

The Faroes and the EU

-possibilities and challenges in a future relationship

Tórshavn 2010

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A Report from the Committee, which has examined the prerequisites for the most beneficial relationship between the Faroes and the EU.

Handed over to the Minister of Foreign Affairs in May
2010.

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Handed over to the Minister of Foreign Affairs in Mai 2010

The Committee: Hákun Jógvanson Djurhuus, chairman, Dr Achim Emde, Georgios Kritikos, Per Fabricius Andersen, Marita Rasmussen, Atli Suni Leo, Sonja J. Jogvansdóttir, Dr. Hanna í Horni, Durita Lamhauge Jóansdóttir og Páll Holm Johannesen.

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Preface

In September 2008 a new Government coalition was formed in the Faroes consisting of the Unionist Party (liberals), the Peoples Party (conservatives) and the Social Democrats.

In its coalition agreement, the Faroese Government states that one of its political objectives is to review the relations between the Faroes and the EU, with the general aim of obtaining closer cooperation with the EU.

In order to examine the possible options in the broadest sense for closer relations between the Faroes and the EU, the Government decided to appoint an expert committee to analyse the various options and obstacles in this regard.

The report will be the fourth of its kind examining the relationship between the Faroes and the EU. The conclusions from the previous three reports can be found in Annex 5.

The task of the expert committee, hereafter referred to as ‘the Committee’, is to:

(...) examine the prerequisites for the most beneficial relationship between the Faroes and the EU, i.e. a renewed cooperation comprising amongst others the four freedoms, as well as research, education, culture etc.

With the above mentioned in mind, the expert committee is to examine the pros and cons both of the Faroes remaining outside the EU, and of joining the EU. In addition, the expert committee shall describe the differences between a) an extension of the Danish EU membership to cover the Faroes and b) the Faroes obtaining an independent EU membership; the expert committee shall examine the prerequisites for both options.

The Committee chose to look at four approaches, which have been put forward in the Faroese political debate in recent years:

1) Expanding the current framework of cooperation, 2) the Faroes as part of the Danish EU membership, 3) independent Faroese EU membership, and 4) EEA membership. In examining these various approaches, three factors fundamental to the Faroese EU debate were taken into consideration. These

are the Faroes' status as a self-governing territory, EU's Common Fisheries Policy (CFP) and the small size of the Faroes.

At the first meeting held on 20 April 2009, the Committee discussed the task and agreed on a work plan. The Committee has had six meetings, all held in the Faroes.

Furthermore, in order to get a better understanding of the needs of Faroese society for closer relations with the EU, members of the Committee have had consultative meetings with representatives from different sectors of Faroese industry and the labour market on the matter. Also, during his visit to Andorra, Liechtenstein and San Marino in August 2009, the Faroese Minister of Foreign Affairs sought the views of his counterparts on their respective countries' relations with the EU. The information gathered through these meetings has also been used as source material for the analysis in this report.

The Committee was chaired by Hákun Jógvanson Djurhuus, Director of the Department of Trade of the Faroese Ministry of Foreign Affairs. The other members of the Committee were Dr Achim Emde, German Ministry of Finance and former employee of the EU Commission, Georgios Kritikos, Administrator in the Council of the EU, Per Fabricius Andersen, Senior Adviser in the Danish Ministry of Foreign Affairs and former Counsellor at the Danish Permanent Representation to the EU, Marita Rasmussen, Director of the Faroese House of Industry, Atli Suni Leo, Senior Adviser in the Faroese Ministry of Finance, and Sonja J. Jógvansdóttir, Representative of the Faroese Labour market. The members of the secretariat of the Committee were Dr Hanna í Horni, Durita Lamhauge Jóansdóttir and Páll Holm Johannesen, all advisers in the Faroese Ministry of Foreign Affairs.

The participant in the Committee from the Danish Ministry of Foreign Affairs has drawn attention to the fact that the constitutional and legal relations between Denmark and the Faroes fall within the competence of the Ministry of Justice and the Danish Prime Minister's Office in Copenhagen.

Consequently, any reference in this report to the interpretations of the legal or political possibilities pertaining to the constitutional relation between

Denmark and the Faroes, as well as considerations and evaluations of future political possibilities in this regard, has been decided upon without participation of the member in the Committee from the Danish Ministry of Foreign Affairs and is therefore without prejudice to the official legal position of the competent Danish authority in the matter.

The structure of the report is as follows:

The report starts with the conclusion on the analysis of the different approaches dealt with by the Committee. Chapter 2 describes the historical background for the relations between the Faroes and the EU. The current political ambitions of the Faroes concerning closer relations with the EU are also described. In chapters 3 to 6 the four different approaches the Committee has chosen to focus on are analysed. Annexes 1 to 6¹ analyse and describe the opinion of the Danish Government regarding the legal possibility of the Faroes to participate in agreements with the EU within areas of shared competence, the position of the industry and the labour market, microstates and autonomous regions in Europe and previous committee reports.

In the report the Committee has examined the possibilities and challenges in a future relationship with the EU. Once handed over to the Faroese Government it is up to the political system in the Faroes to decide on how to proceed.

The Committee hereby presents the report to the Minister of Foreign Affairs of the Faroes².

Tórshavn, May 2010

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1) The views expressed in the annexes are those of the author and may not in any circumstances be regarded as stating an official position of the Committee

2) The original version of the report is the English version.

Conclusion

The Committee has examined the prerequisites for the most beneficial relationship between the Faroes and the EU: a renewed cooperation including the free movement of goods, services, capital and persons, as well as research, education and culture. This has also involved an examination of the pros and cons of remaining outside the EU or of joining the EU.

The Committee has chosen to interpret ‘most beneficial’ as being a solution where, taking the financial, administrative, political and legal challenges into consideration, the different needs of the Faroese society vis-à-vis the EU are met at the lowest economic and political cost.

When Denmark became a member of the EU in 1973, the Faroes chose to remain outside. While being part of an EU Member State, the Faroes are treated as a third country by the EU. This makes the Faroes’ relationship with the EU unique when compared to other self-governing territories belonging to an EU Member State including Greenland, which is treated as an OCT (Overseas Countries and Territories).

Faroe-EU relations are complicated essentially due to two reasons that have formed the decision of staying outside the Union: 1) their economy is not very diversified, since the export is heavily dependent on fisheries and 2) the Faroes are a self-governing territory within the Kingdom of Denmark. In this regard, the political parties in the Faroes disagree on the future relationship between the Faroes and Denmark. The disputed question is if the Faroes should remain a part of the Danish realm or if they eventually should secede from Denmark. It has been important for the Committee to respect the different political ambitions and priorities in this area. From an economic point of view there seems to be general political concern about the EU Common Fisheries Policy (CFP), which would require the Faroes to relinquish exclusive competence over their fundamental economic source of income in favour of an uncertain measure of influence within the EU. The concern about the CFP is shared by the House of Industry and the Coalition of Trade Unions³. Also, the House of Industry and the Coalition of Trade Unions, the Ship-owners’ Association and the Farmers’ Association⁴ state that most of their needs are met within the current cooperation with the EU.

3) House of Industry, Vinnuhúsið, is an umbrella organisation for Faroese employers. Coalition of Trade Unions, Samtak, is an umbrella organisation comprising trade unions and the fishermen’s organisation, representing 8.000 members.

4) Meetings held with the Ship-owners’ Association on 26 April 2010 and the Farmers’ Association on 12 March 2010

Recognising the importance of a closer cooperation with the EU, considering the small size of the Faroes, the legal and political preconditions, the ambitions of the Faroese Government, the needs of the industry, the labour market and the society as a whole, the Committee has reached the following conclusions:

The political preconditions for the Faroes joining the EU as part of the Danish EU membership do not appear to be present, although this approach seems to be the least complicated from a legal point of view. A membership through Denmark would mean that Danish EU membership would be extended territorially to cover the Faroes. Hence, the Faroes would obtain full European integration and would have to follow all the obligations that this entails. Such a solution would require full political support from Denmark, as well as an agreement between the Faroes and Denmark on the modalities for an EU membership extended to encompass the Faroes. The agreement would need to take into consideration a possible financial contribution from the Faroes to the EU budget, the administrative costs and workload of implementing the *acquis communautaire* into Faroese legislation and possible Faroese influence on matters concerning the Faroes. It is also very likely that, as part of the Danish EU membership, Faroese traditions with regard to whaling, bird hunting and sheep farming and slaughtering would face restrictions from the EU. The inclusion of the Faroes in the Danish EU membership would also require political support from the EU Member States. Denmark would be solely responsible *vis-à-vis* the EU. This approach would require a reassessment of the political priorities in the Faroes since it touches upon two of the contentious issues in Faroese-EU relations, namely the relationship with Denmark and the CFP.

