

THE EUROPEAN FREE TRADE ASSOCIATION

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An Intergovernmental Platform
for Trade Relations

Georges BAUR



INTERSENTIA

Cambridge – Antwerp – Chicago

Intersentia Ltd
8 Wellington Mews
Wellington Street | Cambridge
CB1 1HW | United Kingdom
Tel: +44 1223 736 170
Email: mail@intersentia.co.uk
www.intersentia.com | www.intersentia.co.uk

*Distribution for the UK and
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NBN International
1 Deltic Avenue, Rooksley
Milton Keynes MK13 8LD
United Kingdom
Tel: +44 1752 202 301 | Fax: +44 1752 202 331
Email: orders@nbninternational.com

Distribution for Europe
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Groenstraat 31
2640 Mortsel
Belgium
Tel: +32 3 680 15 50
Email: mail@intersentia.be

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FOREWORD

The European Free Trade Association (EFTA) is the intergovernmental organisation of Iceland, Liechtenstein, Norway and Switzerland. Set up in 1960 by the Stockholm Convention for the promotion of free trade and economic integration, it offered another form of ‘European integration’, different to the EU – more intergovernmental, less integrated and with the capacity to allow its states to negotiate their own trade agreements. It is, however, something of a Cinderella model, forgotten by states in the rush to join the EU and integrate ever more. The countries that were and, in part still are, members of EFTA are rather like-minded and may, historically and politically, be called ‘friends of the UK’ (from Portugal via Switzerland to Finland). The driving force behind the original EFTA model was the UK, determined to find another way of inter-state cooperation outside the EU. Given that EFTA covers many matters the UK might need in its future ‘life’ outside the EU but in Europe, a closer look at EFTA might be helpful. It is unlikely that the UK would rejoin EFTA, at least in the short to medium term, but it would be a way of ‘coming home’. A book analysing the EFTA Convention in depth has never been written before and there is no better person to write it than Dr Georges Baur, who worked for the EFTA secretariat for 15 years and whose deep familiarity with EFTA, the EEA and the EU means that he can provide deep insights into this subject. Now working in Liechtenstein, Georges has had the opportunity to reflect and consider the different models which he has worked with throughout his professional career, and this has helped to inform his rich legal analysis.

Professor Catherine Barnard, University of Cambridge
February 2020

PREFACE

AIM OF BOOK AND DEFINITIONS

This short book aims to give the reader interested in European integration beyond the dimension of mere EU membership an insight into an alternative structure that has long been overlooked and ignored. If some knew of it, then it was considered by many an outdated model and, to put it bluntly, a loose association of some economically highly specialised, small and wealthy Western European states.¹ However, the European Free Trade Association (EFTA) was once conceived as an alternative model under the United Kingdom's leadership to the then European Economic Community (EEC), now European Union (EU).

The lost interest in EFTA can also be shown by the (academic) writing undertaken on that subject. In the early days there were quite noteworthy publications on EFTA and the economic policy it represented.² Interest in the subject diminished when the UK joined the EEC. There was, however, still some academic literature produced on EFTA, notably on the free trade agreements between the EU and the EFTA states, although not much in English.³ Then, after the inception of the European Economic Area (EEA), the interest of academia remained with that form of European integration, if at all. Most of the academic contributions dealing with EFTA either came from the EFTA Secretariat⁴ or the EFTA states themselves, or these were

¹ S. GSTÖHL, 'Switzerland, Norway and the European Union – The odd ones out?' in N.M. Jovanovic (ed.), *International economic integration: Integration schemes*, Routledge, London 1998, p. 322.

² To name but a few, see e.g.: STUDY GROUP OF THE GENEVA GRADUATE INSTITUTE OF INTERNATIONAL STUDIES, 'The European Free Trade Association and the Crisis of European Integration', Michael Joseph Ltd., London 1968; V. CURZON-PRICE, 'The Essentials of Economic Integration – Lessons of EFTA Experience', Macmillan, Basingstoke 1974.

³ See e.g. H.-G. KOPPENSTEINER (ed.), 'Rechtsfragen der Freihandelsabkommen der Europäischen Wirtschaftsgemeinschaft mit den EFTA-Staaten', Orac, Vienna 1987.

⁴ See e.g. K. BRYN and G. EINARSSON (eds.), *EFTA 1960–2010, Elements of 50 Years of European History*, EFTA, Geneva 2010.

needed as an introduction to the EEA.⁵ One unfortunate consequence of this is ‘that the political scientists [and other academics, G.B.], who see the “European Integration” as a synonymous with the history of the EU and its current performance, lose many opportunities for comparative research.’⁶

