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# **Iceland and the EEA, 1994-2011**

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## Introduction

Only after the collapse of the financial system in autumn 2008 did Iceland apply for EU membership. After fierce dispute in the parliament – and the society at large – the new left wing coalition government handed in the application in July 2009. Iceland had however already since entering into the European Economic Area (EEA) in 1994 been an active participant in the European integration process. The EEA soon became Iceland's main instrument in international relations. In general terms the cooperation has run smoothly and successfully been integrated into the whole administration. Overall the agreement has functioned well, at least until in late 2008 when Iceland was forced to introduce capital controls which in principle violate the agreement.

As this report illustrates it can be claimed that the entrance into the EEA resulted in Iceland becoming a de-facto member of the European Union. So, despite the fact that Iceland was officially outside the EU, it nonetheless continued, through the EEA and later also the Schengen-agreement, to participate actively in the European project. In fact, in some areas, Iceland is deeper involved in the European integration process than many of its official members. Through the agreement the Icelandic government is committed to implement the bulk of all EU legislation that falls within the EU internal market. This close involvement in the European integration process has directly influenced the development of the Icelandic society.

## The Nordic five

In order to understand the Icelandic case within the European project it is particularly interesting to map out the differing paths the Nordic five have chosen in the European integration process. The Nordic countries have continued to be amongst those who have shown

the most reluctance towards the European integration process, but at the same time all of them have shown a keen interest in an ongoing close relationship with Europe, albeit in varying forms. It is interesting to note however, that even though they are all considered to be similar – even homogeneous – culturally and as political entities each state has chosen varying ways of association with Europe.

Denmark chose to leave EFTA and immediately join ranks with the European Union<sup>1</sup> already in 1973. After the cold war, Sweden and Finland also left EFTA and joined the EU in 1995 with the voting public in Norway rejecting membership for the second time. The No vote in Norway also put an end to the EU debate in Iceland at the time.

The EFTA members had previously negotiated a close collaboration with the European Union through the European Economic Area agreement (EEA), which came into force in the beginning of 1994. The five Nordics were therefore split when it comes to participation in the European project. Denmark, Sweden and Finland are full members of the European Union while Iceland and Norway take an active part in European co-operation through special agreements, the European Economic Area agreement (EEA) since 1994, and the Schengen border-control agreement since 2001. Both are members of the European Free Trade Association (EFTA), Norway a founding member since 1960 and Iceland joining in 1970.

To complicate the picture even further, Finland has demonstrated the will to join the inner core of the EU states and is the only Nordic country that has intro-

<sup>1</sup> The term European Union is in this paper used to cover the EU today and all of its previous treaties since the creation of the Coal and steel community in 1952

duced the Euro. Denmark has remained defiant in regard to the continuing changes within the EU and refused both the Maastricht Treaty and the introduction of the Euro, resulting in many exemptions. Sweden also voted to refuse the Euro. There is also a clear difference between Iceland and Norway, as the Norwegian government has twice negotiated a membership agreement with the EU, only for it to be rejected by the electorate in referendums in 1972 and 1994. On July 16<sup>th</sup> 2009 Iceland applied for EU membership.

The Nordics are also split on NATO but across different lines, as Denmark, Norway and Iceland are all founding members of NATO while Finland and Sweden remain out of the organization because of their neutrality policy.

### The party system

Before entering into further analysis it is beneficial to map out how the debate on Europe relates to the party system in Iceland, which ever since independence has consists of four main political parties. The left of centre Social Democratic Alliance (SDA), which was founded in 2000 after a merger of the Social Democratic Party (SDP) and the People's Alliance (PA), is the only one that has consistently campaigned for EU membership. The right of centre Independence Party (IP) has however until recently been the most influential in Icelandic politics. The party supported Iceland's membership in EFTA and the EEA but then turned against EU membership. The leftwing Left Green Party (LGP) also founded in 2000 by splinters from the PA and its predecessors has campaigned against further participation in European integration. The small central Progressive Party (PP) has been split on the European issue and in effect without a clear defined policy.

### Aim of the report

The aim of this report is to study how Iceland has been influenced by the EEA agreement, the Schengen-agreement and other arrangements with the EU since 1994 and up to present. The report studies the overall impact on the Icelandic society and analyses the political, legal, economic, administrative, cultural and other consequences of Iceland's participation in the European project. The report digs into the history of Iceland's relations with the European integration process, analyses the Europeanization of the Icelandic society and maps the perception different actors in the society have on participating in the European project. Finally the impact of the financial crisis on Iceland's European policy is studied. First it is however beneficial to map the existing literature and research on the relations between Iceland and the European integration process.

### Literature review

Apart from few general books and reports on different aspects of European cooperation not much research had been published on Iceland and the European project before 1994. Leading up to the EEA quite a few commissioned reports on the agreement were however produced, mainly dealing with its economic and legal effects. None of those writings can though be considered an important contribution in European studies. Icelandic academics did not really become interested in European integration until after the EEA came into effect. The main focus has been on the role of small states and to identify and map Iceland's relationship within the European integration process. In recent years special emphasis has been on analysing how participation in the European project relates to domestic politics in Iceland, especially how the idea of supra national cooperation within the European Union relates to the traditional national discourse.

Research on Europe started mainly within the Political Science department of the *University of Iceland*, the by far largest higher education institution in Iceland. With the establishment of *Centre for Small State Studies* in 2001 and subsequently the revitalization of the then dormant *Institute for International affairs* the two institutions became influential in the general discussion in Iceland on the EU and internationally within Small State studies. The young private *Reykjavik University* established a European Law institute in 2002. In 2005 the small but long established *Bifröst University* founded the *Centre for European studies* in Iceland under the leadership of the author of this report. Its main area of research has been Europeanization and Iceland's role in the European project. The Centre for European studies is part of the EC Thematic network for European studies, *SENT*, and the EC Thematic network for European law studies, *Menu for Justice*.

A handful of scholars in Iceland have been dedicated to European studies. The limited space here only allows for mentioning of few and most influential writings within the field. In 1994 ambassador Einar Benediktson co-authored a book with Ketill Sigurjónsson and Sturla Pálsson on the early years of Iceland's participation in European integration (Benediktson et al 1994). In 1996 Ólafur Þ. Stephensen published his book on the EEA negotiation which he referred to as a milestone on Iceland's European voyage (Stephensen 1996). In 1999 economist Jón Sigurðsson published a book on the EMU and introduction of the euro (Sigurðsson 1999).

In 2000 the foreign ministry produced the first overall assessment on the EEA and Iceland's position in Europe, in a wide scope report which became the basis for the debate on Europe in the coming years (Skýrsla Halldórs ... 2000). The same year former ambassador Einar Benediktsson published his book *Iceland and European Development* (Benediktsson 2000)

In 2002 Úlfar Hauksson published his influential book on EU's fisheries policy and its impact on Iceland in membership negotiations (Hauksson 2002).

In 2003 the International Affairs Institute at the University of Iceland published a joint research with NUPI in Norway on possibilities for the two countries within Europe: *Iceland and the EU: EEA, EU-membership or a "Swiss-solution"* (Ísland og ... 2003). Together with the main report an influential appendix on possible solutions on the fisheries policy was published: *Iceland, Norway and the EC Common Fisheries policy. The potential of the reform – a springboard for Iceland and Norway*. Also in 2003 the author of this report published one of the first textbooks on Iceland and the EU: *European integration and Iceland – Guide to European integration and Iceland's involvement in the European project* (Bergmann 2003).

In 2004 *Routledge* published, within its series on *Europe and the Nation State*, a book called *Iceland and the European Integration: On the edge*. The collection of articles was edited by Baldur Thorhallson and dealt with several aspects of Iceland's relations with the EU (Thorhallson (ed). 2004)

In early 2007 a prime minister appointed committee of all political parties published its findings after a three year long overall study on Iceland's relationship with the EU (Tengsl ... 2007). The report served as a basis for the debate on Europe in the period leading up to the crash in autumn 2008. Countless reports have been produced on the impact of European cooperation and possible EU membership on different policy areas, such as fisheries, agriculture, regional policy and monetary policy.

In early 2008, before the crash, the author of this report co-authored a book on the effects of adopting the Euro together with economic associate professor Jon Thor Sturluson (Bergmann & Sturluson 2008). In 2009 Audunn Arnórsson published his book on the application process: *In or out – negotiating with the EU* (Arnórsson 2009). Later the same year the author of this book published a new textbook on Iceland and the EU called: *From Eurovision to Euro – all about the*

*European Union* (Bergmann 2009b). In 2010 Magnus Bjarnason published a book on the political economy of joining the EU (Bjarnason 2010).

Countless BA- and MA theses have been written on Iceland and the EU but only few PhD's: Baldur Thorhallsson wrote on the role of small states in the European union (1999) (See Thorhallson 2000), Eiríkur Bergmann, the author of this report, wrote on how national sentiments have influenced Iceland's European policy, Gunnhildur Lily Magnúsdóttir wrote on small states and EU's environmental policy, Magnús Bjarnason wrote on the political economy of joining the European Union (See Bjarnason 2010) and Jóhanna Jónsdóttir wrote on Europeanization in Iceland.

Large number of political debate books and articles has also been published on Iceland and the European question.

### History of Iceland's relationship with the EU

When studying Iceland's foreign relations the heritage of the independence struggle becomes immensely important. Debates on foreign relations have been among the most vicious in Icelandic politics since gaining full independence in 1944 – after more than a hundred year-long struggle from under Danish rule. The independence struggle in the nineteenth century was fought with legal argumentation rather than arms. The campaign was led by a small group of Icelandic intellectuals in Copenhagen, headed by figures such as Jón Sigurðsson and the editors of *Fjölfnir*, one of the first Icelandic yearly journals. Together they created a national myth that served as a justification to their special emphasis on Iceland's sovereignty and independence. And even though the idea of a sovereign Icelandic nation-state was indeed an integral part of international development, a common understanding about the Icelandic nation was developed within Iceland.

This unique understanding was drawn from a historical myth on which Icelandic nationalism was based. The myth creates the idea of a golden age from the settlement in the ninth century until Iceland falls under foreign rule, first with the Old treaty with Norway in 1262, later Danish rule and Absolutism in 1662. As the myth goes, this period was the golden age of the brave and capable Icelandic nation but darker days were to follow after loss of sovereignty (Hálfðanarson 2001: 28). The emphasis was thus on drawing an unbroken link to the golden age rather than on linking the Icelandic independence struggle with international ideological developments of the time. Iceland's path

to modernity and progress was therefore seen to strive through its own unique past rather than simply just part of international trend (Hermannsson 2005: 252, 292).

The sense of nationalism was furthermore somewhat stronger than in most other European states at the time, based on a historical conviction that justified the full sovereignty and independence of the Icelandic nation (Hálfðanarson 2001: 36-39). The nation became almost a concrete natural fact in the Icelandic mind. A free and sovereign Icelandic nation became an integral part of the self-image of the nation. Icelandic nationalism was thus created and based on a romantic notion of the natural and pure, or at least special, separate nation. This notion became a vital force in the independence struggle.

