Proceedings’, 11 May 1990.

<sup>62</sup> *Ibid.*

content and the legal institutional aspect were closely linked, and that they would need to preserve the autonomy of EC decision-making.’<sup>63</sup>

In the spring of 1990, the EFTA negotiators subsequently came up with the idea of a two-pillar structure, where the implementation and application of EEA rules would be divided between the EC Commission and a new surveillance authority, with the two bodies linked through a joint organisation at the EEA level.<sup>64</sup> But while this promised that the EEA ‘agreement remained an intergovernmental agreement without supranational characteristic’<sup>65</sup>, it did not address the question of decision-making in the way the EFTA side had hoped. In further discussions during autumn 1990 a pragmatic solution was put forward by the EFTA side on ‘comitology’ – that is, decision-making. Since ‘a solution which would put the EFTA States in front of a *fait accompli* will never be accepted’, an alternative was proposed premised on ‘regular co-operation between those at the national level who are responsible for putting the agreement into practice’. This in effect would give EFTA countries the right to participate at the preparatory phase of EU legislation if it were relevant to the EEA as a whole. And it would have the advantage, if not in practice then in principle, that ‘neither side’ would be seen to be ‘interfering with the decision-making autonomy’ of the other.<sup>66</sup>

### **A Successful Treaty?**

How to approach the institutional conundrum divided EFTA countries until the end of the negotiations in autumn 1991, with the Swiss adopting the most critical position. In communications with other EFTA capitals in March and April 1991, the Swiss delegates informed them that it would be unlikely they could accept the mere consultative status of the EFTA countries in comitology as suggested by the negotiators.<sup>67</sup> In the end, after painstaking negotiations, the Swiss yielded and the institutional questions were settled in October 1991. For EEA decision-making and

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<sup>63</sup> Ibid.

<sup>64</sup> EFTA-Geneva/Ministerial Meetings Working Papers 1989–1990/CS/29/90, ‘Informal EFTA ministerial meeting, Geneva, 3 April 1990’, 30 April 1990; EFTA-GENEVA/HLNG Documents/34/90, ‘EFTA-EC negotiating group V on legal and institutional questions, Brussels, 11 October 1990’, 19 October 1990 and ‘Report by Chairman; Annex I to HLNG 34/90’, 19 October 1990; Working Documents/EFTA/NG/V/2/90, ‘Note on Surveillance’, 11 October 1990.

<sup>65</sup> Fossum and Graver, *Squaring the Circle of Brexit*, 46.

<sup>66</sup> EFTA-Geneva/EFTA Working Documents/EFTA/NG V4/90, ‘Annex II to HLNG 34/90’, 19 October 1990 ‘Note on Comitology’, 11 October 1990,

<sup>67</sup> EFTA-Geneva/Ministerial Meetings Working Papers 1990–1991/CS/15/91, ‘Informal EFTA ministerial meeting, Geneva, 1 March 1991’, 12 April 1991.

application of the agreement, a separate Council of Ministers was set up whose task was to draw general policy lines and discuss possible modifications of the agreement. Decision-making was based on a consensus where the EFTA countries would first need to coordinate their own position and present their opinion with one voice. As the main operative institution, an EEA Joint Committee was set up under the auspices of the Council to oversee the practical implementation of the agreement and to resolve possible problems. Like the Council, it also acted on the consensus principle. In addition to these, a separate joint EEA Parliamentary Committee and an EEA Consultative Committee for Economic and Social Affairs were set up. Participation in the preparation of new EU legislation was resolved by requiring the Commission to consult EFTA experts in the same way as experts were consulted in EU countries. The EFTA countries were also granted limited access to the preparatory and implementing committees of EU legislation. And the EFTA states would establish their own oversight body, the EEA Surveillance Authority, which mirrored the role of the Commission.

Most significantly, the original agreement included a common EEA Court, which would act as a court of first instance to resolve disputes arising from the EEA agreement. The ECJ rejected this in December 1991, as it held that this was contrary to the Treaty of Rome and the EJC's position as the ultimate adjudicator of Community law.<sup>68</sup> It was subsequently replaced with an independent EFTA Court whose powers were limited to the application of the EEA agreement to EFTA members. After resolving the institutional and legal issues, there were still a number of difficult questions left: fish, transit traffic and the cohesion fund contributions all required agreement. Norway and Iceland had bilateral negotiations with the Commission on fishing rights, as did Switzerland and Austria on transit traffic. Fishing was the most problematic in the last phase. Finally, a solution was found that certain fish products in the EFTA countries were completely free to enter the EC market and tariff concessions were negotiated with some other products. Norway and Iceland, on the other hand, granted the Community the fishing rights they had requested in their waters.