The preconditions for an independent EU membership for the Faroes are not currently present. If the Faroes were a state aiming for EU membership this would require full political support from the EU Member States. However, uncertainties remain as to the political position of the EU with respect to embracing the micro states in Europe as EU members. A Faroese EU membership would give access to full European integration and the Faroes would have to follow all the obligations that this entails. This means that there would have to be a reassessment of the political concerns about the CFP. Furthermore, the size of the Faroes and the limited administrative and

financial capacity needs to be taken into consideration. Also, there is the possibility that an EU membership would put restrictions on Faroese traditions with regard to whaling, bird hunting and sheep farming and slaughtering. However, with independent EU membership the likelihood of visibility and direct influence in the EU would improve compared to joining the EU as part of the Danish membership.

The legal preconditions for an EEA membership are not present. In order to become a party to the EEA Agreement a State has to be either a member of the EFTA or the EU. The Faroes are not a member of EFTA, which is only open to states. Also, Denmark is already a party to the EEA agreement. Therefore, according to the Foreign Policy Powers Act, a Faroese EEA membership is not possible. An EEA membership would, however give the Faroes access to the internal market and cooperation within education, research and culture. The Faroes would have no influence on decision-making and only indirect influence on decision-shaping, while administrative and financial costs would be high.

The legal preconditions for a customs union are present in principle. A customs union with the EU would give free access for Faroese goods to the European market. In addition, Faroese interests in avoiding anti-dumping charges would be accommodated. The question remains if it would be desirable for the EU to conclude a customs union covering fish products with the Faroes, since the fisheries sector is regarded by the EU as very sensitive. Whether the Faroes would be able to participate in a Customs Union Agreement would depend inter alia on the legal basis of the agreement.

The political and legal preconditions exist for either continuing to expand the current framework of cooperation on a case-by-case basis or by creating a new bilateral agreement. Regardless of which of these two options is chosen, support from Denmark will be essential. Whether there is political interest in the EU to pursue such options is, however, still an open question, although none of these have yet been rejected. The Committee finds that this approach respects the different political ambitions and priorities of the Faroese Government and Parliament and accommodates most of the needs of the industry and labour market as well.

It remains to be seen in practice, how this approach could cover education, culture and the free movement of persons, since these areas are categorised as shared competences. According to the Foreign Policy Powers Act, the Faroese Government and the EU can, in principle, only conclude agreements in areas for which the Faroes have assumed competence from Denmark and in which the EU has exclusive competence. The Lisbon Treaty explicitly brings the entire field of trade policy under the exclusive competence of the Union. From a legal point of view, the parties could either expand the current framework of cooperation to cover trade in services and other areas under exclusive competence such as capital, or conclude a new agreement, where trade in services under exclusive competence could be included. However, to what extent the Lisbon Treaty in practice will affect the use of mixed agreements in the field of trade remains to be seen.

Political priorities will have to be made concerning financial and administrative resources. Using the same procedure that has been applied hitherto in the relations between the Faroes and the EU offers the possibility of gradually adjusting the costs, and areas of interest can be introduced step-by-step over a longer period, relative to the financial capacity of the Faroes. The costs will consist of expenses related to the transfer of political competence and responsibility from the Danish authorities to the Faroese authorities, as well as the direct costs of participation in the various programmes. Indirect costs, consisting of higher administrative costs in the Faroes and administrative and representative participation in various programmes, will vary according to the ambitions of the Faroes.

Executive summary

As has been shown in the conclusion, there are no easy solutions with regard to a closer cooperation between the Faroes and the EU. Decisive issues such as political priorities, legal aspects, financial and administrative challenges and core issues such as the constitutional status of the Faroes within the Kingdom of Denmark and the EU CFP need to be taken into consideration. Depending on those and the political priorities and will of all the parties involved, some of the four approaches appear more realistic than others.

In the table below, the analysis of the four approaches is summarised with the purpose to give the reader a brief overview of the pros and cons of each approach. This table is a simplification of the analyses, observations and arguments in the whole report, meaning that the pros and cons should be read with the whole report in mind. It is important for the Committee to make it clear that the content of the table is not intended to stand alone as complete arguments.

<p>Approach</p>	<p><u>Expanding the current framework of cooperation</u></p>	<p><u>Independent Faroese EU membership</u></p>	<p><u>Faroese EEA membership</u></p>
<p>Pros</p> <p>Does not require a stance on altering the constitutional situation</p> <p>Does not require any change with regard to the Common Fisheries Policy</p> <p>Improvements on market access might be attainable depending on the scope of the agreement/agreements.</p> <p>Access to programmes and funds via bilateral agreements</p> <p>Compared to full membership, this model is less costly, both in direct costs and administratively.</p>	<p>The Faroes as part of the Danish EU membership</p> <p>Full European integration possible in a relatively short timeline.</p> <p>Market access and full-fledged participation in the internal market and the four freedoms.</p> <p>Full access to programmes and funds.</p> <p>Anti-dumping and safeguard measures would not apply against the Faroes</p> <p>Faroese participation in the Danish EU-policy making process</p>	<p>Full European integration possible in a relatively short timeline.</p> <p>Market access and full-fledged participation in the internal market and four freedoms.</p> <p>Full access to programmes and funds.</p> <p>Anti-dumping and safeguard measures would not apply against the Faroes</p> <p>Direct influence on the decision-making process inside the EU, at least in principle.</p>	<p>Increased European integration.</p> <p>Market access and full fledged participation in the internal market and the four freedoms.</p> <p>Access to programmes and funds.</p> <p>Does not involve the CFP</p> <p>Opt outs may be possible</p>
<p>Cons</p> <p>Under the Foreign Policy Powers Act the Faroes cannot conclude agreements with EU in areas with so-called shared competences on EU side (e.g. education)</p> <p>Anti-dumping charges and safeguard measures cannot be automatically avoided.</p> <p>Process sensitive to internal political conditions in the Faroes and in the EU.</p>	<p>Constitutional situation - the Parliamentary Act on Home Rule does not allow transfer of legislative powers to other institutions (e.g. the EU) than the Faroese Parliament.</p> <p>Limited political support/no consensus</p> <p>EU's fisheries policy (CFP)</p> <p>Administrative and financial challenges.</p> <p>Limited chance for Faroese influence on EU policies.</p> <p>EU membership might restrict traditional Faroese hunting (whales & birds) and sheep slaughtering.</p>	<p>Constitutional alterations resulting in the Faroes becoming a State.</p> <p>CFP.</p> <p>Administrative and financial challenges</p> <p>Limited political support/no consensus</p> <p>Small nations' full membership maybe not desired by the EU.</p> <p>EU membership might restrict traditional Faroese hunting (whales & birds) and sheep slaughtering.</p>	<p>Only indirect influence on policy shaping compared to approaches 2 and 3</p> <p>Conventional challenges – EEA Agreement is only open for States.</p> <p>Administrative and financial challenges.</p> <p>Restrains under the Danish Constitutional Act.</p> <p>Future of the EEA is uncertain.</p>

Terms and abbreviations

Acquis Communautaire: The total body of EU law accumulated thus far.

Bilateral Agreement: Agreement between two parties.

Blue Report: Committee report from 1995 examining how the Faroes could achieve the best possible access to the EU common market.

CFP: The EU Common Fisheries Policy.

Copenhagen Criteria: Criteria from 1993 that define whether a country is eligible to join the European Union or not.

Customs Union: Type of trade block which combines a free trade area with a common external tariff.

DG-Relex: Directorate-General for External Relations (European Commission).

ECAA: European Common Aviation Area.

EC: European Community.

EEC: European Economic Community.

EEA: European Economic Area.

EFTA: European Free Trade Association.

EU: European Union.

EEZ: Exclusive Economic Zone.

Exclusive EC Competence: Areas for which the Member States have transferred their competence to the EU.

FAO: Food and Agricultural Organisation.

Fisheries Agreement: Since 1977 the Faroes and the EU have had a bilateral fisheries agreement..

Free Trade Area: Area with duty free trade between the participating states, which may retain individual external tariffs towards third countries.

FTA: Free Trade Agreement: Since 1991 the Faroes and the EU have had a Free Trade Agreement. The FTA was last amended in 2008.

FP7: EU's 7th framework programme for research and technological development.