After Iceland gained sovereignty in 1918 and full independence in 1944 the independence struggle did not end, but a new idea was born, the notion that the fight for independence is a constant and everlasting struggle and that it will never end. This understanding of Icelandic nationalism, created in the independence struggle, has since become one of the most important ideas in Icelandic political discourse (Grímsson 1978). The fear of losing the sovereignty gained in the independent struggle is still an important explanatory variable in Icelandic politics.

Icelanders were unified in the independence struggle with more than 90 percent of the electorate agreeing to full independence in a national referendum in 1944 – ending Iceland's 600 year-long relationship with Denmark while the mother state was still under Nazi occupation. This feeling of unity was shattered only a few years later when a fierce debate on Iceland's membership in NATO rose and heightened in violent riots in front of the parliament building on Mars 30th 1949 when the right of centre coalition (SDP, IP and PP) agreed to Iceland's membership – resulting in a permanent divide in Icelandic society between those for and against NATO-membership and the defence agreement with the United States that followed in 1951. This same divide and intensity has been evident in the debate on Europe. Directly resulting from the heritage of the independence struggle, debates on foreign relations have become more vicious in Iceland than almost any other political disputes in the country (Bergmann 2009a).

### Foreign policy – three main pillars

To put Iceland's European relations into perspective it might be useful to take a more broad look at its foreign

policy which can be sorted under three main pillars; the European pillar, the Atlantic pillar and then the rest of the world (See Bergmann 2007: 20-21).

The European pillar is by far the most important and contains most of the country's major trade agreements and its vital foreign links to underpin the economy, such as through the EFTA-membership and the EEA-agreement. Iceland is also a member of the Council of Europe and is firmly rooted within the heritage of Nordic co-operation. Here we can also mention close bilateral trade and cultural relationship with the UK.

The Atlantic pillar is the second most important and contains Iceland's membership in NATO and the defence agreement with the US since 1951 which resulted in a close bilateral relationship with Washington on foreign policy matters. While Iceland mostly relied on the European pillar to underpin its economy it relied much more heavily on the Atlantic pillar for its strategic security. After the US government decided to close its army base in Keflavik in 2006 the Atlantic pillar has however become less important than before, giving more weight to the European cooperation in foreign and security policy matters.

The third pillar consists of foreign relations with the rest of the world, for example through the United Nations and the World Trade Organisation to mention just a few.

### EFTA 1970

Ever since the Treaty of Rome was signed in 1957 Icelanders have debated their place in Europe. The issue came first on the agenda by the end of 1957 when leaders in Western Europe were preparing to create a joint forum for the six states in the European Economic Community (EEC) and the other members of the Organisation for European Economic Co-operation (OECE), of which Iceland was a member. After talks broke down in 1959 the UK government led a group of seven states establishing the European Free Trade Association (EFTA) in 1960 – as an intergovernmental counterweight to the supra national characteristics of the EEC (Nugent 2006: 26). At the time Iceland's economy was mostly based on food production, namely fisheries and farming. Iceland's main interests in foreign trade were to insure access for its fish products into European markets – of which the UK was vital. As EFTA was mainly formed around free trade with industrial goods Iceland did not join the association in the beginning. After the UK applied for membership in the EEC in 1961 the newly formed progressive coalition (SDP and IP) seriously contemplated

applying for membership in EEC rather than joining EFTA (Gíslason 1993: 199). The Icelandic government only abandoned the plan of seeking membership in the EEC after the French leader Charles de Gaulle had vetoed the UK's application (Gíslason 1993: 200-201). Consequently Iceland applied for membership in EFTA in 1968 and joined in 1970 – accompanying rapid industrialisation in the Icelandic economy.

Even though arguments in the EFTA-debate were mostly based on the economy, the discourse of the independence struggle and conservative ideas on the nation and its sovereignty were also quite clear and formed a base for the economic arguments (Bergmann 2009a: 203). Many parliamentarians referred, for example, to the undisputed distinctiveness of the Icelandic nation and there was a clear consensus in the parliamentary discussions that the Icelandic nation was unique in the world and had to be protected when it came to international co-operation. One parliamentarian, Tómas Árnason (PP) who admitted the economic benefits that might accompany EFTA, also voiced concerns that membership could fit uneasily with his special nation. “The Icelandic nation has undisputed distinctiveness among nations and even among those already members in EFTA. It is only natural that our relationship with EFTA will be marked by that distinctiveness“ (Árnason 1968).

This uniqueness and distinctiveness of the Icelandic nation was then used as an argument for the multiple opt-outs and special solutions which Iceland brought to the negotiating table. Those arguing against further participation in the European integration process feared that this small nation might lose its identity in such a close relationship with the big nations of Europe. Many parliamentarians referred to the Old treaty of 1262 and the introduction of Absolutism in Denmark in 1662 in their argument against integration with other nations.

Entrance into EFTA in 1970 started the still ongoing process of Europeanization of the Icelandic society. The main aim of EFTA was to encourage free trade in industry between its members, for example by terminating import limitations, import tax and with any other restrictions affecting trade. In that way it hoped to promote free trade in all of Western Europe. Each EFTA member however reserved the right to negotiate trade agreements with third countries, adhering only to regulations stipulated by GATT and later the World Trade Organisation. After accession the Icelandic economy rapidly adapted to the European market and saw the effects immediately, with the lowering of

prices on imported goods and easier access to European consumers. Consequently Icelandic industry also felt the effects of increased competition from European manufacturers, with suffering in fields such as in the furniture making industry.

In 1972, Iceland followed the path of the other EFTA members by signing a free trade agreement with the European Community, which increased trade in goods and positively influenced business relations between Iceland and the EC members. The cooperation subsequently spilled over into other areas such as regulation within the field of environmental issues, transport and research, to mention but a few. It also resulted in the quadrupling of business transactions between EU and the EFTA states (Pedersen 1994: 27)

### EEA 1994

Although participation in EFTA and the signing of free trade agreement greatly increased Iceland's – and the other EFTA states – trade with the EU, pressure soon started to build for cooperation in other areas of the economy. On 17<sup>th</sup> of January 1989 the president of the European Commission, Jacques Delors, proposed such an initiative in his famous speech to the European parliament. The European Economic area agreement was then signed in Oporto in Portugal in May 1992 and entered into force on January 1<sup>st</sup> 1994 (Agreement on ... 1992).

The EEA created the single largest common market in the world, which now counts approximately 500 million inhabitants in 30 European states. Entering into the EEA has resulted in active Europeanization of the Icelandic society and weaving Iceland ever more closely into the European internal market. The EU internal market was expanded to include the EFTA members within the EEA. The agreement however falls short on allowing the EFTA's access to the EU's institutions and decision making. It does not for example entitle the EFTA/EEA members to participate in institutions such as the European Council, the European Parliament or the European Court of Justice and provides only restricted access to the EU Commission. The agreement also falls short of the Common Agricultural Policy and Regional cohesion policies. Iceland is furthermore and perhaps most importantly not a member of the Common Fisheries Policy. Iceland, Norway and Liechtenstein do not participate in EU's trade policy, which consist of a joint customs register and a consolidated effort in aid and developmental issues. EU's trade agreements therefore do not apply to Iceland. Other areas of co-operations such as the monetary policy, taxation and foreign affairs are also not covered

in the framework. The same applies to internal matters, including judiciary affairs that fall outside the Schengen- and Dublin agreements (See Bergmann 2009a: ch. 17).

The EEA agreement does not mention local authorities. However in more than half of instances the effects of EEA's legislation is felt by local authorities in Iceland but not the state. This is noteworthy as contrary to local authorities within the EU who can impact the legislation procedure through the Committee of the Regions, which was established after the EEA came into force, local authorities in Iceland only have very informal access to the decision making (Tengsl Íslands ... 2007: 40). However, nongovernmental interests associations such as the Confederation of Icelandic Employers (SA), the Icelandic Confederation of Labour (ASÍ), the Federation of Icelandic Industries (SI) and Iceland's Chamber of Commerce all have access to the influential Economic and Social Committee of the EU. Before analysing the effect the EEA has had in Iceland it is beneficial to roughly map out the main political debate leading up to the agreement.

### The political environment

In the parliamentary debate leading up to the EEA agreement (1989-1994) emphasis on the sovereignty argument had moved to the forefront of the debate. Those arguing for membership put their main emphasis on economic gain but also used the independence discourse in their argumentation and put similar emphasis on progress and modernity as was used in the independence struggle for sovereignty from Denmark. Foreign minister, Jón Baldvin Hannibalsson (SDA), the main campaigner for the EEA in Iceland, argued that the EEA would be Iceland's "passport" into the future and the key to economic prosperity (Hannibalsson 1991).

To support the claim that the EEA was in some way a continuation of the independence struggle, many parliamentarians referred to Jón Sigurðsson, the main hero of the independence struggle, and used his vision to argue that Iceland should stand proud and equal among other nations and not be afraid to participate fully in European co-operation. Iceland was to be equal to other independent states and fully-functioning in international society. Jón Baldvin Hannibalsson referred to Jón Sigurðsson and claimed that the EEA would bring progress and push Iceland further into modernity. He said that the EEA would "bring opportunities for our nation, her cleverness and action. [...] This agreement also tests our abilities and confidence to stand equally among other nations." (See in Ingebritsen 1998).

Parliamentarians who argued against the EEA used the sovereignty argument more systematically than the Yes-side did. The nation and its sovereignty became the central argument in the No-camp and were only supplemented by economic arguments that came secondary. The No-side emphasised that the EEA threatened Iceland's sovereignty, which would be shifted to undemocratic EU institutions in Brussels. Some said that even though it could be argued that the agreement might bring economic benefits, it should however be rejected solely on the ground that it violated Iceland's sovereignty. The same was true in the EU debate. More weight was put on the formal sovereignty of the nation rather than on the economy or any real meaning of the sovereignty concept. Jóhann Ársælsson, member of the then People's alliance, said that the EEA should be rejected on the grounds that it violated Iceland's "sense of sovereignty." (Ársælsson 1992).

The No-camp accused the Yes-side of being unpatriotic, and drew direct links with the independence struggle. They said that Iceland's independence would be lost if it joined the EEA. MP Páll Pétursson (PP) went so far as to predict that membership in the EEA would end the Icelandic nation. "Our nation is different from other EFTA-states. [...] If we submit [to the EEA] we would of course instantly lose our language, culture and independence in a very short time period." (Pétursson 1989).

### Europeanization

The EEA agreement has clearly and greatly influenced the development of the Icelandic society. Its impact is not only measured through the legal acts Iceland has had to adopt but also through increased and more informal trans-border cooperation which has followed. The EEA opened up the closed off Icelandic society and provided for a mere transformation in the economy which became much more diversified and increasingly internationalised. Entrance onto the European internal market for example allowed for the growth of the financial sector. The EEA opened the way for the Icelandic Viking capitalist with increasing operation abroad, for example in financial services. Increased growth also followed in the service industry, mainly in IT and especially the internet gaming industry. The agreement soon became Iceland's main point of entry in international relations (Bergmann 2009a: See Part II).

Iceland has enjoyed increased access to the EU market and its many cross-border co-operations programmes, including scientific, educational and cultural affairs,

bringing with it extra capital and increased knowledge. Icelandic entrepreneurs have been given the opportunity within in the European market and Icelandic scientists have created stronger ties with international colleagues, to name but a few. Participation in the EU programmes has dramatically boosted turnover in the area of research and has strengthened relations between Icelandic businesses and institutions, and their European counterparts (Bergmann 2009a: See Part II).

