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*Brexit, Norway and the EEA*

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## Brexit - timeline

- Notification of article 50, TEU. January 2017?
  - Two years – possible extension
  - **Withdrawal agreement**,
  - *“taking account of the framework for its future relationship with the Union”.*
- The **new agreement** post-membership – no (legal) deadline
- **Bilateral trade agreements**
  - Cannot start formal negotiations while still in the EU
  - Content will depend on new UK-EU agreement

## Models of cooperation with the EU

- EEA – full (almost) single market access
- Swiss „model»
  - 120 sectoral agreements covering parts of the single market
  - Only limited access to services, ex financial services
- Traditional free trade agreement
  - Ex. EU-Canada (still not ratified after 7 years)
  - Covers goods but not services

## The EEA agreement - background

- European Economic Area conceived by Jacques Delors in 1988
  - To extend the (emerging) single market to neighbouring countries
- Context: cold war/neutral countries Austria, Finland, Sweden
- EEA negotiated between EU-12 and EFTA-7 and signed in 1992.
- Entered into force in 1994
- 1995: EFTA countries Austria, Finland and Sweden become EU members

## WHY EEA?

- Gives (almost) full access to the single market
  - Provides a level playing field for business
  - Gives Norw. citizens the right to move freely, take up residence, work, study and access to health and social security benefits across the EEA (31 countries)
- The price:
  - EU single market legislation need to be followed by the EEA/EFTA countries (legal obligation)
  - A financial contribution on par with comparable member states (obligation in practice)