GATT: General Agreement on Tariffs and Trade.

Harmonised System: An internationally standardized system of names and numbers for classifying traded products developed and maintained by the

World Customs Organization (WCO) (formerly the Customs Cooperation Council).

Home Rule Act: Act of 1948 which defines the relations between the Faroes and Denmark by dividing the administrative and legislative areas into two groups: Joint affairs under Danish State authority and special Faroese affairs under Faroese Home Rule administration and legislation.

ICES: International Council for the Exploration of the Seas.

The Foreign Policy Powers Act: The Act on the concluding of agreements under International Law by the Government of the Faroes of 2005.

IMO: International Maritime Organisation.

FO-EU Joint Committee: A forum for the Faroes and the EU to meet annually administrating the functioning of the FTA.

Lisbon Treaty: The present EU treaty which came into force on 1 December 2009

Shared Competence: Areas where the competence is shared between the EU and its Member States.

NAFO: Northwest Atlantic Fisheries Organization.

NAMMCO: North Atlantic Marine Mammal Commission.

NASCO: North Atlantic Salmon Conservation Organisation.

NATO: North Atlantic Treaty Organization.

NEAFC: North East Atlantic Fisheries Commission.

Negative list: A list of those items, entities, products, etc. to which the agreement will not apply, the commitment being to apply the agreement to everything else.

Pan-Euro-Med Cumulation: Diagonal cumulation zone between 42 countries: EU (27) Morocco, Algeria, Tunisia, Egypt, Israel, Palestinian Territories, Jordan, Lebanon, Syria, EFTA (4), Turkey and the Faroes.

Pink Report: Committee report from 1991 examining the possibilities for a free trade agreement between the Faroes and the EC.

Positive list: A list of those items, entities, products, etc. to which the agreement applies.

Red Report: Committee report from 1998 examining the possibilities for the Faroes in negotiations with the EU on a new expanded FTA.

Schengen/Dublin Cooperation: While the Schengen agreement is about strong outer-border control and free movement of persons within the inner borders of the EU, the Dublin cooperation concerns Asylum policies.

VAT: Value Added Tax.

Veterinary Protocol: Protocol entered into force in 2001 entailing that the Faroes follow the same veterinary regulations that apply to the EU Member States. Also, with this agreement the Faroes are within the external border of the EU in the veterinary area in relation to third countries.

WTO: World Trade Organisation.

1. Introduction

The Faroes are a European nation based on European heritage and values and highly dependent on cooperation with the wider Europe. Approximately 90% of Faroese foreign trade is with Europe, of which around 65% consists of exports to the EU market. Although recognizing the importance of European integration the Faroes have chosen to stay outside the EU.

Compared to other countries that have sought EU membership, neither internal nor external circumstances have forced the Faroes to change their position towards EU membership. The fall of communism prompted several Eastern European countries to seek EU membership in order to achieve economic and political stability resulting in the largest enlargement of the EU in 2004. In the wake of the global economic crisis in 2008, a strong desire to examine the possibility for an EU membership has arisen in Iceland. In the case of the Faroes, it was rather an “external shock” in the form of the imminent adoption of the Law of the Sea and the extension of fisheries zones that affirmed the decision of the Faroes to stay outside the EC when Denmark entered in 1973.

Being a small nation, dependent on the sea, fish and fish products constitute 95% of the total export value. While traditional fisheries previously accounted for the majority of this percentage, aquaculture has become an important and increasing part of total Faroese fish production. Were the Faroes to enter the EU, it would have a decisive influence on their ability to regulate their fundamental economic resource since the CFP is one of the most integrated policy areas within the EU.

Another issue, which needs to be taken into consideration, is the political question of independence, which in many ways is inseparable from the general aim of obtaining closer cooperation with the EU.

The Faroes appreciate their special relationship with the EU and consider it important to find solutions enabling the Faroes to participate in the continuous European integration. Hopefully, this report will give the Government of the Faroes and the Faroese society in general a clear picture of the possible options, in the broadest sense, for closer relations between the Faroes and the EU.

2. The Faroes and the EU

It is now 36 years since the Faroese Parliament agreed that the Faroes should not join the European Economic Community (EEC) along with Denmark. On 22 January 1974, the Faroese Government presented a proposal for the Faroes to inform the Danish Government that the Faroes did not wish to follow Denmark and become part of the EEC. Instead, the Faroese Government would commence negotiations with Danish authorities and the EEC about Faroese relations with the EEC. The proposal was passed unanimously in the Faroese Parliament.

Two issues in particular weighed heavily in the Faroese EEC debate in the beginning of the 1970s. Firstly, there was great concern with regard to the CFP. If the Faroes were to become a part of the CFP, it was feared that large European vessels would empty the Faroese fishing grounds and thereby jeopardise the viability of those regions of the Faroes, which were dependent upon fishing in local waters. Faroese opposition to EEC membership grew stronger, when the Fisheries Zones of the Faroes as well as of the EEC Member States were extended to 200 nautical miles. in 1977, and the EEC fisheries policy in consequence thereof was further centralised⁵. This opposition was due to the fact that the loss of fishing grounds in the waters of third countries made the Faroese fishing fleet more dependent upon the resources within the Faroese zone, making the Faroes even more reluctant to share these with the large fishing fleets of Europe.

Secondly, in addition to the possible economic consequences if the EEC was to manage the Faroese fishing grounds, the potential political consequences of an EEC membership were also debated. Having struggled for increased independence from Denmark, Faroese politicians were not keen to hand over influence to the EEC. The independence movement focussed on the importance for the Faroes, with so few inhabitants, to safeguard their integrity and identity as a nation and culture in the face of dominant external influences. It was also argued that there would be administrative difficulties associated with a Faroese EEC membership. The view was that the Faroese administration would have difficulties finding the capacity to deal with all the EEC legislation which would have to be implemented in the Faroes as a consequence of Faroese EEC membership.

5) Baldacchino & Milne, Godfrey & David. *Lessons from the Political Economy of Small islands*, MacMillan Press Ltd, 2000, pp. 127-128

Faroese nation building

In the late 19th century, the Faroese nationalist movement united the Faroese people around a cultural identity expressed in language, literature and culture. However, the movement disagreed about how radical the political objectives should be with regard to the relationship with Denmark. The national movement regarded the Faroes as a nation and the people did not think of themselves as Danes. Political divisions arose about the long-term consequences of this national recognition⁶. The result was that the movement split into two opposing political factions. A conservative or moderate wing, the Unionist Party, was formed in 1906, and a radical wing, the Independence Party, was formally formed in 1909. These two opposites formed the dividing line for subsequent political parties. From having been a primarily cultural movement that in many ways united the people around a national cultural identity, this political division gave the movement a political character focusing on how close the Faroes should be to Denmark⁷.

During the Second World War, the Faroes were occupied by Britain and isolated from Denmark, which was occupied by Germany. In the war period, the Faroese were almost entirely self-governed. When the war ended, it was difficult for many of the political parties to return to the former status as a Danish county. The Faroes negotiated with Denmark on a new form of arrangement, but the Faroese political parties could not agree on a common proposal. In 1946, this culminated in a referendum in the Faroes, resulting in a narrow majority for secession from Denmark.

Confusion arose over the outcome of the referendum. Consequently, the Danish King dissolved the Faroese Parliament and called for a new election pursuant to applicable legislation. The result of the election was that the parties that had been opposed to secession gained a majority in the Faroese Parliament. Again, negotiations took place with the Danish government and the result was a disputed Home Rule Act from 1948⁸. The Republican Party was formed as a protest party against the adoption of the Home Rule Act. The aim of the Republican Party is Faroese sovereignty.

The fact that the national movement became political and split into two political opposites is the reason for the current political party division. It is important to understand that this historical division also affects the current

6) Debes H. J. "Omkring formationen af en nation", Fróðskaparrit, 41. bók, Føroya Fróðskaparfelag, Tórshavn, 1993, p. 35.

7) Sølvará, H. A. Løgtingið. Bind I, Tórshavn, 2002, p. 151

8) Sølvará, 2002, pp. 271. Mørkøre J. "The Faroese Home Rule Model – Theory and Reality" in Lyck ed.: Constitutional and Economic Space of the Small Nordic Jurisdiction, 1997, p.170

interests and concerns of the political parties with regard to the Faroes' relationship to the EU.

The Faroese people have for more than a century been split on the issue of forming a state of their own, and a considerable part of the Faroese population still feels that they have unresolved national issues within the current constitutional framework with Denmark. As such, Faroese nationalism is a more active reality and it plays a more explicit role than in nations, which precisely through nationalism have gained independence⁹.