The EU operates hundreds of committees and advisory bodies around its decision making practises. The EEA opens some of those up to the EFTA-states who by participating on that level are able to influence legislation on the preparatory stage. In 2005 Iceland had access to 418 committees and specialists advisory bodies but only chose (or had capabilities) to participate in 184 of them (Tengsl Íslands ... 2007: 66). On the same premises Iceland participates in many of the EU's agencies, including the European Environmental agency, the European Medicines Agency, European Maritimes Safety Agency, the European Aviation Safety Agency, European Network and Information Society Agency, European Centre for Disease Prevention and Control, European Centre for the Development of Vocational Training, European Agency for Safety and Health at Work and European Foundation for the Improvement of Living and Working Condition and the European Food Safety Authority) (Tengsl Íslands ... 2007: 49).

There are also many relevant EU agencies where Iceland is not a member, including the Community Plant Variety Office, Community Fisheries Control Agency, European Agency for Reconstruction, European Monitoring Centre for Drugs and Drug Addiction, European Monitoring Centre on Racism and Xenophobia, European Fundamental Rights Agency, European Training Foundation, Office for Harmonisation in the Internal Market, Translation Centre for the Bodies of the European Union, European Defence Agency, European Union Institute for Security Studies and European Union Satellite Centre (Tengsl Íslands ... 2007: 49).

### Impact on sovereignty

As previously pointed out the impact on Iceland's sovereignty was one of the main concerns in the political debate leading up to the EEA. The opposition argued that the agreement was in violation of the Icelandic constitution which prohibits the state to surrender sovereignty to a foreign entity (Björgvinsson 2006: 381). The Icelandic constitution is unusually strict on the issue contrary to the practice in most of the neighbour-

ing states who have made sufficient changes directly to provide for sharing decision making on an international level (Björgvinsson 2006: 399).

When the EEA was being negotiated a hand picket government-commissioned committee of four legal experts however concluded that the agreement would not violate the sovereignty requirements stated in the Icelandic constitution (Schram et al 1992). That has however ever since been heavily disputed and law professor Guðmundur Alfreðsson has for example argued that sovereignty is being transferred to Brussels beyond what is allowed for in the constitution in all three branches of the state – the legislator, the executive and the judiciary (Alfreðsson 1992).

### Institutional setup

The EEA agreement rests on two pillars and provides an institutional bridge between EFTA and the EU by establishing joint mechanisms such as the EEA Council, the EEA joint Committee and the EEA Consultative Committee. Despite the equal nature of this formal institutional framework it has however always been clear that the EU is the leading partner and the main aim of the EEA is to bring the EFTA's into the European single internal market. The EFTA/EEA states have for example only quite limited input on the preparatory stage when a new legislation is being negotiated. As soon as the proposed legal act moves to the political level the EFTA/EEA lose sight of it. It can thus hardly be argued that the EEA was ever meant to bring two equal partners into a joint forum. The EFTA states agreed to adapt the EU's regulatory framework in the fields of the internal market and related areas (Björgvinsson, 2006: 31). It is then the role of the EFTA Surveillance Authority (ESA) to make sure that Iceland, Norway and Liechtenstein adhere to the regulations on the internal market. If ESA finds one of the three states in violation of EU law it can put the case for the EFTA Court. Over the years ESA has twelve times taken direct action or issued formal infringement procedure against the Icelandic republic before the EFTA court (EFTA Court cases 2011). The number of cases against Iceland heavily increased after the Crash of 2008.

Despite the above mentioned political emphasis on sovereignty Iceland has nevertheless agreed to submit to the supra-national decision making mechanism of the EU within the field of the co-operation. This is in violation of the Icelandic constitution according to many legal scholars, such as Guðmundur Alfreðsson who pointed out that the aim of the EEA to create a harmonised legal framework within the field of the

cooperation directly excludes the Icelandic parliament from influencing the European laws the agreement forces it to adopt (Alfreðsson 1992).

### **New treaties and impact on decision making**

The EEA agreement was built on the premise of the Rome treaty as it was in 1992 and has not been significantly updated since negotiations came to a close that year. Since the agreement entered into force on January 1<sup>st</sup> 1994 various political shifts and institutional turns have taken place within the EU – and thus the political and legal environment surrounding the EEA has changed dramatically. Four new treaties and the historical eastern enlargement have for example marked a transformation of the EU, with increased influence of the European Parliament and the Council at the cost of the European Commission.

Even though the EEA is meant to be dynamic and is constantly being moulded and developed, in an attempt to emulate the regulation changes within the internal market of the EU, it does not however, follow the operational and institutional changes in the European Union. These changes within the EU are therefore not mirrored in the EEA and that has led to continually widening gap between the rapid development of the EU and the more stagnant mechanism within EFTA/EEA. Within the EEA the Commission is the counterpart of the EFTA states and should speak on their behalf within the EU's institutions. The diminished capacity of the Commission within the EU has further narrowed the influence that the EFTA/EEA on the European legislation process (Bergmann 2009: 130)

The position and weight of the EFTA states has also diminished significantly. In 1994 the EFTA-states were the most important market for the EU 12 with 30 million inhabitants in six states. Now there are only Iceland, Norway and Liechtenstein left on the EFTA-side while the EU has grown to 27 members with around 500 million inhabitants. Although the formal institutional setup remains the same the political importance and influence of the EFTA/EEA has greatly diminished (See for example in Skýrsla Halldórs ... 2000: 15). Thus, through extensive rounds of enlargement and treaty reforms, the internal decision making within the EU has become increasingly complicated, which has led to increased difficulties for the EFTA/EEA-states to influence the process.

Even though the EEA brings Iceland into the internal market it falls short of the custom union. Iceland is therefore able to enter into free trade agreements with

third countries. Either bilaterally or through EFTA, Iceland has entered into free trade agreements with Chile, Egypt, Croatia, Israel, Jordan, Lebanon, South-Korea, Macedonia, Mexico, Palestine, Singapore, Tunis, Turkey and the countries within the South African custom union (Tengsl Íslands 2007: 63).

### **How deeply involved?**

The EEA-agreement consists of 129 articles, 49 protocols and 22 appendixes. In addition the contracting parties either individually or collectively issued 71 statement regarding for example safety clauses and special understandings on various provisions. With the agreement Iceland, Norway and Lichtenstein are obliged to implement all the EU legal acts that apply to the internal market. Initially there were approximately 1.600 EU acts that Iceland was to adhere to. The agreement is however dynamic in the sense that it calls for a constant revision and update of Icelandic law. These acts have now increased to roughly 5000 (Tengsl Íslands ... 2007: 55-58). Some have since ceased to be relevant and others have been implemented by Iceland's own initiative and therefore not taken into the count here.

There is no consensus among Icelandic politicians on how closely the EEA already links Iceland with the EU. The importance of maintaining independence becomes evident in the ongoing debate on what the EEA agreement really means and how deeply into the European project Iceland is already involved through the EEA and the Schengen-agreement. The Yes-side claims that Iceland already has to adopt most of the EU laws and therefore not much would change with full membership. The No-side, on the other hand, claims that Iceland would be overwhelmed by new rules and regulations. In 2003, the foreign minister at the time, Halldór Ásgrímsson, leader of the PP, claimed that through the EEA and Schengen, Iceland already had to adopt over 80 per cent of the whole EU legislation (Ásgrímsson 2003). Two years later, a new foreign minister, Davíð Oddsson, leader of the IP, said that the share was only 6.5 per cent (Oddsson 2005). The gap between these two percentages is, of course, too great to be explained by any changes in the operation of either the EU or the EEA. The only real difference was that the two foreign ministers held a very different policy on EU membership.

Mr. Ásgrímsson was clearly sympathetic to EU membership, while Mr. Oddsson was forcefully against. Both figures provide a skewed impression of the situation. No member state adopts all legal decisions taken in the EU and the variation of the scope covered

by individual legal acts is huge. This statistical exercise performed by the two foreign ministers is meaningless to measure how involved Iceland already is in the European integration process. What is interesting here, however, is how the two foreign ministers used selected statistical information as propaganda in the EU debate domestically. Given the independence discourse, it simply fitted Mr. Oddson's politics better to claim that EU membership would entail a much greater transfer of sovereignty to Brussels than was already the case through the EEA.

Before analysing the scope of the cooperation it might be interesting to note that according to ESA Iceland adopts almost all (98,8% in 2006) of all EU directives that fall under the internal market (Tengsl Íslands ... 2007: 55). In this regards it is also worth noting that EU member states do not implement all EU legislation. Many regulations and legal decisions are not implemented into national law, such as legal decision on subsidies to individual farmers. According to professor Fredrik Sterzel, Sweden for example only implements around a quarter of all EU's legal acts. Of those only around eight percent are what he counts as core legislation (Sterzel 2001: 15).

By applying the Icelandic case to Sterzels model we see that Iceland adopts almost as many of the EU legal acts as Sweden, a full EU member, does, or 86 percent to be exact (Bergmann 2009a: 160). According to Dutch scholars Jong and Herweijer (2005) between six and sixteen percent of all legal acts passed by the Dutch parliament can directly be traced to EU legislation.

This is interesting for the Icelandic case because according to the government's official committee on European affairs published in 2007 this figure is actually higher in Iceland. 17.2 percent of all laws (285 in total) passed by the Icelandic parliament in the years 1992 to 2006 where directly a result of the EEA-agreement. The figure rises to 21.6 percent if legal acts stemming indirectly from European law are added to the pool. This is interesting, not least interesting in the light that over the same period more than 2.500 legal acts were adopted into the EEA, which means that most of them were implemented by issuing regulations rather than through specific legislation. Only little over 10 percent of implemented EEA acts were passed as law through the Icelandic parliament. Most, or 77 out of the 285 laws in total, fell under the domain of the Ministry for Commerce (now Ministry of Economic Affairs). The second highest number, or 39 in total, was adhered to the Transport Ministry. (Tengsl Íslands ... 2007: 57). It should be stated here that in recent years Iceland has somewhat fallen behind in implementation of EEA relevant acts, which is mainly due to an increasingly long backlog in translation into Icelandic (Interview 2011).

**Participation by chapters**

As stated before, this statistical counting of legal acts tells little about how involved in to the EU's legal environment Iceland is already. Another way of measuring the involvement might be by mapping Iceland's participation through the EEA and Schengen according to the 35 chapters the EU uses during membership negotiations.

**Table 1:** EU accession negotiation chapters and how they relate to Iceland's adoption of EU law through the EEA and the Schengen agreement.