- 3 As shown by a quick look at the press, interest in EFTA has increased since the referendum of 23 June 2016, in which a slim majority of UK voters expressed their wish to leave the European Union.⁷ Since the very beginning of the reporting on the so-called ‘Brexit’, hardly any distinction has been made between EFTA and the EEA.
- 4 In this book, various aspects related to EFTA will be examined in greater detail. Brexit will serve as an opportunity to introduce the subject, and there will be a chapter dealing with the question whether EFTA could be of interest to the United Kingdom (UK) when it acquires its new status outside the EU. This will, however, have to be done with the explicit proviso that at the time of the publication of this book negotiations between the UK and the EU on a future relationship have barely begun and any view on this would, therefore, be mere speculation.
- 5 Some concepts that will be used or which can be found in documents to which reference will be made, might be difficult to understand. The book, therefore, introduces some basic definitions. Other clarifications, such as the different forms of external trade relations or economic integration, will be further explained in the context of the respective chapters.
- 6 Some of the concepts in relation to the EFTA Convention might cause confusion in as far as some publications speak of the ‘EFTA Convention’, ‘Stockholm Convention’ or ‘Vaduz Convention’, sometimes in a rather arbitrary manner. The ‘Stockholm Convention’ is the EFTA Convention as it was agreed in its original form and text in 1960. The ‘Vaduz Convention’ is the Convention amending the ‘Stockholm Convention’. This book will, however, generally use the term ‘EFTA Convention’ and this means the text

⁵ See e.g. G. BAUR, M. SANCHEZ RYDELSKI and C. ZATSCHLER, *European Free Trade Association (EFTA) and the European Economic Area (EEA)*, 2nd ed., Wolters Kluwer, Alphen aan den Rijn 2018.

⁶ R.T. GRIFFITHS, ‘EFTA and European Integration 1973–1984, Vindication or Marginalisation?’ in K. Bryn and G. Einarsson (eds.), *EFTA 1960–2010, Elements of 50 Years of European History*, EFTA, Geneva 2010, p. 145.

⁷ See e.g. The Guardian of 14 January 2017: ‘Nick Clegg says May should go for Norway-style trade deal’, <http://www.theguardian.com/politics/2017/jan/14/nick-clegg-theresa-may-norway-style-trade-deal-brexit-eu>.

currently in force, unless there is a reference to a specific text in its historic dimension. A similar problem sometimes occurs with regard to the terms 'EEC', 'EC' and 'EU'. Except in cases where the historical term matters, this book generally refers to the 'EU' as it currently is.

In the different chapters the reader may come across some repetitions. These were, however, retained on purpose in order to try to facilitate access to a sometimes rather difficult subject.

STRUCTURE OF THE BOOK

Chapter 1 attempts to give an initial answer to the questions: what is EFTA and what is its position among the different models of economic integration? The chapter provides a brief excursion into the specific theory, and briefly touches upon the context of global trade law, in which EFTA operates, namely the rules of the World Trade Organisation (WTO).

This is followed by Chapter 2 which offers a short historical overview of EFTA. This is intended to complete the picture of economic integration in Europe.

Chapter 3 examines the EFTA Convention from a substantive point of view, i.e. what subjects are covered by the cooperation amongst the EFTA states. This is also the first of the three main activities of EFTA.

Chapter 4 deals with membership of the association, its scope and institutions. This will also include some words on procedures and finances.

The second main activity of EFTA, namely relations with third countries and other organisations, will be dealt with in Chapter 5. The main focus will be on free trade agreements (FTAs) which EFTA and/or its member states negotiate around the globe.

Chapter 6 will focus on EFTA as a platform for its member states to base their relations with the EU on. Again, as the history of European integration suggests, this is not straightforward. The four current members of EFTA chose different ways to develop their formerly loose – and from today's perspective – rather basic links with the (then) EEC into a participation in the EU's internal market, as in the case of Iceland, Liechtenstein and Norway, or a sectoral association, as in the case of Switzerland. As far as possible and required by the intimate connection between the EFTA rules and those of the EEA Agreement the chapter will also refer to the

EU's internal market and its rules. It will, however, cover neither the law of the Internal Market nor the EEA in detail as this would be outside the scope of this book. There are, however, excellent works on the subject. The chapter will proceed in the same manner with regard to the relationship between the EU and Switzerland. As mentioned before, this seems to be all the more relevant with regard to the current discussion on Brexit and the future relationship between the UK and the EU, as some of the most important elements for a functioning trading relationship between the EU and its closest neighbours can be found here. These elements will also be of importance for a future trade agreement, whatever this may be.

- 14 Finally, the future relationship between the UK and the EU will be at the core of Chapter 7. Given that the UK has left the EU, there will need to be a new basis for the future relationship between the UK and the EU. Even though it is currently impossible to say what form or shape it will have, that future relationship will have to be negotiated. It might therefore be worthwhile considering the EFTA Convention. This instrument might be useful for the UK, either to bridge the period until a new agreement is concluded, or to provide a base for its future relationship with the EU if the UK should eventually choose to associate itself to the internal market, or even in a long-term perspective, e.g. as a basis for its future external trade relations, or a combination of these elements.

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I have tried to eliminate errors as much as possible. Any that may have remained undetected are, of course, solely mine.

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