The formal relationship between the Faroes and the EU today

The Faroes are not covered by the provisions of the EU Treaty. The formal relationship between the Faroes and the EU is based on two bilateral agreements; a Free Trade Agreement¹⁰ and a Fisheries Agreement¹¹.

The first Free Trade Agreement (FTA) between the Faroes and the European Community (EC) was signed on 2 December 1991. Prior to this first formal FTA, trade between the Faroes and the EEC was governed by two interim unilateral arrangements from 1974. The arrangement for tariff treatment of Faroese exports entering into the EEC, in the shape of a Council Regulation, recognised a continuation of the tradition where Faroese goods entered Denmark free of duty, on the condition that they were not re-exported to other EU countries. The Faroes had been part of the membership of Denmark in the European Free Trade Association (EFTA) together with i.a. the UK and retained their duty-free status in the UK for certain fish products, which had been exported free of duty before 1973. According to the interim FTA from 1974, a narrow selection of fish products was to receive preferential duty treatment in the EEC at large. In most of these cases the tariff was reduced by instalments to 20% of the common tariff; in some cases, however, such as salted cod, the duty was set at zero. On industrial goods (HS 25 – 99) the duty was eventually reduced to zero. Apart from some species of minor importance, there was full duty on all fresh, frozen or smoked and salted fish of species other than cod.

From 1991, the FTA abolished the special treatment for Faroese goods entering Denmark. The duty-free trade in industrial goods (HS 25 – 99) continued. The scope of fish products that were allowed to enter the EU free of duty

9) Debes, H.J." Identitetserkendelse og nationalisme i en rigspolitisk periferi. I nordatlantiske foredrag." Seminar om nordatlantisk kulturforskning i Nordens Hus på Færøerne 27-30. august 1990. Nordurlandahúsið í Føroyum, Tórshavn. 1991, p. 86. See also Andreassen, Anja. Sambandsflokkurin í 100 ár – tættir úr søgu Sambandsflokksins.Sambandsflokkurin, Tórshavn, 2006

10) OJ L 053, 22.02.1997, p. 0002-0135

11) OJ L 371, 31.12.1991, p. 0002-0120

was increased. In short, all fish products, which hitherto had been exported to the EU, including Denmark, obtained duty-free access. These products were listed in a ‘positive list’¹². Moreover, the duty free access was in a number of areas restricted by tariff quotas (where the common tariff would be reintroduced when the quota was reached), and tariff ceilings (where the common tariff could be reintroduced, when the ceiling was reached). Other fish products could still be made subject to “statistical surveillance”. However, none of the tariff ceilings ever led to the reintroduction of a tariff, while some of the tariff quotas were reached in the years after 1992. The ‘positive list’ entailed a conservation of historic trade patterns. Flexibility for new products was supposed to be secured by several development clauses. However, in practice, it has proved to be a very slow and difficult process to add new items to the ‘positive list’, or to increase existing tariff quotas in keeping with supply changes. The Faroes have proposed changing the ‘positive list’ to a ‘negative list’¹³.

The functioning and development of the FTA is monitored by a Joint Committee, which meets once a year to discuss the functioning of the agreement, and other related issues. Since the first formal FTA between the Faroes and the EC was signed, trade in fish products between the parties has increased, both due to increased duty-free access and due to relative stagnation of demand for Faroese fish products in other markets.

The current FTA was concluded on 6 December 1996 in Brussels and entered into force on 1 January 1997. The FTA was last amended on 5 November 2008. The FTA from 1996 is generally considered to have improved the conditions for Faroese trade with the EU. Following negotiations with the EU in 1998, several changes in trade relations between the Faroes and EU came about, which resulted in what today is virtually free trade for the Faroes in almost all of the products the FTA covers. Consequently, Faroese fish exporters are able to export goods¹⁴ covered by the agreement largely duty-free to the EU market. The agreement is, however, more restrictive with regard to processed and conserved fish (HS Chapter 16).

A Veterinary Protocol¹⁵ was concluded in 2000 and entered into force in 2001. With the Veterinary Protocol the Faroes follow the same veterinary regulations for production and trade in animal and fish products that apply

12) Positive list: goods that are explicitly mentioned as being under preferential duty.

13) A list of those items, entities, products, etc. to which the agreement will not apply, the commitment being to apply the agreement to everything else

14) Goods according to Chapter III, i.e. fish, live, fresh, frozen, filleted, salted, smoked, and shrimp.

15) OJ L 46, 16.2.2001, p.24

to the EU Member States. The Veterinary Protocol makes it easier for the Faroes to import animal products from and export fish and fish products to the EU. Also, with this agreement the Faroes are within the external border of the EU in the veterinary area in relation to third countries.

In December 2005 the Faroes became party to the Pan-Euro-Med System of Cumulation¹⁶. In short, this means that the Faroes can cumulate the origin of goods with the EU and the EFTA Member States, with which the Faroes also have trade agreements, as well as the other members of the Pan-Euro-Med, with which the Faroes have FTAs.

The Fisheries Agreement with the EEC was signed in 1977 and provisionally used until it entered into force in 1981. The Fisheries Agreement is a framework agreement stipulating the parameters for the annual fisheries consultations between the Faroes and EEC on the mutual exchange of fishing opportunities in the fishery zones of the two parties, with a view to obtaining a satisfactory balance in the value of the fishing opportunities of the two parties. The details of the exchange of fishing opportunities are discussed and agreed in annual consultations between the authorities of the EC and the Faroes.

Legal basis of Faroese foreign policy

The Faroes are part of the Kingdom of Denmark. Pursuant to the Constitutional Act of the Kingdom of Denmark, the Constitutional Act applies to all parts of the Kingdom of Denmark including the Faroes. Consequently, the Constitutional Act lays down the legal framework for the Faroes' foreign policy powers. However, due to the Faroes' special status nationally, culturally and geographically, the Faroes have since 1948 had extensive self-government (Home Rule). The Home Rule system transfers political competence and responsibility from the Danish authorities to the Faroese authorities. The Home Rule authorities administer the areas of competence, which have been transferred from Denmark, enact legislation in these areas, and have the economic responsibility that is associated with them.

The legal basis for Faroese participation in the international community rests upon two acts enacted under the Danish Constitutional Act: namely the Home Rule Act of 1948¹⁷ and the Foreign Policy Powers Act of 2005¹⁸.

16) OJ L 110, 24.4.2006, p. 1–106

17) Act No. 11 of March 31st 1948 on the Home Government of the Faroes.

18) Act No. 80 of May 14th 2005 on the Conclusion of Agreements under International Law by the Government of the Faroes.

The relations between the Faroes and Denmark were defined in the Home Rule Act of 1948, which divided the administrative and legislative areas into two groups; joint affairs under Danish State authority and special Faroese affairs under Faroese Home Rule administration and legislation. According to the Home Rule Act, matters concerning the foreign relations of the Faroes are under the responsibility of the Danish State. However, Section 8 of the Home Rule Act offers the Faroese Home Rule authorities some guarantees of involvement in the conduct by Danish authorities in international relations of importance to the Faroes

The Foreign Policy Powers Act of 2005 transferred further foreign policy powers to the Faroes, thereby providing the Faroes more room for manoeuvre in the international arena. The Foreign Policy Powers Act supersedes the Home Rule Act. Section 1 and section 4 of the Foreign Policy Powers Act set the parameters for manoeuvre with regard to areas of competence, which have been taken over by the Faroese Government. According to the Foreign Policy Powers Act, the Faroes may, in the name of the Kingdom of Denmark, inter alia conclude agreements with other countries or organisations, which relate entirely to subject matters under the jurisdiction of the Authorities of the Faroes (Section 1).

Section 1 of the Foreign Policy Powers Act reads:

“The Government of the Faroes may negotiate and conclude agreements under international law with foreign states and international organisations, including administrative agreements, which relate entirely to subject matters under the jurisdiction of the Authorities of the Faroes”.

The Faroes cannot, however, conclude international agreements on defence and security policies. Neither does the Foreign Policy Powers Act allow the Faroes to enter into international agreements which apply to Denmark, nor to negotiate membership of international organisations of which the Kingdom of Denmark is already a member.

The Foreign Policy Powers Act allows for the Faroes to negotiate membership of international organisations which allow entities other than states to become members. Section 4 of the Act reads:

“Where international organisations allow entities other than states and associations of states to attain membership in their own name, the Government of Denmark may, at the request of the Government of the Faroes, decide to apply or support an application for this purpose for the Faroes, where this is consistent with the constitutional status of the Faroes.”