Covered	Mostly covered	Not covered
1 Free movement of goods	12 Food safety, veterinary and phytosanitary policy	11 Agriculture and rural development
2 Freedom of movement for workers	14 Transport policy	13 Fisheries
3 Right of establishment and freedom to provide services	15 Energy	16 Taxation
4 Free movement of capital	18 Statistics	17 Economic and monetary policy
5 Public procurement	19 Social policy and employment	22 Regional policy and coordination of structural instruments
6 Company law	20 Enterprise and industrial policy	29 Customs union
7 Intellectual property law	21 Trans-European networks	30 External relations
8 Competition policy	23 Judiciary and fundamental rights	31 Foreign, security and defence policy
9 Financial services	24 Justice, freedom and security	32 Financial control
10 Information society and media	27 Environment	33 Financial and budgetary provisions
25 Science and research	28 Consumer and health protection	34 Institutions
26 Education and culture		35 Other issues

Mapping Iceland's involvement by the chapters covering different policy areas it comes evident that Iceland already participates in 24 out of the 33 chapters covering EU's legal base, the *aquis communautaire* (Chapters 34 and 35 do not cover any specific policy areas.) (Bergmann 2009a: 155-6). Further analysis on Iceland's involvement in these policy areas of the EU, through the EEA and the Schengen agreements, are provided later in this report, where Iceland's EU application is discussed. Whatever measure is used it clearly becomes evident that Iceland is deeply involved in the European project and very few areas remain excluded.

In certain fields, such as on the environment, transport and food hygiene, the vast majority of all legislation passed in the Icelandic parliament is initiated through the EEA (EFTA Bulletin 2002). Furthermore the lines between what is considered part of the internal market, and therefore what is EEA relevant, and other parts of EU legislation is becoming increasingly more blurry (Interview 2011).

EU members have the ability to influence decision making using various means, whereas Icelandic citizens are not afforded the same rights as a non members. The Icelandic government has therefore surrendered part of its decision making to the EU and has little or no chance of having any influence over future decisions (See for example Wallis 2004).

### Opt-outs and derogations

No opt-outs, exemptions or derogations are allowed from implementing EU law within the parameters of the EEA without a specific agreement with the European Commission, which has the authority to negotiate technical adoptions. Only the Council can provide substantive derogations. However rare Iceland has still been on few occasions been able to negotiate opt-outs and derogations from European legislation, for example in the field of animal health and food production, for instance regarding import on meat products. Iceland negotiated special adaptations regarding regulations on renewable energy and on specific regulations on board fishing vessels. Iceland was also able to convince the EU to allow for specific adoptions on rules on aviation safety to accommodate to the primitive airports in the most rural areas of Iceland where it is merely impossible to implement the EU rules, especially regarding airport security (Tengsl Íslands ... 2007: 32). Because of specific conditions as the most sparsely populated country in Europe, with an average population density of 2.8 inhabitants per km<sup>2</sup>, Iceland also gained derogations from EU rules on house heating, the electricity directive and on different

aspects of rules on waste disposal in rural areas (Tengsl Íslands ... 2007: 33).

These adaptations on implementation of EU laws in Iceland are in line with derogations and specific measures member states have been able to negotiate from within the EU. It should also be mentioned that the EFTA Surveillance authority (ESA) has been known for interpreting EU laws more narrowly than its counterparts in the Commission who also take political views into account while ESA solely focuses on the strictly legal side of the matter (Skýrsla Halldórs ... 2002: 11, 12; Emerson et al 2002: 33; Tengsl Íslands ... 2007: 59).

Initially the daily operations of the EEA were based on the spirit of the agreement rather than only on the strict letter of the law. The EFTA/EEA states had for example access to committees and advisory bodies beyond the framework of the agreement. Gradually this characteristic of the cooperation has changed with a much narrower interpretation on the EU side, resulting in the exclusion of Iceland, Norway and Liechtenstein from many bodies they had happily participated in before (EFTA Bulletin 2002, Tengsl Íslands ... 2007: 46, 66).

This lack of interest shown by the EU towards the agreement has become obvious with the deliberate disregard for the EFTA/EEA members in developing new EU legislation (Tengsl Íslands ... 2007: 67). There have been many instances where the EU has not sought consultation on new legislation, which it is however obligated to do according to article 99 of the agreement. The article clearly stipulates that EFTA experts are to be consulted in the same manner as experts within the EU.

### The veto right

When the Joint EEA committee agrees that an EU legal act should be adopted by the EFTA/EEA states it is forwarded by Iceland's delegation in Brussels through to the Foreign Ministry in Reykjavik and from there either to the relevant ministry which issues a relevant regulation or if necessary to the Icelandic parliament which passes a domestic law on the basis of the act. As EEA acts are only legally binding after they have been implemented by the Icelandic parliament, it can be concluded that Iceland holds a formal veto power over EU laws. It has however increasingly become evident that the EFTA/EEA states cannot refuse EU legislation without threatening the whole cooperation (Tengsl Íslands ... 2007: 33).

In such an instant it is in the hands of the EU Commission, according to article 102 of the EEA agreement, to suspend the part of the agreement that the vetoed legislation falls under, which in return goes against the overall aim of the agreement to insure legal homogeneity on the internal market. Vetoing EU legislation could therefore lead to snowballing effect resulting in the dissolving of the agreement – not only for the individual state but also for their two other EFTA partners in the EEA (Eriksen 2008).

Directly because of this suicidal effect built into the agreement the veto right has never been used. Once the Commission did, however, start the process. That was in 2002 when Liechtenstein voiced reservations regarding a new legislation on money laundering. An agreement on the issue was subsequently made in good time before any further consequences (Tengsl Íslands ... 2007: 33-34). This formal veto right can be compared to the Atom Bomb in the way that it might be effective to hold but not very beneficial for anyone to use it.

Even though the formalities remains the same as when passing normal Icelandic laws this automatic nature of implementing EU's legislation has had the effect that European law is rarely discussed in the Icelandic parliament (Tengsl Íslands ... 2007: 86). On few occasions EEA directives have however been disputed to the extent that it has spurred a general political debate over the possible veto right, among them were the directive on electricity providers, the one on sewers, and most recently, the service directive.

### Operational difficulties

As a consequence of these new found circumstances, the EEA and the EU clash on an increasingly regular basis. Iceland has in recent years felt increased difficulties in the cooperation. The agreement is being operated on a lower level within the Commission resulting in a lesser flexibility than before when the EU side showed much more interest in the agreement (Emerson et al. 2002: 31-32). EU's foreign ministers for example rarely show up for meetings in the EEA Council as was expected in the beginning (Tengsl Íslands ... 2007: 67). And increasingly the European Commission "forgets" to involve specialists from the EFTA/EEA states when a new legislation is being prepared (Skýrsla Halldórs ... 2000: 69-71).

This diminished interest in the agreement and lesser knowledge of it within the EU's institutions and member states has led to more frequent difficulties than before, as for example was apparent when Iceland

was treated as a third state outside of the internal trade framework when the EU invoked tariffs on steel in a trade dispute with the USA (Tengsl Íslands ... 2007: 66). More serious was however the fishmeal crisis in 2000 when the EU unilaterally banned import on fishmeal for animals in a respond to the Mad Cow disease crisis. Only by lobbying EU capitals with similar interests, especially Copenhagen, could Reykjavik avoid a categorical ban on import from Iceland which was however completely safe (Tengsl Íslands ... 2007: 67).

### The eastern enlargement

The eastern enlargement almost resulted in the collapse of the EEA agreement and this could have meant dire consequences for the Icelandic economy. The events portray an interesting picture of the cooperation between the EU and the EFTAs. Negotiations on the simultaneous enlargement of the EEA did not come to a close until the 1st of April 2004, only a month before the enlargement was to take place. Because of the homogeneity nature of the internal market newcomers to the EU also have according to article 128 of the EEA-agreement to apply for membership in the European Economic Area and accession should be simultaneously.

However, when preparing for the eastern enlargement accession to the EEA became a very distant priority and was only dealt with when coming to the end of the process. The start of 2002 was met with fresh demands from the European Commission, insisting that Iceland and Norway would extensively increase their funding in the EU's developmental fund by 27 or 38 fold (Tengsl Íslands ... 2007: 16). The Icelandic government had never agreed to the basis of these payments and actually wanted them to be abolished altogether, not increased (See Bergmann 2009a: 142-147).

The payments had initially been forced on the EFTA states towards the end of the negotiations on the EEA. Iceland had agreed to contribute 100m ISK a year for five years, suspending the payments in 1999. By then the Spanish government demanded that the payments should be continued for five more years and vetoed Iceland's ongoing participation in the EC 5th Research Framework Programme until the dispute was solved – with Iceland completely surrendering to the demands. Five years later, in 2004, when the payments should end by the second agreement, the EU returned instead with a fresh demand for a multi-fold increase (Stækun Evrópska ... 2007).

Iceland's position was undermined by Norway's willingness to increase their payments resulting in

the third agreement of a five-fold yearly increase for Iceland and ten-fold increase for Norway. Half of Norway's payments were allocated to a special fund controlled and operated from Oslo. The rest was to be distributed by the EFTA development fund which the new members could apply to for projects.

Another clash was instigated by Poland's refusal to come to an agreement on tariffs on herring from Iceland and Norway. This issue was of the utmost importance as past free trade agreements with Eastern Europe were to discontinue with the enlargement of the EU. Through the process Iceland was however able to negotiate certain compensations with increased access to the EU's market.

When negotiating the EEA agreement Iceland refused to allow for foreign investment in fishing companies and opening of its markets for certain agricultural goods. EU's countering measures is found in Protocol 9 to the EEA agreement which stipulate limited tariffs on few fish products from Iceland, such as herring and lobster. The problem leading up to the enlargement was that Iceland had in the meantime negotiated complete free trade agreements with many of the accession states resulting in a worsening trade access to these states when they would join the EU and thus also adhering to Protocol 9.

The conclusion was to compensate Iceland for the worsening of access by other general measures, for example by lifting off tariffs on herring butterflies which Iceland mainly exports to Poland (Tengsl Íslands ... 2007: 16). The eventual conclusion to the matter came at a crucial time. It was therefore not surprising that many despaired at the future of the whole EEA agreement when the Prince of Liechtenstein declined to sign the EEA enlargement treaty. His refusal came as a result of ongoing, unrelated land disputes in the Czech Republic but in the end, this too was eventually resolved.

Accompanying the 2007 enlargement to Romania and Bulgaria Iceland was then once again forced to still increase these payments with the fourth agreement and now with no suspension in sight (Stækkun Evrópska ... 2007). According to ministers in the Icelandic government the European Commission threatened to drag its feet's on other issues within the EEA Joint Committee resulting in impossible consequences for Iceland and Norway (Stephensen 2007).

This process of simultaneous enlargement of the EU and the EEA shows that Iceland is in a vulnerable

situation against the EU, but it also shows that when there is a mutual political will to find solutions, suitable measures can be found within the framework of the EEA.

### Updating the EEA

These problems and diminished capacity to influence EEA legislation caused the Icelandic government to start pressing for a revision of the EEA-agreement by the end of the millennium. The government identified four main goals (Júlíusdóttir and Reva 2008). First to bridge the ever increasing gap between the EU and the EEA by updating the text of the agreement so it would be in line with the changes made by the new treaties. Secondly to increase and broaden Iceland's access to specialists committees in the European Commission. Thirdly to provide access for the EFTA/EEA states to other EU institutions, i.e. the Council and the Parliament which had gained increased influence within the EU machinery. Fourthly to revisit stipulations in Protocol 9 with the aim of lowering tariffs on Iceland's export of fisheries goods. Apart from the previously mentioned changes on Protocol 9 the EU proved unwilling to revise the EEA at all (Tengsl Íslands... 2007: 46-47, 67). The Icelandic government felt quite alone on this strive as the Norwegian government showed little or no interest in revisiting the agreement.