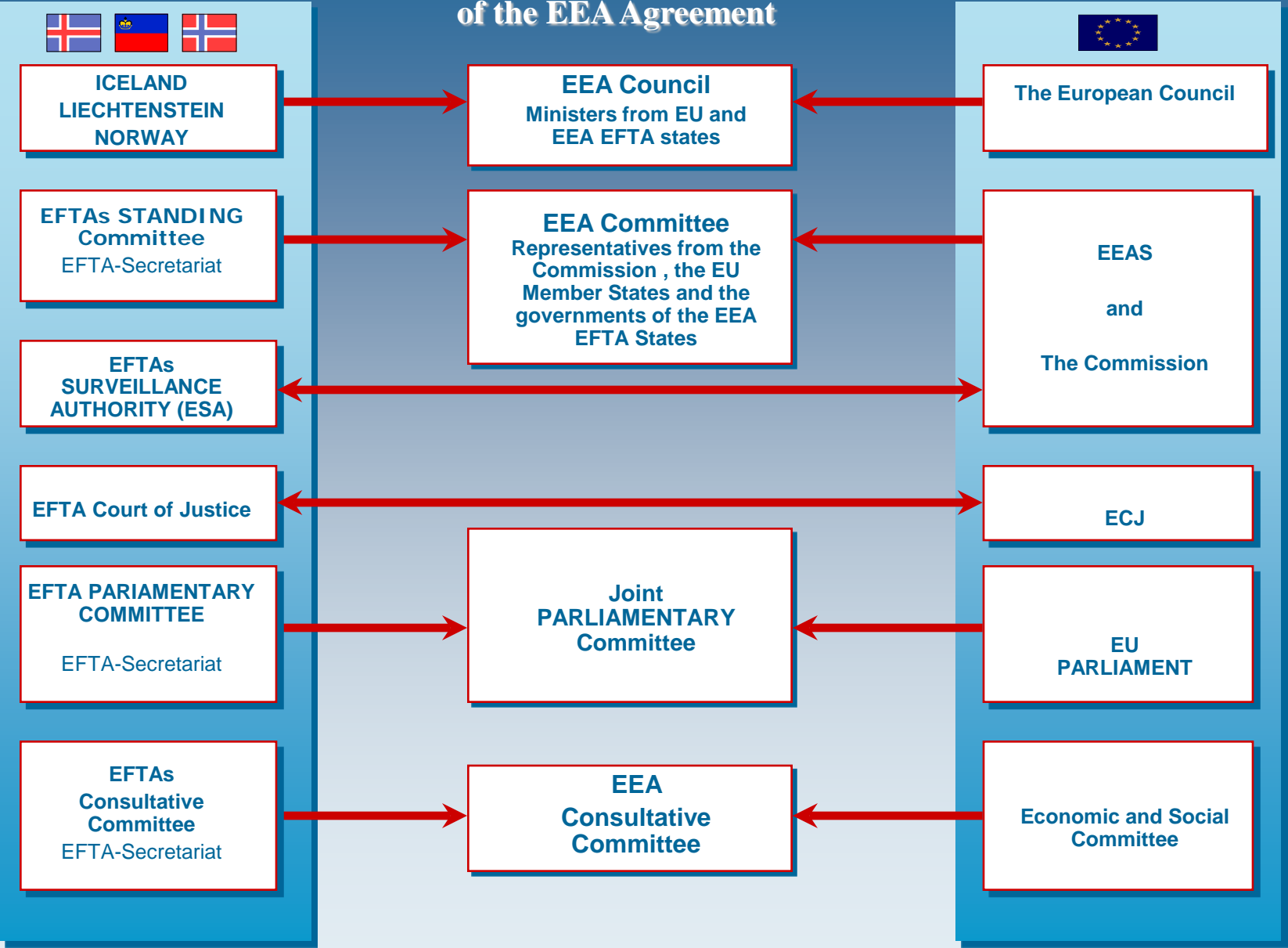
## What the EEA is

- Extends the single market to the EEA/EFTA countries
  - Common rules on the free movement of goods, services, capital and persons
- Does not include agriculture, fisheries, customs union, JHA and a number of other policies
- EEA financial mechanism (Norw. Share 96 %)
  - 1994-2014 3.2 billion eur
  - 2014-2021 2.8 billion eur

## How the EEA works

- The jurisdiction of EU bodies only apply within the EU
- EU rules (directives and regulations) need to be incorporated into the EEA by way of separate decisions taken by the **EEA joint committee** comprised of the EU and EFTA (The «two-pillar» system)
- Leaves formal sovereignty intact **but**; the EEA is based on the principle of legal homogeneity:
  - To ensure this: a separate dispute resolution mechanism at the EFTA side
  - **The EFTA surveillance authority** and **EFTA court**

# The two-pillar structure of the EEA Agreement





## EEA vs EU membersh. and legisl. impact

- EEA 1992 - 1300 legal acts
- EEA 1994 – 1800 Legal acts
- EEA March 2016 – 11000 legal acts
- EEA in terms of overall EU legislation: approx.  $\frac{3}{4}$
- June 2011: Norway obtained derogations from a total of 56 legal acts, Iceland 349 and Liechtenstein 1056 (NOU 2012:2 Outside and inside)
  - Vast majority of EU legislation are implementing acts and delegated acts (1600-1800 annually)
  - Only 50-70 (basic) legislative acts decided by Council and Parliament annually

## EU/EEA and impact on national legislation

- EU competences
  - four freedoms, competition/state aid, monetary policy (Eurozone), Customs/trade policy, Schengen, CAP, fisheries,
- National competences
  - economic policy, tax policy, social policy, health, education, foreign policy
  - **But**: when cross-border effect – national policy must be in conformity with the principle of non-discrimination and EU rules
  - Ex : working time directive, tax policy as illegal state aid etc (Apple),

## EEA vs Schengen

- EEA – four freedoms including free movement of persons
- Schengen- national border controls replaced with common external border controls.
- EEA – two pillar system/EFTA-EU
- Schengen – all EFTA countries are associate members of Schengen – bilaterally, not through EFTA
  - Associate members participate in Council deliberations (Comix) but do not vote

## The EEA seen from the EU

- Model arrangement for relations with third countries that want access to the single market,
  - Implies the quasi-automatic incorporation and updating of EU-legislation (unlike the Swiss «model»)
  - Has a well-functioning dispute resolution mechanism, EFTA Surveillance Authority and EFTA Court (unlike the Swiss «model»)
- But; Backlog of legislation not incorporated into the EEA seen as negative –