Since 1948, Faroese participation in the international community has steadily evolved. The Faroese Government has, together with the Government of the Kingdom of Denmark, concluded FTAs with the EU, Switzerland, Norway, Finland, Iceland, Poland and Estonia. Furthermore, bilateral fisheries framework agreements and annual fisheries exchanges are concluded with the EU, Russia, Norway, Iceland and Greenland. The Faroes participate to coastal states consultations on the management of shared fish stocks in the North-east Atlantic, including Atlanto-Scandian herring, mackerel, blue whiting and redfish. These coastal states arrangements form the basis for measures adopted for international waters through NEAFC, where the Faroes participate jointly with Greenland under the name “Denmark in respect of the Faroe Islands and Greenland”. Such joint membership with Greenland is also the case in NAFO and NASCO, while Denmark’s fisheries interests are covered by the membership of the EU in these same organisations.

As “the Kingdom of Denmark in respect of the Faroes”, the Faroes will be a party to the South Pacific Fisheries Regional Management Organization (SPRFMO), and are also planning active participation in the same capacity in a future North Pacific regional fisheries management organisation (NPRMFO). Additionally, the Faroes are an independent member of the North Atlantic Marine Mammal Commission (NAMMCO), in which Denmark participates as an observer.

In recent years, the Faroes have also become associated member of the International Maritime Organisation (IMO), the UN Food and Agriculture Organisation (FAO) and the United Nation Educational, Scientific and Cultural Organisation (UNESCO). Compared with their previous status as part of Denmark’s delegation to these bodies, with little or no regular organised participation, associate membership gives the Faroes greater exposure and active speaking rights in these organisations and their various specialist committees. This, in turn, has generated a more dedicated development and coordination

of Faroese participation and Faroese views on the relevant issues under discussion internationally.

The Faroes participate actively as a part of Denmark's membership in the Arctic Council and in the International Whaling Commission (IWC). The Faroes are included in Denmark's membership of the North Atlantic Treaty Organisation (NATO). In the Nordic Council and in the Nordic Council of Ministers, the Faroes enjoy a special status along with Greenland and Åland, as autonomous territories.

Intended areas of cooperation

The Faroes have systematically expanded their cooperation with the EU to encompass more areas. In addition to expanding the FTA, the Faroes are about to achieve association to the Seventh Framework Programme on Research (FP7) and are currently negotiating association to the European Common Aviation Area (ECAA). The extension of the ECAA agreement's scope of application to include the Faroes would take place through a unilateral declaration from Denmark in connection with Denmark's ratification of the Agreement.

With associated membership of the FP7, the Faroes will gain access to EU research cooperation on an equal footing with Switzerland, Israel, Norway, Iceland and Serbia, which are among the countries associated to the FP7¹⁹.

Through Faroese association to the ECAA, Faroese air transport companies would be free to operate on the European continent and vice versa. The general aim of Faroese association to the ECAA is to create the necessary basis for future development of Faroese air transport. The ECAA will encompass all EU Member States, the EFTA Member States of Iceland and Norway as well as the Balkan states.

19) ftp://ftp.cordis.europa.eu/pub/fp7/docs/third_country_agreements_en.pdf

3. Expanding the current framework of cooperation

Legal aspects

Since the present FTA between the Faroes and the EU entered into force in 1996, it has been extended in scope several times. The legal bases for subsequent amendments have been Article 34 and Article 35 of the FTA. Article 34 has been used to modify the nomenclature of the customs tariffs and rules of origin while Article 35 has been used with regard to amendments concerning trade in goods and in areas related to trade in goods.

Article 35 states that the cooperation between the parties may be extended, upon request, where one of the parties believes that this is for the benefit of the mutual cooperation:

1. *Where a Contracting Party considers that it would be useful in the common interest of both Contracting Parties to develop the relations established by this Agreement by extending them to fields not covered thereby, it shall submit a reasoned request to the other Contracting Party.*

An agreement resulting from the negotiations referred to in paragraph 1 will be subject to ratification or approval by the Contracting Parties in accordance with their own procedures. The Contracting Parties may instruct the Joint Committee to examine this request and, where appropriate, to make recommendations to them, particularly with a view to opening negotiations.

The Joint Committee, consisting of members from both parties, administers the agreement on free trade between the Faroes and the EU. It meets annually to discuss the functioning of the agreement, and other related issues.

Therefore, the Parties may extend the scope of cooperation of the FTA to include other fields of trade, not covered by the current agreement. This could be interpreted as other trade areas where the EU has exclusive competence, such as trade in services. The Faroes have expressed the wish to extend the FTA to include this area also. Though not impossible, the reply from the EU has been that this would be very difficult both technically and legally, because the FTA only covers trade in goods. Therefore, the Commission has so far contested the Faroese argument that it might be possible to use Article 35 as the appropriate legal basis for extending the current FTA into areas not related to trade.

Nevertheless, the scope of cooperation between the Faroes and the EU has also been extended into fields not related to trade in goods. The Faroes will be associated to FP7 in a matter of weeks, and later this year the Faroes is likely to be associated to the ECAA agreement. This has been done on a case-by-case basis and not under the legal framework of the FTA. A bilateral approach for each area of interest has been used, and on this basis, it has been possible to conclude individual bilateral agreements.

For the future prospects of expanding the current framework to cover other areas, it is important to understand the overall distribution of competences between the EU and the Member States. The Treaties make a distinction between three categories of competence:

- concurrent or shared powers (the most common case); for example, internal market, environment, transport and energy;
- exclusive EU powers (the Member States have irrevocably relinquished all possibility of taking action); for example, customs union, CFP and Common trading policy
- supporting powers or areas of supporting action (the EU's sole task is to coordinate and encourage action by the Member States), for example, industry, tourism, culture, education, professional training, youth and sport.

A common factor in three of the current bilateral agreements between the Faroes and the EU, the FTA, the Fisheries Agreement and the association to the FP7, is that these concern areas in which the EU has exclusive competence. This means that the EU Member States through the EU Treaty have transferred their competence to the EU to administer the area exclusively. As described, a number of areas in the EU Treaty fall under exclusive EU competence, while some fall under shared competence between the EU and its Member States. Under the Danish Constitution, the Faroes are, as a rule, free to conclude agreements with the EU regarding subject matters, where the EU has exclusive competence, while this is not possible if the subject matter of the agreement is an area of shared competence between the EU and its Member States²⁰.

20) See Annex 1

According to the Constitutional Act of the Kingdom of Denmark, as reflected in the Foreign Policy Powers Act, the Faroes cannot conclude agreements with the EU in areas of shared competence. One of these areas of shared competence where the Faroes have expressed a wish to extend the cooperation with the EU is education. However, in the case of the association to the ECAA, which is a shared competence area, Denmark and the Faroes have managed to find a pragmatic solution.

Pursuant to section 1(4) of the Foreign Policy Powers Act, the Faroes cannot participate in a cooperation/organisation of which the Kingdom of Denmark already is a Member, nor become a contracting party to agreements negotiated within such organisations. The Kingdom of Denmark is one subject under international law, and the Faroes and Denmark cannot be parties to the same agreement. Thus, the Constitutional Act of the Kingdom of Denmark does not e.g. allow Denmark to be represented as both the “EU Member State Denmark” and “the Kingdom of Denmark in respect of the Faroes” in the same agreement. Hence, the Faroese foreign policy powers are first and foremost determined by the Constitutional Act of the Kingdom of Denmark, and not by international law.

The fourth agreement, the ECAA, to which the Faroes could be associated later this year, is an agreement based on shared competence between the EU and the Member States. However, in the case of the association to the ECAA, Denmark, the EU and the Faroes have managed to find a pragmatic solution. The Faroes can only become party to a mixed agreement through Denmark. This means that when the Faroes enter into a mixed agreement, it can only be done through a unilateral declaration by Denmark, in which the geographical application of the mixed agreement is extended to cover the Faroes.

Prior to the Lisbon Treaty entering into force on 1 December 2009, some services were categorised under shared competence. The Treaty explicitly brings the entire field of trade policy under the exclusive competence of the Union. In principle, this could mean that the parties can now either extend the FTA to cover trade in services and other areas under exclusive competence such as capital, or conclude a new agreement, where trade in services under exclusive competence are included. To what extent the Lisbon Treaty will affect the use of mixed agreements in the field of trade policy remains to be seen.