Icelandic officials working within the field of the agreement are convinced that the EEA is becoming increasingly less important to the EU. They say that within the Commission many are of the view that the EEA agreement is outdated and ought to be terminated. (Bergmann 2009a: 135-136).

Revisiting the EEA agreement would also not be without risk. For example regarding the agreement on exchange of fishing quota Iceland has with the EU which allows the EU to catch 3000 tons of Rockfish (Sebastes) in the Icelandic fishing zone in exchange for 30.000 tons of herring which Iceland is allowed to catch out of the EU's quota in the sea of Greenland. The EU transferred their quota within the Icelandic fishing zone mainly to Spanish fishermen who have had difficulties catching it while Icelandic fishermen have successfully caught all they are allowed (Stækkun Evrópusambandsins 2001: 13). It is therefore expected that the EU would also want to revisit this arrangement together with others issues if the EEA would be renegotiated.

### Coordination of the EEA

The central operation of the EEA-agreement is coordinated within the Ministry for Foreign Affairs in

Reykjavik, with the bulk of the workload shouldered by 3-4 diplomats within the ministry. Until Iceland applied for EU-membership in mid 2009, European affairs, including the operation of the EEA, were hosted under the trade unit within the Ministry for Foreign Affairs. It tells a story that most of the staff within the unit was educated in law. Only after the application was handed in were European affairs dealt with at a broader level within the ministry.

The weight of the daily operation of the agreement is however conducted in the mission in Brussels. The embassy is also the key actor for lobbying on behalf of Icelandic interests against the EU's institutions. On average 4 diplomats from the Foreign Ministry, together with 1 representative from each of the 10 main policy ministries in Iceland, have the task of monitoring developments within the EU institutions, especially emerging legislation within their respective field. The representatives are backed up by their respective ministries in Reykjavik where a designated EEA liaison officer, together 2-3 officials in each of the ministries, are actively working on EEA relevant matters. However, according to interviews conducted for this report with high level diplomats in the MFA in Reykjavik, most of the mission representatives in Brussels complain about lack of backup from their ministries at home, from which they get little feedback. In total roughly 50 officials on a governmental level are actively working on the agreement (Interview 2011).

As a small state of little more than 300 thousand inhabitants, Iceland can only operate a much smaller administration than most of its counterparts in the EEA. Because of this systemic lack of resources Iceland has been forced to prioritize much more actively on specific policy areas where it can focus its limited efforts on. Iceland compensates for its lack of resources, for example by relying more heavily on close cooperation and help from foreign services of neighbouring states, especially the other Nordic states. This they for example do to gain access to information and background analysis that require greater manpower than Iceland has to spend. Here it can be noted that since the Crash of 2008 the small Icelandic diplomacy has been further overloaded with a flood of very difficult cases.

### Cooperating with Norway

The EEA agreement binds Iceland and Norway, together with Liechtenstein, into joint venture with the EU. The relationship between Iceland and Norway in the EEA can be compared to an arranged marriage between distant cousins. This is not an heated affair entered into because of true love. As one could expect

in such an circumstances there are still ongoing and unresolved issues of tensions between the two.

According to the agreement, Iceland, Norway and Liechtenstein are meant to harmonize their position internally and then speak with one voice within the cooperation. Senior diplomats in Iceland's foreign service, interviewed for this report, however claim that their Norwegian counterparts on occasion seem to forget that they are in a binding agreement with two smaller partners and that Norway, as the big power within the EFTA/EEA, is prone to operate alone on issues that are of a concern for all of them. The Icelandic government therefore feels that their Norwegian counterparts do not always honor the partnership and tend to unilaterally voice opinion or even enter into negotiation with the Commission without consulting Iceland (Interview 2011).

Despite being linked together in the EEA, Iceland and Norway have been in a significantly different position when it comes to European cooperation and, as stated before in this report, operate quite different European policies. It is claimed that after twice refusing accession agreement with the EU, the Norwegian government is very concerned with proving itself as being a good European. Iceland has on the other hand never felt the same need to gain that kind of an acceptance in Brussels (Interview 2011).

As a result the Icelandic government feels that the Norwegians are too keen to give into the demands of the EU rather than sticking firmly to the principles of the EEA agreement. Senior Icelandic officials claim that the following pattern has emerged: First Iceland and Norway agree on a position and then later in the process Norway gives into the demands of the EU without consulting Iceland. This is claimed to have created increased tension in the cooperation. As an example for this pattern, Icelandic diplomats interviewed for this report, point to several cases in addition to the already mentioned cases of payments into the development fund and Iceland's strive to update the EEA-agreement – where Norway did not back up the Icelandic position. These cases include participation in the European Emission Trading Scheme (ETS), the widening of rights of establishment to include foreign family members of EEA citizens and the ongoing pressure from the European Commission to provide the EFTA Surveillance Authority with power to issue fines on actors that are in violation of EU rules (Interview 2011). In all of the cases Norway was more willing than Iceland to participate and give into the will of the EU.

Further tension is also felt over the role of the EFTA secretariat. Like many small states within the EU who rely more heavily on the European Commission than large states, who can use resources within their own administration, Iceland tends to rely more the EFTA secretariat than Norway which is prone to internalise EEA related matters. Icelandic officials interviewed for this report claimed that their Norwegian counterparts systematically bypass the EFTA secretariat on many EEA relevant issues – and thus avoiding coordination with Iceland. (Interview 2011).

However, despite these tensions the Icelandic senior officials interviewed for this report concluded that in the seventeen years of operating the EEA the cooperation with Norway has overall worked well and to the benefit of both parties. So, as far as arranged marriages goes, this one has been relatively successful (Interview 2011).

### Schengen-border control

When analysing systemic cooperation between Iceland and the EU it is also necessary to mention Iceland's participation in the Schengen-border control mechanism which extends the EU's outer borders to Iceland. As was the case leading up to the EEA a government committee of legal experts concluded that participation in Schengen does not violate Iceland's constitution. The main rationalisation for the conclusion was that through it were no automatic transfer of decision making in the legal sense (Tillaga til ... 1999). When analysing the reality of the cooperation it however becomes apparent that Iceland is to adopt all of the EU legislation that falls under the framework of the Schengen agreement. A former Icelandic ambassador to the EU put it this way: "First the EU takes its decision and then Iceland takes the same decision." (Bergmann 2009a: 152). Whatever the formalities regarding the constitution might be it is clear that decision making has of course in any political sense been transferred to the EU Council when it comes to Schengen related matters. Through Schengen and related fields Iceland already adopts most EU legislation within the field of Justice and Home Affairs (Brache 2002).

In Schengen matters Iceland and Norway were however able to gain better access to the EU decision making mechanism than is the case in the EEA. Through the Schengen Joint Committee Iceland and Norway are directly involved in the work of the Council. Iceland also participates in many of the agencies the EU runs within the framework of Justice and Home Affairs, for example in agencies such as European Judicial Cooperation Unit (Eurojust), European Police Office

(Europol), European Agency for the Management of Operational Cooperation at the External Borders (Frontex) and European Police College (Cepol) (Tengsl Íslands ... 2007: 49).

### De facto membership

Formally, Iceland is surely not part of the EU institutions but when real participation in policies and programmes through the EEA-agreement and the Schengen border-control agreement is examined one can only conclude that Iceland is for the most part a very active participant in the European integration process. Through the EEA-agreement Iceland became a full participant in the internal market of the EU; the four freedoms of goods, capital, services and the labour market were expanded to include the EFTA/EEA states. A co-operation was also created in matters outside the internal market, including the environment, research and education. Iceland is for example becoming increasingly integrated into the EU policies on air pollution, where it amongst other things participates in the Effort Sharing Mechanism of the European Emission Trading Scheme (Interview 2011).

In fact, in some areas Iceland participates more actively than many of its official members. Britain for example, has chosen to remain outside the Schengen-area where Iceland actively participates. Iceland has thus, through its agreements with the EU, delegated decision rights in important fields of the economy to the EU or joint bodies it operates with the EU. It could even be claimed that Iceland is a de-facto member of the EU through its close co-operation agreements, even without having formal access to decision-making in the EU institutions.

As discussed in the introduction to this chapter on Europeanization of Iceland, the EEA agreement altered the composition of the Icelandic economy, for example by opening up the international financial market to Icelandic businessmen. But, as was the case accompanying EFTA membership, when many small local industries, for example the furniture manufacturing industry, suffered as a result, few segments of the economy can be said to have lost out after entering onto the EEA. Among them are however vegetable and flower growers which had extensive operation in greenhouses in the geothermal areas in Iceland (Interview 2011).

Even though Iceland is an active partner in the European project it can also be concluded that the EEA is not adjusting well to the rapid developments within the EU which has for example seen four new trea-

ties and three rounds of enlargement since the EEA entered into force. As a result it can be argued that the political significance of the agreement is dwindling and that it no longer sustains a comprehensive partnership between the EFTA and the EU. These developments have shifted Iceland and the other EFTA states into the sidelines of European collaboration.

The Icelandic government maintained that the EEA and Schengen agreements did not entail automatic transfer of legislation and other decision-making rights to EU institutions or any EFTA/EEA forum (Tengsl Íslands ... 2007: 15). This interpretation was not least based on the argument that EU legislation was only indirectly applicable to Iceland. EU regulations are directly binding for its member states, but formally EU regulations have to pass through the EEA Joint Committee and the Icelandic parliament before they become law (Tengsl Íslands ... 2007: 70). On the basis of this formal difference, it was argued that the legal effect was not as direct in the EEA as it was in the EU legal system.

Formally, it might then be argued that the EEA-agreement does not entail significant transfer of sovereignty in a legal sense. However in any political understanding of the sovereignty concept it must be admitted that through the EEA-agreement the Icelandic government has agreed to transfer decision-making rights to supra national institutions in Brussels.

The Icelandic parliament is obliged to adopt almost all EU legislation that applies to the internal market based on the decision of the EEA Joint Committee (Björgvinsson 2006: 59, 137). It is therefore clear, when the reality of the co-operation is studied, that Iceland has to adopt the same legislation as EU member states within the framework of the agreement. The parliamentary process in Iceland is therefore only a formal exercise, as EFTA/EEA parliaments have no other option than to adopt legislation that the EEA Joint Committee forwards to them. Furthermore, all policymaking and other decisions on future development, new regulations and so on, are dealt with within EU institutions to which the Icelandic government has very limited access (Emerson et al. 2002). We can therefore conclude that in any political understanding Iceland has quite clearly transferred real decision-making to the EU. The legal interpretation that the Icelandic government held on the EEA agreement is therefore not in full compliance with the reality faced when studying decision-making in the EEA.

To understand this difference in interpretation, it is

necessary to differentiate between formal sovereignty on the one hand and real transfer of decision-making on the other. Again, to explain this division we have to look into political discourse and political ideas within Iceland. It seems therefore that some kind of rift has occurred between the government's formal and legal definition of the agreement and the political reality Iceland faces in the co-operation. With full membership in the EU Iceland will surely face new limitations on its sovereignty, but through the EEA Iceland already faces other limitations on its sovereignty that EU states do not face. But, as stated before, the Icelandic politicians have thus far put more emphasis on preserving formal legal sovereignty rather than admitting to the real transfer of decision-making evident in the EEA and Schengen.