Why were the remaining issues, which had appeared so intractable earlier, resolved in 1991? In the first half of 1991 a general pessimism existed that the EEA would not be realised, given the differences of opinion both within EFTA members and

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<sup>68</sup> EFTA-Geneva/EFTA/CSC/INF/58/91, 'ECJ Opinion', 16 December 1991; Consultative Committee Documents, 'Opinion of the European Court of Justice on the EEA Agreement. Note by the Secretariat', 19 December 1991.

between the negotiators on institutional questions. However, during the last months of the negotiations, during the summer and autumn of 1991, a stronger political will emerged which provided the impetus to see the negotiations to their successful end. Even the recalcitrant Swiss negotiators were ultimately willing to swallow the final agreement, and the overriding benefits of having a less than satisfactory agreement in place seems to have been a motivating factor in this regard.

This same strand of thought appears to have influenced the willingness on all sides to reach a compromise and close the negotiations. With the EC's Maastricht summit approaching, and with it the prospect of the Community's post-Cold War enlargement, the function of the EEA had changed. For the majority of EFTA members, the EEA was no longer to be a permanent fixture in their integration strategies, but a temporary solution allowing smooth access to the single market while they waited for their entry into the Community as full members. The result was a far cry from the expectations regarding an institutionally coherent and strong grouping of concentric circles that had been envisaged just two years earlier. On the other hand, this fact helped make the EEA easier to accept, flaws and all. In institutional questions, EFTA members gave way on too many of the Community's demands; the Community, in turn, gave way bilaterally to individual EFTA countries on the sensitive questions of cohesion fund contributions, fish quotas and transit traffic.

Despite the grand compromises achieved in 1991 and early 1992, the stony road to the EEA was not yet complete. One more surprise was to come in the ratification phase. The agreement was planned to come into force from the beginning of 1993, but it was rejected in a referendum in Switzerland on 6 December 1992. This led to a need to reopen the agreement regarding Swiss cohesion fund payments, the result of which was that the EFTA countries were made to pick up the slack. With this sorted, on 1 January 1994, the EEA agreement finally entered into force, one year later than the original schedule. It brought 12 EU countries and five EFTA countries – Finland, Sweden, Austria, Norway and Iceland – together, while Liechtenstein would join when it acceded to EFTA in 1995.

In the end there was very little left of the original ambition to create an institutionally robust, overarching structure that could manage the varying speeds and degrees of integration among certain European states surrounding the EC core. As Robert Pelletier, a French industry representative in the EC's Economic and Social Committee, said about the whole exercise in February 1992, 'many problems had been

avoided rather than solved'. On a more positive note, Finland's Ambassador to the EC, Erkki Liikanen, speculated that the EEA might nevertheless 'become a durable part of the architecture of Europe for those countries which did not wish EC membership'.<sup>69</sup> Looking back on events over the last two decades, this was highly prescient. For with both the eventual refusal of the Norwegian electorate to accept the country's accession into the EU in 1994 and Iceland and Liechtenstein remaining as its other members, the EEA by force of circumstance has indeed become a permanent feature of European cooperation. While not reaching the lofty aspirations of its initiators, it was nevertheless thought of as, and has in some form remained, an alternative to the strict supranational framework of today's EU. It was the Commission's Eric Hayes who in 1992 spoke of how 'the EEA is undoubtedly important even though it is not what it was originally intended to be'.<sup>70</sup> Tracing the history of its development reminds us not only of how and why this is the case, but also that integration 'by other means' has been something the institutions and members of the EU, as much as the countries outside it, have long wrestled with. What was preconceived as everlasting in 1989, in the course of the negotiations gained a temporary character, but then after a number of twists and turns became permanent, an outcome that many had wished for, but no one planned to happen in the way it did.

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<sup>69</sup> EFTA-Geneva/EFTA/CSC/INF/9/92, '23rd Joint Meeting of the delegations representing the Economic and Social Committee of the EC and the EFTA Consultative Committee held in the Hague on 20 November 1991. Record of proceedings', 10 February 1992.

<sup>70</sup> EFTA-Geneva/EFTA/CSC/INF 25/92, '24th Joint meeting between delegations of the Economic and Social Committee of the EC and the EFTA Consultative Committee, Reykjavik, 19 May 1992. Report by the EFTA Secretariat', 23 June 1992.