With regard to concluding a new agreement, it also remains to be seen which areas of such a new agreement would be under shared competence, such as education, free movement of persons and culture, and also how such shared competence should be addressed.

One issue which has been present in the Faroese EU debate, but which has never been on the political agenda, is the possibility to form a customs union with the EU. This option has also been discussed in previous commission reports. The area of trade is, as mentioned earlier, categorised under exclusive Union competence; hence, there should in principle be no legal obstacles to concluding an agreement on a customs union between the EU and the Faroes. Both trade and customs are areas of competence, which are assumed by the Faroes. However, whether the Faroes would be able to participate in an agreement establishing a customs union will depend on inter alia the procedure employed by the EU in this matter. Notwithstanding the fact that customs and trade are part of the exclusive competence of the Union, a number of agreements establishing customs unions are concluded with the participation of the Member States. The explanation for this is partly that the agreements usually also cover other areas not specifically related to customs, and partly that for political reasons the EU may decide not to exercise its exclusive competence.

Currently, there is no internal legal procedure in the Faroes to transfer the competence of the Faroes to another country or international organisation. Forming a customs union with the EU would require the Faroes to delegate some of their competences to the EU, requiring an internal legal procedure. Such a delegation of competence would also have to be assessed in light of the Constitutional Act of the Kingdom of Denmark.

Political aspects

In its coalition agreement, the Faroese Government aims to extend the cooperation with the EU to comprise services, capital, free movement of persons, veterinary issues, research, aviation, education and culture.

It is sometimes also argued politically that the Faroes should join the EU to get better market access for both goods and services. According to the survey made by the House of Industry²¹, annexed to this report, the major-

21) See Annex 2

ity of the Faroese industry is satisfied with the current FTA, both concerning trade in goods and trade in services. The long-term objective in banking and insurance is, however, to achieve better market access for services. The aquaculture industry is the most sceptical with regard to the current situation, not due to lack of duty free access, but due to their concern about possible safeguard measures targeting salmon exports.

Taking the political ambitions and the views of the industry into consideration, the areas which are not covered by the current relationship between the Faroes and the EU are services, capital, persons, education and culture.

Extending the current cooperation on a case-by-case basis has been seen politically as a practical way of expanding the current cooperation with the EU. The main argument is that such an approach could be quite comprehensive and at the same time avoid touching upon very sensitive political issues such as the constitutional status of the Faroes, the CFP and the much higher administrative burdens that other approaches such as EU or EEA membership would entail. Hence, politically this approach is considered to be easier to administer and not as expensive as other solutions. Furthermore, it could include the areas of particular interest to the Faroes and allow for the Faroes to adjust financially to each area over time.

Since trade in fish products is normally seen as a sensitive area in the EU, it is very difficult to imagine that a proposal from the Faroese for a customs union with the EU would gain the necessary political support from the EU. Export of fish products from the Faroes to the EU market today accounts for about 65% of the total Faroese export.

A customs union between the Faroes and the EU covering fish products has not been raised formally between the parties previously, and it is very difficult to predict how this would be perceived politically – both in the Faroes and in the EU.

Denmark stated in the Council of Ministers of the EU in 2006 that Denmark supports the ambitions of the Faroes to extend the cooperation between the Faroes and the EU.

“Declaration by the Government of Denmark

The Government of the Faroes has informed the Danish Government of its intentions to seek relations between the Faroes and Europe extended to encompass the free movement of services, capital and persons, as well as other areas of cooperation such as science, education and culture, either through multilateral arrangements or by a special bilateral arrangement with the Community.

The Government of Denmark supports the intentions of the Government of the Faroes to seek relations between the Faroes and Europe extended to encompass the free movement of services, capital and persons as well as other areas of cooperation such as science, education and culture.”

As mentioned, it remains to be seen to what extent the new exclusive competences for the Union in the field of trade policy will affect the use of mixed agreements.

The question of whether to extend the cooperation between the Faroes and the EU by expanding the existing framework or by a new agreement has been raised at Joint Committee meetings between the parties. Politically, the EU has not excluded this as an option. The EU has however indicated that any legal or practical problems between the Faroes and Denmark in connection with this solution should be solved before negotiations are initiated. The problems referred to have been in the areas of shared competence. Concerning cooperation within areas of exclusive competence the EU side has so far been forthcoming.

Whichever solution is sought, given the legal status of the Faroes, continuing political support from Denmark on all modalities in the chosen approach is essential and it will be necessary to promote this actively within the EU. Furthermore, the Faroes will also need to actively promote their own interests vis-à-vis the EU, including cooperation and coordination with the EU in areas of common interest.

Administrative aspects

Extending the current agreement with the EU to other areas might, depending on the content, require additional capacity as the administrative structure and legislation of the Faroes would have to be brought into line with the

standards of the EU. However, in the case of gradual expansion of the current agreement, the Faroes would be able to assess, on a case-by-case basis, the administrative burden of the area of interest, as opposed to a situation in which the Faroes would opt for EU (either as independent or through Denmark) or EEA/EFTA membership.

The association of the Faroes to FP7 will entail an additional workload for the Faroese administration; Faroese officials will have to keep track of developments in Brussels, and also attend the many committee meetings required in order to maximise the advantages of associated membership. Likewise, the association will entail an increased workload for the respective ministries in the Faroes, which will have to administer the obligations that follow from associated membership to the FP7.

With regard to attending FP7 committee meetings, the participation of each country differs according to its respective administrative capacity. At the moment, Iceland has one full-time officer in Brussels in charge of the FP7, who is accompanied by experts from Iceland to the most important meetings. The Icelanders have acknowledged that with only one officer in Brussels they are not able to attend all meetings, and have therefore decided to concentrate on those areas which are most important to the Icelandic research community.

The Faroese participation would most likely be similar to that of Iceland in that there would be an obvious need to give priority to meetings of particular relevance.

Should the Faroes be included in the ECAA, the Faroes would have to implement the applicable EU legislation in all areas delegated to the Faroes, i.e. legislation concerning labour market conditions, competition rules, safety and other areas related to the operations of airlines. However, since the ECAA Agreement is an agreement in a field where some of the competence lies with the Member States, and taking into account that aviation is yet to be devolved to the Faroes, it will be the Danish authorities who will evaluate which aspects of the legislation the Faroese legal system will have to implement. The Faroese Government is about to assume responsibility for aviation from Denmark. This is estimated to entail an additional workload for the Faroese administration as well as associated costs. The number of directives and regu-

lations the Faroes will have to implement in connection with the ECAA will be around 70.

Financial aspects

For each area of interest, the costs and the benefits, including the income potential associated with entering into a closer cooperation in a given field, can be analysed when deciding whether or not the inclusion of the area in question should be pursued. This approach gives the possibility of a gradual evolution, where areas of interest can be introduced over a timeline, according to the financial capacity of the Faroes.

The costs will consist of direct expenses associated with assuming competence from Denmark as well as the direct cost of participation. Indirect costs, consisting of higher administrative costs in the Faroes and administrative and representative participation in various programmes, will vary in depending on the ambitions of the Faroes.

With regard to the services areas, no direct costs are foreseen. This also applies to the inclusion of the Faroes in the ECAA. With regard to Faroese participation in programmes such as FP7 and Life Long Learning (LLL), on the other hand, these will involve direct costs in the form of annual participation fees.

The table below shows the revenues of the FP7 and LLL framework programmes in the period from 2009 to 2013.

Framework programmes revenue 2009-2013 in million €²²

	2009	2010	2011	2012	2013
FP7	6.119	6.933	7.968	8.926	9.766
LLL	962	1.005	1.037	1.093	1.126
Programmes in total	7.081	7.938	9.005	10.019	10.892

With regard to participation in the FP7, where the Faroes have already negotiated their inclusion, the costs can be divided into direct costs, being the annual participation fee in 2010 of around 930,000 Euros, and indirect administrative costs of around 2-300,000 Euros associated with implementing

22) www.efta.int & Memorandum on the financial consequences of Faroese membership in the EU, EFTA and EEA" by Jonhard Eliassen, Brussels. 2008

the legislation and supporting participation in the programme in the Faroes and in Brussels.

The Faroes will pay part of the total cost of the research framework programme according to the following formula:

$$\text{FP7-cost in total} * \frac{\text{GDP of the Faroes}}{\text{GDP of EU27} + \text{GDP of the Faroes}}$$

A similar financial system is applied to the LLL and other areas of cooperation.