### EEA vs. EU membership

Despite debating viciously previous steps in the European integration process, first the EFTA accession in 1970 and then the EEA in 1994, Icelanders have for the most part accepted the merits of co-operation in EFTA and the EEA. Ever since the accession to the EEA full membership of the EU has been fiercely debated. It was however not until July 2009, after the collapse of the financial system, that an EU application was finally put forward. On 27 July 2010 the first Intergovernmental Conference was held, officially launching accession negotiations. As can be seen in the table above mapping the policy areas of the EU already covered by the EEA and Schengen, (see above), only few key areas of the EU remain outside of the current framework of co-operation through the EEA and Schengen. Out of the remaining ten policy chapters only four are classified as difficult; The Common Agricultural Policy, The Common Fisheries Policy, Economic and Monetary Affairs and Regional policy and coordination of structural instruments (Iceland 2010 ... 2010). Consequently the hottest debated policy areas in Iceland have, together with the sovereignty factor, been the adoption of the euro, fisheries and agriculture.

Through the screening process accompanying Iceland's EU application the EEA has come under closer scrutiny than ever undertaken before. Every stone in the ongoing cooperation is being turned as a part of the process. The European Commission concluded in its Progress Report in November 2010 that Iceland meets both the political and economic criteria's, that it is a functioning democracy with strong institutions and a stable constitutional and legal order and that due to the EEA agreement Iceland is prepared to take on the obligations of membership in the medium term

(Iceland 2010 ... 2010). The report states that through the EEA Iceland has already liberalised most economic sectors and removed special government protection in most fields. The report, however, highlighted a number of areas; fisheries, agriculture and rural development, environment, free movement of capital and financial services, where serious efforts would be required to take on the obligations of membership. It for example identifies that high barriers to market entry continue to exist in some strategic sectors that are not covered by the EEA, such as fisheries, energy, air transport and real estate. To understand just how deeply Iceland is already involved in the policies of the European Union, through the EEA, it is beneficial to analyse the involvement by policy chapters according to the Commission progress report.

On free movement of goods, covered in chapter 1, the report concludes that Iceland continues to be highly aligned with the *acquis* but that the legislation on alcoholic beverages remains to be adopted. Iceland fully applies the *acquis* of chapter 2 covering freedom of movement for workers. On chapter 3, covering rights of establishment and freedom to provide service, the Commission concluded that even though the overall alignment with the *acquis* is at a satisfactory level, the current rules are however not in line with the Services Directive. In the wake of the financial crisis, Iceland took in November 2008 protective measures which restrict capital flows. The Commission claims that in chapter 4, covering freedom of movement of capital, significant and sustained efforts are needed to remove the existing restrictions on capital movements, including foreign investment in fisheries (Iceland 2010 ... 2010: 17- 19).

The report concludes that Iceland has already implemented the main body of the *acquis* on public procurement in chapter 5, company law in chapter 6, intellectual property rights in chapter 7 and competition policy in chapter 8, but that a comprehensive enforcement policy remains to be adopted on intellectual property rights and that further monitoring is needed on the state aid measures taken in response to the financial crisis. Overall alignment is also said to be good in chapter 9 covering financial services but that implementation is not complete in insurance and securities and that the supervisory capacity needs further improvement. The report also notes that the Icesave dispute remains unresolved. High level of alignment is also reported to be reached in the field of information society and media covered in chapter 10 (Iceland 2010 ... 2010: 19-23).

Chapter 11 on agriculture and rural development is one of the four classified as difficult. The present policy which provides high import protection to farmers is said not to be in line with the *acquis*. Iceland is however partially in line with the *acquis* on food safety, veterinary and phytosanitary policy covered in chapter 12. Under the EEA agreement Iceland gained an exemption on trade in live animals which needs to be revisited. It will also be necessary to close the remaining gap with regard to the *acquis* on the hygiene package, plant protection products, novel foods and genetically modified foods (Iceland 2010 ... 2010: 23-25).

Chapter 13 covering fisheries might be the most difficult in the ongoing negotiation. As the economy rests on fisheries Iceland's main goal is to secure its control over the fishing waters (Bjarnadóttir et al. 2009). One way to do that might be to negotiate a special management zone around Iceland's fishing waters which would remain under the control of Icelandic authorities as is further discussed later in this report (Bergmann 2009b: 206-207). The Commission progress report states that even though some rules differ substantially, Iceland's fisheries policy has however similar objectives to those being pursued in the EU. The report claims that a particular attention needs to be paid to the internal market *acquis* regarding the right of establishment, the freedom to provide services as well as the free movement of capital in the fisheries production and processing sectors where the restrictions in place are not in line with the *acquis*. And those mechanisms for implementing and monitoring EU support measures remain to be set up (Iceland 2010 ... 2010: 25-26).

On transport policy in chapter 14 Iceland is said to apply most of the *acquis* apart from the restrictions to foreign investment in air and maritime transport. Iceland's energy policy also continues to be highly aligned with the *acquis* in chapter 15. Tax legislation in chapter 16 is however only partly concluded to be in line with the *acquis*, in particular on VAT and excise duties. According to the report, liaison offices and IT interconnectivity remain to be set up (Iceland 2010 ... 2010: 26-27).

Leading up to the Crash of 2008 the Icelandic krona had proved extremely volatile and collapsed with the fall of the Icelandic banks. The ISK became virtually worthless abroad and the Icelandic government was forced to introduce limits on foreign currency trade – which are still in place (Gjaldeyrishöft hert ... 2009). The action violates the principle of free flow of capital which is one of the four freedoms of the internal

marked and thus the EEA (Guðmundsson 2010). The Icelandic government therefore sees participation in the Economic and Monetary Policy, covered in chapter 17, as one of the main benefits of EU membership. The Commission report identifies several shortcomings that still exist in Iceland in the field, in particular regarding full independence of the Central Bank and the prohibition of monetary financing of the public sector (Iceland 2010 ... 2010: 28, 29).

Iceland is reported to be highly in line with the *acquis* on statistics covered in chapter 18 but needs to improve the availability of statistical data to be in line with EU methodology. Social policy and employment in chapter 19 is also mostly covered by the EEA. Social dialogue mechanisms are well established and standards in the field of social inclusion, social protection, anti-discrimination and equal opportunities remain very high. The report however states that the current financial and economic situation has affected the quality of tripartite dialogue between labour, employers and government and that a comprehensive employment strategy remains to be worked out. In the field of enterprise and industrial policy in chapter 20 Iceland's alignment is reported to be at high level but new measures are said to be needed in industrial and SME policy, in particular to address the challenges of the current economic difficulties. EU standards are mostly fulfilled in chapter 21 which covers trans European network. TEN-E-related policy, however, requires further development (Iceland 2010 ... 2010: 29-31).

The EEA only partly covers regional policy and coordination of structural instruments, found in chapter 21. Iceland is though reported to be preparing for the implementation of the cohesion policy instruments. The Commission report states that an appropriate analysis is needed, including identification of the institutions responsible for the implementation of the cohesion policy (Iceland 2010 ... 2010: 32).

The judiciary and fundamental rights in chapter 23 are said to be of a high standard and good progress is reported in the anti-corruption policy. However the report concludes that Iceland's new provisions on conflict of interest and financing of political parties as well as of the act of judiciary remains to be fully assessed. The legislation on citizens' rights and data protection is not as of yet in line with the *acquis*. As an associated member of the Schengen Agreement, Iceland already implements a large part of the *acquis* in the area of justice, freedom and security, covered by chapter 24. In particular as regards external borders and visa policy. Iceland is also well advanced in the area

of migration and asylum. Iceland applies EU rules on the fight against terrorism and against drug trafficking but further efforts are said to be needed to ratify and implement relevant international instruments such as the Council of Europe Convention against trafficking in human beings (Iceland 2010 ... 2010: 32-34).

Through the EEA Iceland fully participates in the fields of science and research covered in chapter 25 and education and culture covered in chapter 26. Iceland is also mostly in line with the EU *acquis* in environmental policy covered in chapter 27, for example on air and water quality, noise, waste management, climate change and industrial pollution control. The ratification of key multilateral environmental agreements such as the Espoo and Aarhus Conventions is however pending and compliance with the nature protection *acquis*, in particular as regards protection of whales, seals and wild birds as well as conservation of natural habitats and of wild fauna and flora, remains to be achieved. In the field of consumers and health protection found in chapter 28 Iceland has already implemented a significant part of the *acquis* but some further efforts are however reported to be needed in the field of public health (Iceland 2010 ... 2010: 35-38).

The EEA does not cover external trade with third parties but Iceland's customs legislation is nonetheless to a large extent in line with the *acquis* in chapter 29. Further significant efforts are however said to be needed to meet EU rules on duty-free legislation. External relations are in chapter 30 where the Commission reports some progress as Iceland has started preparations for assessing its obligations in terms of the need to amend or renounce its international agreements. The report notes that measures are needed to assure that Iceland's Official Development Assistance does not decline further. Chapter 31 on foreign, security and defence policy is not covered by the EEA. The regular political dialogue between the EU and Iceland has however continued to cover foreign policy issues and Iceland is reported to already have mostly aligned itself with the EU's common foreign and security policy (CFSP). Iceland is reported to play an active part in regional organisations in northern Europe, for example through participation in international organisations, such as the UN, NATO, OECD, OSCE and the Council of Europe. It is reported to have actively participated and played an important role in the Arctic Council, the Conference of Parliamentarians of the Arctic Region, the Barents Euro-Arctic Council, the Northern Dimension, the Nordic Council of Ministers and the West Nordic Council (Iceland 2010 ... 2010: 38-40).

Financial control is covered in chapter 32. The Commission reports that a gap assessment needs to be carried out in the areas of financial management and control systems, internal audit and external audit to take into account internationally accepted standards. No significant divergences are however reported between the systems in Iceland and the EU when it comes to financial and budgetary provisions covered in chapter 33. Appropriate coordination structures and administrative strengthening are however reported to be needed for implementation of the rules on own resources (Iceland 2010 ... 2010: 40-41).

The Icelandic government also issued its general position at the Intergovernmental Conference in July 2010. The government claims that the special arrangements already recognized through the EEA are well founded and should stand scrutiny in the context of the accession negotiations. „This includes rules on investment, the import of live animals and aviation security, as well as rules on energy and the environment where our circumstances differ significantly from those of mainland Europe. Iceland’s geography and cultural traditions with respect to the sustainable harvesting of various animal species, including marine mammals and bird species, must also be taken into account.“ (General position ... 2010). In the statement Iceland also emphasises that ownership or exploitation of natural resources cannot be transferred beyond what is laid down in environmental rules. More specifically on fisheries the government states that „Icelandic control and sustainable utilisation of marine resources will have to be ensured.“ (General position ... 2010).

### The EU debate

Above Iceland’s integration with the EU’s legal environment through the EEA and what issues need to be addressed before it can join the EU has been identified but the debate on possible EU membership has however mainly revolved around Iceland’s sovereignty and independence as became evident in the parliamentary debate (See in Bergmann 2009a).

In the debate on the EU which rose in the beginning of the new millennium, the importance of sovereignty soon became to the forefront. The No-side put their main emphasis on Iceland’s national heritage and unique culture and argued that Icelanders should continue to develop a competitive society and strong economy on their own. They claimed that it would be a retrograde step of great consequence if Iceland were to lose its self-rule through membership of the EU. With membership of the EU, they argued, Iceland would be locked inside an unproductive trade block and trapped

in an undemocratic bureaucracy. Then prime minister, Davíð Oddsson (IP), described the EU as one of the most „undemocratic bureaucratic monstrosity man has ever created“ (Friðriksson 2002).

Study of the debate makes it clear that the No-side believed that the sovereignty argument and the discourse of the independence struggle could be quite useful. The leader of the Left Green Party (LGP), Steingrímur J. Sigfússon, put the sovereignty issue in the forefront. „For the first, membership would mean diminished independence and sovereignty, loss of distinctiveness“ (Sigfússon 2000). His colleague Ögmundur Jónasson said it was “undisputed that membership in the EU would undermine Iceland’s self rule“ (Jónasson 2000).

Debating EU membership in 2009, after the crash, Pétur Blöndal (IP) remembered Iceland’s 65 anniversary of independence: “We were the poorest nation in Europe after 600 years of cooperation with nation’s south in Europe as we would be joining now.” (Blöndal 2009). He said that after entering into the Old treaty in 1262 had Iceland’s misfortune and humiliation started, and only with independence had Iceland been able to go from being the poorest to amongst the richest in Europe. He concluded that after EU-membership Iceland would again become a “depopulated poor province in a huge European super-state.” His colleague Árni Johnsen said that entering into the EU would be “craziness which is far from the Icelandic root and Icelandic independence.” (Johnsen 2009). Their colleague Unnur Brá Konráðsdóttir said that EU-membership would entail “surrender of significant parts of Iceland’s sovereignty” and that she “didn’t want to park the young Icelandic national flag under a European flag.” (Konráðsdóttir 2009). She said that Icelanders should never forget that they are a unique nation, “tough and hard working and with a soul that could never be broken by foreigners.”

MP Gunnar Bragi Sveinsson (PP) asked if Icelanders were prepared to surrender their sovereignty as the people of Sweden had done by joining the EU (Sveinsson 2009). His colleague Höskuldur Þórhallsson said that Icelanders needed to understand that by joining the EU they were giving up part of their sovereignty which they had fought for “and makes the nation what she is today.” (Þórhallsson 2009)

MP Atli Gíslason (LGP) said that with the EU application Iceland was entering into a road that “threatens its independence and sovereignty.” (Gíslason 2009). His colleague Ásmundur Einar Daðason said that a

new sovereignty fight was now starting and said that Jón Sigurðsson, Iceland’s main independence hero, would turn in his grave if the EU application would go forward (Daðason 2009). Ögmundur Jónasson said that Icelanders had only fared well when they were independent. He faired that the will of the nation would diminish after EU membership and concluded that “he who is glad when beaten to obey becomes a slave.” (Jónasson 2009).

The Yes-side also used the independence discourse and many referred to Jón Sigurðsson, the hero of the independence struggle, to advance their argument. A few parliamentarians even tried to suggest membership of the EU as a way to protect and even strengthen Iceland’s sovereignty rather than a step away from independence. In arguing for EU membership Bryndís Hlöðversdóttir (SDA) described the current situation in the EEA as undemocratic. “We have no influence in shaping the acts that we are obligated to adopt on its [the EEA’s] ground and the formal veto right Althingi should have is not usable.” (Hlöðversdóttir 1992). In 2009 MP Skúli Helgason (SDA) said Iceland now had the choice “to be in conflict with the international society or seek cooperation with the aim of insuring our interests better” (Helgason 2009). His colleague Ólína Þorvarðardóttir said that Icelanders “should be unafraid to participate on the international level as an independent and sovereign nation.” (Þorvarðardóttir 2009).

Before analysing the sovereignty factor further it might be beneficial to map the Icelandic political parties according to their EU policies in the following table.

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**TABLE 2:** Political parties and their EU policy.

		<b>Pro EU</b>			
		SDA			
			PP		
<b>Left</b>	LGP				<b>Right</b>
				IP	
		<b>Anti EU</b>			

**The sovereignty factor**

The study shows that the sovereignty question has been an important factor in the debate on Europe in Iceland. In all three rounds, parliamentarians put a special emphasis on linking their arguments, for or against the further Europeanization of Iceland, with the importance of Iceland’s sovereignty, and all referred to the uniqueness of the Icelandic nation. Both camps, that is, those that argued for closer integration and those arguing against it, used the discourse developed in the independence struggle in their argumentation. The Yes-side not only tried to link membership in the EU with the emphasis in the independence struggle on modernity and economic progress but also claimed that with full EU membership Iceland could reclaim the sovereignty that was partly lost with the EEA-agreement. The sovereignty issue was more often used by the No-camp, but in the debate on full membership, the Yes-side made an effort to turn the argument around and use it for membership. Both camps knew that they would need to link their argument with the independence discourse.

By claiming that Iceland’s sovereignty had already been lost through the EEA and Schengen, the Yes-side strove to dismiss the sovereignty question from the debate. The No-side, on the other hand, maintained that the EEA was simply a classical international agreement while the EU was a supra-national organisation with much more transfer of sovereignty to Brussels than was the case in the EEA. Iceland should therefore not join the EU, as full membership follows unacceptable loss of sovereignty.

**The Fish factor**

Opposition to the EU’s Common Fisheries Policy (CFP) has indeed also been at the forefront of the debate on possible EU membership. The fisheries argument is, however, diminished by the fact that many newcomers to the EU have been able to negotiate significant opt-outs or special solutions in their accession agreements, similar to what could suit Icelandic interests in the area of fisheries (Adler-Nissen 2008).

At least it cannot be dismissed out of hand that Iceland might be able to negotiate an accession agreement that will guarantee full Icelandic control over the current Icelandic fishing waters. The struggle for control over fisheries within the 200-mile zone around Iceland can be seen as an integral part of the Icelandic independence struggle and is therefore part of the idea of the sovereign Icelandic nation. Fisheries are still a vital part of the Icelandic economy and control over the fishing zone is therefore seen by Icelanders

as crucial in keeping control over their own destiny. In the general position of the government issued in July 2010 at the Intergovernmental Conference in Brussels, marking the start of Iceland's membership negotiation, it is claimed that fisheries „are the life blood of the Icelandic economy.“ (General position ... 2010). Nearly half of Iceland's merchandise exports are accounted for by fish products. It's also pointed out in the statement that this is the first time the EU is engaged in negotiations with a nation whose prosperity rests so heavily on fisheries. „Income from fisheries accounts for 100 times more per person in Iceland than the EU average.“ (General position ... 2010).

This unique importance of the fishing industry in the Icelandic economy and society is therefore used as an argument for guaranteeing Icelandic control of the fisheries zone in accession negotiations. That could, for example, be done by defining the Icelandic fisheries area as a special management zone within the CFP but under full control by the Icelandic authorities. This would not be a permanent opt-out, as Denmark, for example, has in a few areas, but rather a special definition in a well-definable area, similar to the Arctic farming clause that Finland and Sweden were able to negotiate for their farmers north of 62° in their accession treaties.

The Icelandic government acknowledges the need for a Common Fisheries Policy (CFP) in Europe but points out how strikingly unique the features of the Icelandic exclusive economic zone are, which extends to enormous areas that cover 760,000 square kilometres. The situation in the North-West Atlantic Ocean is significantly different from the current EU fishing zone. Unlike in any EU member state the Icelandic exclusive fishing zone does not border the waters of EU states and the vast majority of Iceland's stocks are local. The Icelandic government points out that the CFP was „understandably not designed for Iceland's circumstances, much as the Common Agricultural Policy was not designed for the Arctic as acknowledged in previous accession treaties.“ (General position ... 2010). On these grounds the Icelandic government claims that its fish stock is not a common resource, any more than Finnish forests or British oil. The EU Common Fisheries Policy was aimed at controlling fishing of shared stocks in common waters and therefore it can be argued that it should not apply to Iceland. This argument could also find strength in the EU's principle of subsidiary.

It is therefore not unreasonable to think that it might be possible to find a suitable solution for the Icelandic

fisheries industry if Iceland negotiates membership of the EU, as many EU officials have recognised (See for example Arnórsson et al. 2003). Accordingly Michael Köhler, then deputy head of cabinet of Fisheries and Maritime Affairs Commissioner Joe Borg, for example said that the EU's rule for relative stability would ensure that Icelanders will on their own decide who would fish within their fishing zone if Iceland would join the EU (Köhler 2007). No definite answers will however be available on this question until an accession treaty has been negotiated.

### **Sovereignty/fisheries**

When debating Iceland's participation in the European integration process parliamentarians have mainly used two sets of arguments: economic effect for the fisheries industry on the one hand and how Europe fits with the idea of the Icelandic nation and Iceland's formal sovereignty on the other. In some cases we can also conclude, after studying the three main rounds of debate on Europe in the parliament, that the importance of keeping control over the fisheries resources around Iceland is, up to a point, also an integral part of the independence struggle. In the debate it became part of the ongoing independence struggle to keep European vessels out of Iceland's fishing zone.

As already mentioned, the No-side used the importance of sovereignty, as developed in the independence struggle, more directly in their discourse while the Yes-side rather tried to link their economic argument with that part of the sovereignty discourse that has to do with modernity and economic progress. In the EEA-round, for example, the Yes-side tried to set up their argument in such a way that free trade with Icelandic fish to the EU market became as an indirect continuation of the independence struggle. As the argument went, Icelanders should accept the EEA so as to secure economic sovereignty. The No-side also linked control of the fishing grounds directly with Iceland's sovereignty. We can therefore conclude that the fish factor, as central as it has been in the European debate in Iceland, is not only an economic matter but also an integral part of the discourse on Iceland's sovereignty as developed in the independence struggle. The oft-used argument that Iceland cannot join the EU because of its Common Fisheries Policy is therefore not simply an economic argument but a vital part of Iceland's independence. Complete control over the fishing zone becomes in that way a symbol of the free and independent Icelandic nation (Bergmann 2009a).

In the independence struggle in the nineteenth century the peasant became a symbol of the independent

Icelandic nation, but with the increasing importance of fisheries, the seaman gradually took over as the representative of the sovereign Icelandic nation state. Icelanders fought the British in the so-called Cod Wars to gain control over their fishing resource around the country and since independence the fish industry has been the most important sector of the economy and has surely been the foundation of Iceland's economic independence. The nation and the seaman are then intertwined in fisherman's folksongs that represent the patriotic Icelander. The fish in the sea and the fisherman are in this respect a symbol of the independent Icelandic nation.