Were the Faroes to participate in the Life Long Learning (LLL) programme, the annual participation fee in 2010 would be around 135,000 Euros and indirect costs of implementing the legislation as well as maintaining participation in the programme in the Faroes and in Brussels of around 1-200,000 Euros. Were the Faroes to conclude a customs union with EU, 75% of the customs revenues of around 4 million Euros (2010), which derive from the present duties levied on imports not subject to duty-free access, would be transferred to the EU budget²³.

Benefits would firstly be represented by the income potential in the business sector through enhanced trade in goods or services, and secondly, on a national level with levied direct and indirect taxes. The income potential of FP7 will be based on the ability of Faroese researchers and research institutions to acquire funding from the research programmes and the potential spin-off from this research.

23) National Budget for the Faroes 2010 & <http://ec.europa.eu/budget>

4. The Faroes as a part of Danish EU membership

Legal aspects

The accession of the Faroes to the EU as a part of Denmark would be a territorial accession and not a state accession. Hence, it would not require a new accession negotiation between Denmark and the EU. Rather, Denmark would have to notify the EU and its Member States that Danish membership is extended to the Faroes. Also, an amendment to the Treaty would be necessary.

Upon the accession of Denmark to the EEC in 1973, the EEC Treaty was amended to read that the Treaty did not cover the Faroes. Article 227, Paragraph 5 reads²⁴.

This Treaty shall not apply to the Faroe Islands. The Government of the Kingdom of Denmark may, however, give notice, by a declaration deposited by 31 December 1975 at the latest with the Government of the Italian Republic, which shall transmit a certified copy thereof to each of the Governments of the other Member States, that this Treaty shall apply to those Islands. In that event, this Treaty shall apply to those Islands from the first day of the second month following the deposit of the declaration.

In 1974 the Danish Government informed the EEC that the Faroese Parliament had decided that the Faroes would not follow Denmark and become a part of Denmark's membership of the EEC. Thereby it was ultimately stipulated that the Faroes were to be treated as a third country with regard to the EU. When the Maastricht Treaty was ratified in 1992 Article 299 (ex 227) in the EEC Treaty was amended to read as follows: "This Treaty shall not apply to the Faroe Islands". This reference to the Faroes has remained unchanged in the Amsterdam (1997/1999) and the Nice Treaty (2001/2003). With the Lisbon Treaty (2009) the territorial reference concerning the Faroes was moved to Article 355. Were the Faroes to become member of the EU as a part of the Danish EU membership, this would require an amendment of the Treaty with the consent of all Member States of the EU. At the very least, Article 355 (5) (a) of the Treaty would have to be deleted, presumably followed by a paragraph substantively similar to the current Article 355 (4).

24) OJ L 2, 01.01.1973, p. 1-37

To become part of the Danish EU membership would entail implementing the entire *acquis communautaire* in the Faroes. This would also apply to Faroese legislation in areas which have been taken over from Danish authorities and administered in the Faroes.

In accordance with the Act on Assumption of Matters and Fields of Responsibility by the Faroese Authorities²⁵ section 1(2), the areas of the Constitution of the Danish State, citizenship of the Danish State, the Supreme Court of the Danish State, foreign, security and defence policy, and monetary and currency policy cannot be taken over from the Danish authorities.

According to the Act on the Power of Matters and Fields of Responsibility²⁶ there are currently 14 areas²⁷ for which the Faroese authorities can assume competence from the Danish authorities, should the Faroese authorities decide to do so. Were the Faroes to become a member of the EU via Denmark, legislation in these areas would have to be consistent with the *acquis communautaire*.

It would be the Kingdom of Denmark, and not the Faroes as such, that would be accountable externally vis-à-vis the EU, if the Faroes were to become part of the EU through Denmark. Hence, in a case of non-implementation of EU legislation by the Faroese authorities, the Kingdom of Denmark would be held accountable by the European Court of Justice (ECJ). The Faroes would, however, be accountable internally vis-à-vis the Danish Government.

It follows from section 1(4) of the Foreign Policy Powers Act that the Act does not apply to agreements “*which are negotiated within an international organization of which the Kingdom of Denmark is a member.*” Thus, the two acts that regulate Faroese participation in the international society, the Home Rule Act of 1948 and the Foreign Policy Powers Act of 2005 would not apply to Faroese membership of the EU through Denmark.

Pursuant to Section 20 of the Danish Constitutional Act, the powers vested with the authorities of the Realm may, to such extent as shall be provided by statute, be delegated to the EU in so far as a majority of five-sixths of the members of the Danish Parliament vote in favour of the enactment of such an Act. Section 20 states²⁸.

25) Act No. 79 of May 12th 2005 on the The Assumption Act of Matters and Fields of Responsibility by the Faroese Authorities.

26) Act No. 41 of May 10th 2006 on the Power of Matters and Fields of Responsibility.

27) Ibid

28) Danish Constitutional Act (Danmarks Riges Grundlov, LOV nr. 169 af 05.06.1953)

“Powers that are granted to the authorities of the Kingdom under this Constitutional Act may, by means of an Act and to a specific extent, be transferred to international authorities created by mutual agreement with other States to promote international legal order and cooperation”

Subject to section 20 of the Constitutional Act, it is possible that a transferral from the Kingdom of Denmark to the EU of powers currently not assumed by the Faroes would require a majority of five-sixths of the members of the Danish Parliament, or alternatively a referendum in accordance with section 42 of the Constitutional Act. This would have to be analysed further. Furthermore, should the Danish EU membership be extended to the Faroes it would require an amendment of the Parliamentary Act on Home Rule in the Faroes, because the Parliamentary Act on Home Rule does not allow transfer of legislative powers to other institutions (e.g. the EU) than the Faroese Parliament.

There is no precedent of any territory joining the EU via a Member State after the accession of the said Member State. Therefore, it is doubtful whether any concessions or opt outs would be granted the Faroes. At present, however, the Faroes have powers delegated from Denmark, and subsequently, some legal changes would have to be made.

Political aspects

Taking into consideration the political landscape in the Faroes, it is difficult to envisage political support for the Faroes becoming part of the Danish EU membership.

Political arguments against this option in the debate in the Faroes comprise issues such as loss of the benefits of autonomy, the assumed necessity to negotiate with Brussels through Denmark on matters presently subject to exclusive Faroese competence, lack of visibility/exposure, inadequate representation in the EU institutions, the CFP and marginalisation.

A general worry is that being part of the Danish EU membership would tie the Faroes closer to Denmark, making it very difficult to eventually form a Faroese state. The only membership option for most of the political parties is an independent membership, implying the formation of a Faroese state.

None of the political parties addresses an EU membership in any form as an option in their political programmes.

A core issue is that the political parties do not expect to get any permanent opt outs concerning fisheries. It was not possible when Denmark joined the EU in 1973, Norway did not get any permanent opt outs in their membership negotiations and, in general, no country has done so²⁹. Also, like in Iceland, there is the concern that finding support and acceptance of Faroese hunting traditions (whaling, bird catching, and sheep farming and slaughtering) will be difficult within the EU and the Member States.

Becoming part of the Danish EU membership, however, would solve the problem concerning market access in terms of both trade in goods and services. The problem for the fish farming industry with regard to safeguard and anti-dumping measures from the EU against the Faroes, mentioned in Annex 2, would also be solved.

Since this approach entails the fewest legal challenges of the four approaches, it would subsequently be the least time-consuming approach to implement.

It has been stated by Mr Per Stig Møller, former Danish Minister for Foreign Affairs, that the Faroes have to choose themselves, and whatever solution is chosen by the Faroese side will be supported by Denmark if possible³⁰.

Membership through Denmark would of course require full support from Denmark and an agreement between the Faroes and Denmark on all modalities, including political, financial, administrative and technical. It is not very likely that the EU would be opposed to a solution where the Faroes became part of the Danish EU membership. On the contrary, it would save the EU the political and administrative efforts concerning the bilateral relations within trade, fisheries and to find a specially constructed solution just for the Faroes.

Any political agreement between the Faroes and Denmark with regard to the Faroes becoming a part of the Danish EU membership would have to respect Denmark's EU obligations.