### The lure of the euro

The debate on adopting the Euro sheds an interesting light on Iceland's position in Europe and its relationship with the European project. It can be claimed that in the Crash of 2008 a systemic failure within the EEA became evident. One of the needs of the EU for introducing a common currency was to limit the risk of operating an internal market with completely free flow of capital. The Euro was in effect an tool to underpin the financial system with a common defence mechanism found in the European Monetary Policy, for example with the European Central Bank which serves as a joint lender of last resort. After privatisation of the Icelandic banks in the early 2000s the financial industry grew to more than tenfold of Iceland's GDP (Financial accounts ... 2009). Iceland's accession into the internal market in 1994 had made this incredible growth possible, together with liberation policies and deregulation domestically. But when the international financial crisis hit in 2008 Iceland found itself left without the common defence mechanism of the EMU. The country's tiny Central Bank had only very limited currency reserve and was utterly unable to rescue the country's financial institutions, as was done in almost all of the neighbouring countries.

This systemic failure of the EEA – operating a small local currency on the wide open European common market – fuelled the debate on either unilaterally adopting the Euro or applying for full membership in the EU. The debate on adopting the Euro therefore also sheds an interesting light on the dilemma in Iceland of participating in the European integration process but without joining the EU. Regularly a discussion crops up that the Icelandic government should unilaterally, or with a bi-lateral agreement, adopt the Euro without membership of the EU (Bergmann & Sturluson, 2008). That would simply be a similar approach to the European project as in the EEA and Schengen. Pressure to adopt the Euro to replace the small and

volatile Icelandic krona had grown since the Icelandic economy ran into trouble in early 2006. According to neo-functional theories, the EU internal market created a new need for a common currency and that puts pressure on European leaders to act. This framework can be used to explain the increasing pressure in Iceland to adopt the common currency (See Bergmann & Sturluson 2008).

Instantly in the aftermath of the Crash, a massive blame game started throughout the society. The left flank in Icelandic politics blamed the government while the right wing, which remained in power throughout the boom years, blamed the Viking capitalist and the international society at large. Many also blamed the EEA agreement for opening Iceland up to the risks of the international financial system. The Pro-EU side also blamed the EEA, but on the opposite end – for falling short of providing the safety mechanism of full membership in the EU with access to the EMU and the European Central Bank in Frankfurt.

After Iceland joined the EEA, and became part of the EU internal market, the automatic spill over effect has created increased pressure on Iceland to fulfil its economic potential by adopting the common currency. This can be used to explain the pressure and the urgency evident in the domestic debate on adopting the euro. But to explain the reluctance to join in, we, as before, have to look to the sovereignty discourse and how membership in the European Union is seen to fit within the national myth created in the independence struggle.

### Conclusions

Only after the collapse of almost the entire financial system in autumn 2008 did the Icelandic government decide to seek EU-membership and submitted an application in July 2009. Europeanization of the Icelandic economy and society however started when entering into the EEA in 1994, weaving Iceland ever more closely into the European internal market. Despite the fact that Iceland was officially outside the European Union, it nonetheless continued, through its co-operation agreement, to participate actively in the European project and was, for example, a full participant in the EU internal market. Iceland already actively participates in 24 out of the 33 policy chapters covering the EU's legal base.

In fact, Iceland was in some ways more deeply involved in the European integration process than some of the EU's official members. To name a few examples,

Denmark has many opt-outs from the EU treaties that Iceland is subject to through the EEA. The EU's border regulation is also applied in Iceland through the Schengen agreement, while the UK and Ireland are exempted from that part of EU cooperation (Adler-Nissen 2008). As a result, one can claim that Iceland has, at least to a substantial degree, become a de-facto member of the EU. The agreement however falls short of providing access to the EU's decision making procedure as the EFTAs agreed to adapt to the EU's regulatory framework within the parameters of the agreement. The formal right to refuse new EU legislation has proved to be an unusable tool but Iceland has however on few occasions been able to negotiate opt-outs and derogations from European legislation.

Overall the EEA has worked well and has functioned in the way that it was meant to, but the cooperation has also opened up new areas which were not foreseen, for example in the field of the environment where the vast majority of all legislation set in Iceland now comes directly from Brussels. The same is true in the field of transport legislation. This is an example of the semi-automatic nature of the process that started in 1994, as can be defined by using the spillover concept described within neo-functional theories.

In the seventeen years since the agreement entered into force the institutional setup and policies of the EU has changed immensely. But even though the EEA agreement is dynamic in the sense that Iceland, Norway and Liechtenstein adopt new EU laws within the framework of the agreement it does not mirror the treaty changes within the EU. That has led to the widening gap between the development of the EU and the function of the EEA. To bridge this increasing gap the Icelandic government called for an update of the agreement but was met with opposition both from the EU and Norway. The failed strive to update the EEA indicates that the Icelandic government was more eager than their Norwegian counterparts to fine tune the EEA instrument as a viable option into the future. As described in this report Iceland has on several occasions felt undermined by Norway when negotiating against the EU. However, senior diplomats within the Icelandic foreign service feel that on balance the close cooperation with Norway within the EEA has worked well for both parties.

It is surely tempting to claim that Iceland had completely changed its European policy after the government submitted an EU application in the aftermath of the collapse of the economy. However, when studying the discourse on Europe in the wake of application we

see the same and even stronger hesitations to participate in the European integration process than before.

As argued in the report the previously-described special understanding of the Icelandic nation can be used to explain Iceland's hesitance in the European integration process. Analysis of the discourse of the three rounds of debate (EFTA-round, 1968-1969; EEA-round, 1989-1993; and EU-round, 2000-2010) shows clearly that the idea of the Icelandic nation and the importance of formal sovereignty have been central to the debate on Europe and suggest that the national factor influences the policies on Europe (Bergmann 2009a). In all three rounds the discourse of the independence struggle was clearly used by politicians of all ranks. In fact, the sovereignty question has been central in all discussions on Iceland and the outside world. The importance of the nation and its sovereignty came to the forefront in the debate on the EEA and continued through the round on the EU. After the collapse of the banks in autumn 2008 and leading up the EU-application in summer 2009 the debate was dominated by harsh nationalistic rhetoric.

The vision of the Icelandic nation and the importance of its sovereignty significantly affect the debate on Iceland's role and participation in the European project. The nationalistic emphasis developed in the independence struggle still influences discourse in Icelandic politics, especially when foreign policy and Iceland's place in the world are debated. This special, holistic and conservative understanding of the Icelandic nation and its sovereignty makes it more difficult for politicians to argue for membership of a supra-national organisation such as the EU. The idea of European integration falls in a way outside the framework of the idea of the sovereign and independent Icelandic nation-state. As discussed parliamentarians have put more emphasis on arguments based on the nation and its sovereignty than on pure economic interests. By referring to the independence struggle in their discourse, the No side has hinted that increased participation in European integration can in a way threaten the idea of the sovereign Icelandic nation.

The political discourse of the independence struggle has, however, not completely hindered Iceland's involvement in the European project. On the contrary, Iceland is an active participant in European co-operation through EFTA, the EEA and Schengen. Even though Iceland is not formally part of the EU institutions, it is already deeply involved in the European project. Here we find an interesting rift between the real and practical participation on the one hand and

the previously-described ideas of the free and sovereign Icelandic nation on the other. From this situation we can develop an explanation.

Like all other open democratic states in Europe, Iceland feels the same economic need and pressure to participate in the European project as described by neo-functionalism. Accordingly, Iceland has agreed to transfer decision-making in significant fields of the economy to the European level through the EEA and Schengen. We have also seen in the parliamentary discussion how the neo-functionalist spillover effect puts increasing pressure on Iceland for further participation. At the same time, however, other forces are pulling in the opposite direction. The national political discourse, so deeply rooted in the independence struggle, has had the effect that Icelanders have been hesitant to agree to the formal transfer of sovereignty which so clearly follows full membership of the European Union. This dilemma can be used to explain why Iceland has been willing to participate actively in the European project through the EEA and Schengen but that the traditional myth of the Icelandic nation and its sovereignty makes it difficult for Icelandic politicians to argue for full and formal membership in the EU.

The debate on adopting the Euro is a good example of this dilemma. This idea fits completely, however, with the current relationship Iceland has with the European integration process, namely participating actively but not being a formal part of the EU institutions with the apparent loss of formal sovereignty which that entails

In addition, however, full membership in the EU would also mean that Iceland would have to pool its formal sovereignty with other member states through real transfer of decision-making. But even though it is agreed that with full membership Iceland would see increased transfer of formal sovereignty, we can also counter-argue and claim that in a political and real sense of the sovereignty concept full membership might not entail more transfer of sovereignty than currently is the case through the EEA and Schengen. It is clear that with EU membership Iceland would have to adopt EU laws in more fields than it currently does, but, on the other hand, Iceland would then gain increased access to the decision-making in the fields already covered through the EEA and Schengen. How the sovereignty equation is measured on these scales is, however, more difficult to calculate.

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# Europautredningen

## Utvalget for utredning av Norges avtaler med EU

Den 7. januar 2010 besluttet Regjeringen å nedsette et forskningsbasert, bredt sammensatt offentlig utvalg som skal foreta en grundig og bredest mulig gjennomgang av EØS-avtalen og konsekvensene av avtalen på alle samfunnsområder.

### Utvalgets mandat er som følger:

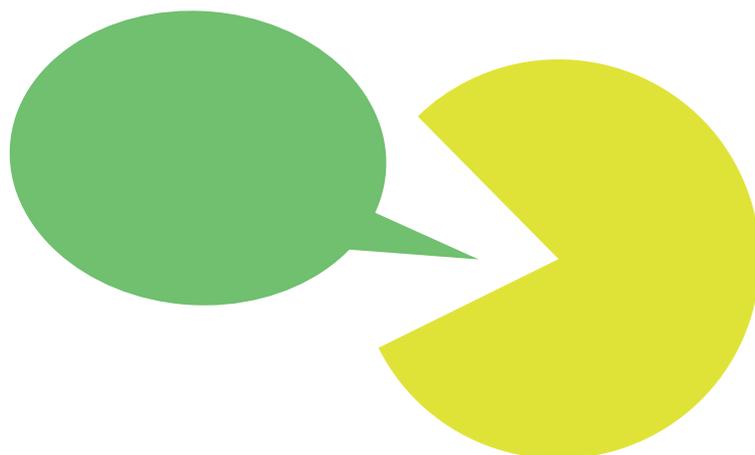
«Utvalget skal foreta en bred og grundig vurdering av politiske, rettslige, forvaltningsmessige, økonomiske og andre samfunnsmessige konsekvenser (herunder velferds- og distriktspolitiske) av EØS-avtalen.

Det skal legges særlig vekt på å vurdere betydningen av utviklingen i EU og EØS etter inngåelsen av EØS-avtalen for avtalens omfang- og virkemåte. Eksempler på områder det kan være naturlig å utrede er bl.a. distriktspolitikk, demokrati på alle styringsnivå, nærings- og arbeidsliv samt forvaltning av naturressurser og miljø. Utvalgets arbeid skal inkludere en gjennomgang av erfaringene med Schengen-avtalen og øvrige samarbeidsordninger med EU.

Utvalget skal ha vekt på beskrivelser og vurderinger av EØS-avtalens og øvrige avtaler/samarbeidsordningers betydning og virkemåte. Arbeidet i organene som ble opprettet for å overvåke EØS-avtalens funksjon, vurderes også.»

### Utvalgsmedlemmer:

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