29) <http://www.kringvarp.fo/index.asp?s=49&ID=66395>

30) Folketingssamling 2006-07, § 20 question, Om hvornår Færøerne forventes at opnå medlemskab af EFTA
Document reference: 2006-07 – answers to § 20-questions (S 2379), 31.01.2007

Administrative aspects

As mentioned above, joining the EU as part of Denmark would entail implementing the whole of the *acquis communautaire*, i.e. a large portion of Community law would affect areas of competence that are transferred from Denmark to the Faroes. Hence, EU membership through Denmark would imply increased administrative burdens for the Faroese administration: Firstly, by the requirement to transpose EC directives within the Faroes' fields of competence into Faroese law; secondly, by issuing administrative rules if required by EC regulations falling within the Faroes' areas of competence; and thirdly, by ensuring that legislation and other norms enacted and issued by the Faroese Parliament and Government are in compliance with Community law. Furthermore, the EU policies in question will often require active administrative participation by the Member States, which in the case of Denmark/Faroes would be either the Danish administration or the Faroese administration, depending on the status of the area of competence in question.

Were the Faroes to become a member of the EU through Denmark's membership, the Faroese Government and Parliament would most likely become advisory bodies to the Danish authorities in matters concerning the EU.

The extent of Faroese influence on matters under Faroese competence or matters, which are otherwise of special concern to the islands, will depend on internal agreements between Denmark and the Faroes.

EU legislation, rulings of the European Court of Justice and other official documents are available in the official EU languages, including Danish, just as the EEA relevant documents are also accessible in the official languages of the participating EFTA countries, Iceland and Norway (the official language of Liechtenstein is an existing EU language). Whether the EU would take responsibility for translation of official documents, in whole or in part, into Faroese, would depend on whether Faroese would be considered an official language of the EU.

Financial aspects

The financial costs of this approach would be that Denmark's contribution to the EU would be calculated to encompass the inclusion of the Faroes. Whether Denmark would demand from the Faroes to cover their relative

share of the increased costs is a question for negotiation between Faroese and Danish authorities.

The table below shows the composition of EU revenues in the budget for 2010.

EU revenue for 2010³¹		
	Billion €	%
GNI-based resources	92,7	76%
VAT-based resources	13,3	11%
Traditional own resources	14,1	12%
Other resources	1,4	1%
Total	141,5	100%

The average EU GNI-based revenue in all Member States for 2010 is calculated to 1.04% of GNI (Gross National Income)³². If it were to be agreed between Danish and Faroese authorities that in the case of Faroese EU membership through Denmark, the Faroes would pay their part of the Danish total payment, the Faroese payment would amount to 1.04% of the Faroese GNI. The Faroese GNI in 2008 was around 1.67 billion Euros³³. The Faroese GNI-based payment for EU membership through Denmark would, based on the above-mentioned assumption, amount to around 17.4 million Euros.

75% of the customs revenues stemming from Faroese import duties of around 4 million Euros (2010), and 0.3%-points of the VAT revenues on around 153 million Euros (2010), corresponding to 0.5 million Euros, would be transferred to the EU budget³⁴.

Another direct cost could be the translation of the *acquis communautaire*, in whole or in part, into Faroese, but as mentioned above, this would most likely be an issue for negotiation.

Indirect costs, consisting of higher administrative costs in the Faroes and active participation in various programmes, would vary in accordance with the ambitions of the Faroes.

31) <http://ec.europa.eu/budget/>

32) Ibid

33) Statistics Faroe Islands (Hagstova Føroyar). The number is actually for the GDP in 2008, but for the Faroese economy this is almost equivalent to GNI

34) National Budget for the Faroes 2010 & <http://ec.europa.eu/budget>

However, this analysis does not cover the issue of market access as a benefit for the Faroese industry. Also, the possible gains for the Faroes from taking part in various programmes, as well as access to funding from the structural funds, should be taken into consideration.

5. Independent Faroese EU membership

Legal aspects

At present, it is not possible for the Faroes to become an independent member of the EU. This follows from the fact that the Faroes are not a state. Consequently, Faroese sovereignty is a precondition for such an option.

Any European country which respects the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, may apply to become a member of the Union³⁵. Article 6 and Article 49 of the Treaty on the European Union set out the conditions for membership. Applying for EU membership is the start of a long process involving the negotiation of an Accession Treaty, which lists all transitional arrangements and deadlines as well as details of financial arrangements and any safeguard clauses. If such an Accession Treaty were to be supported by the Council, the Commission, and the European Parliament, it would be signed by the candidate country and the representatives of all the Member States, and then submitted to the Member States and the candidate country for ratification, according to their respective constitutional rules³⁶.

After an application from a country wishing to join the EU is submitted to the Council, the European Commission provides a formal opinion on the applicant country, and the Council decides whether or not to accept the application. Once the Council unanimously agrees a negotiating mandate, negotiations may be formally opened between the candidate and all the Member States. This is not automatic, however. The applicant country must meet a set of core criteria.

The requirements mentioned above should also be read in conjunction with the so-called Copenhagen criteria³⁷. These are divided into three areas:

1. **Political requirements** (*stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities*)
2. **Economic requirements** (*the existence of a functioning market economy, as well as the capacity to cope with competitive pressure and market forces within the Union*)
3. **Acquis communautaire** (*a candidate country must also be able to put*

35) European Commission, Enlargement, Conditions for Enlargement, http://ec.europa.eu/enlargement/the-policy/conditions-for-enlargement/index_en.htm

36) Ibid

37) European Commission, Enlargement, Accession Criteria, http://ec.europa.eu/enlargement/enlargement_process/accesion_process/criteria/index_en.htm

the EU rules and procedures into effect. Accession also requires the candidate country to have created the conditions for its integration by adapting its administrative structures. While it is important for EU legislation to be transposed into national legislation, it is even more important for the legislation to be implemented and enforced effectively through the appropriate administrative and judicial structures.

If the Faroes became an independent member of the EU, a legal adaptation in the Faroes would be required. Since independence would be a precondition for independent Faroese membership of the EU, the entire *acquis communautaire* would have to be implemented in the internal Faroese legislation. Currently there is no internal legal procedure in the Faroes to transfer the competence of the Faroes to another country or an international organisation. As a member of the EU the Faroes would have to delegate some of their competences to the EU, hence an internal legal procedure is required. Being recognised as a Faroese state by the international society, such a legal procedure would probably be laid down in a Faroese constitution.

Political aspects

Considering the political landscape in the Faroes, the only membership that seems politically possible is an independent membership, with permanent opt outs in the fisheries sector.

A political challenge would be to gain the necessary support for independence. Unless the economy is diversified and other income sources are found, it is very difficult to see that the political system can obtain support for such a step. Furthermore, the political system in the Faroes is divided on the issue.

An independent membership on the right terms would accommodate the desires of full participation in the Internal Market and access to other areas of cooperation as well. However, there is the concern that finding support and acceptance of Faroese hunting traditions (whaling, bird catching, and sheep farming and slaughtering) will be difficult within the EU and the Member States.

Nevertheless, an independent EU membership for the Faroes would raise a series of other issues, which until now have not been addressed in the political debate in the Faroes. The question whether the EU would approve a Faroese

membership application is seldom raised in the Faroese EU debate. It is not considered realistic that the Faroes would be able to meet the administrative burden and the costs associated with an independent EU membership and the implementation of the whole **acquis communautaire**.

Politically, Denmark wants to keep the Faroes as a part of the Kingdom of Denmark, - at any rate for as long as the Faroese themselves do not opt for another solution. An independent Faroese EU membership would require independence from Denmark. As mentioned above, Denmark has stated that this is a matter for the Faroese people to decide.

It is worth recalling that a political wish from the Faroes to obtain independent EU membership would, of course, require full political support from the EU institutions and the Member States. From the Faroese side, it has been acknowledged that this might indeed prove to be quite difficult to achieve.

The position of the microstates in Europe raises similar questions and concerns. These microstates do not have similar constraints concerning their constitutional status and not the same reservations as the Faroes with regard to the CFP. There are, however, other shared concerns, such as the huge administrative demands and costs associated with a possible EU membership, which the microstates are not ready to take on.

Also, there does not currently appear to be any substantial political will from the side of the EU to integrate the microstates of Europe on the same conditions as the current Member States.

Administrative aspects

Independent Faroese EU membership would most likely reflect that of smaller states in the EU, namely, that due to the limited administrative capacity the Faroes would have to prioritise between the sectors, i.e. choose to focus on those areas that are of most importance to the Faroes.

The experience of the smaller states in the EU has shown that despite their limited staff, expertise and general capacity to follow all negotiations, they have succeeded in reaching positive outcomes in their core areas. It has been argued in one study that, unlike larger Member States, the smaller states can

be more proactive in their most important sectors. According to the study, this is because “they make use of the special characteristics of their administrations, such as informality, flexible decision-making, greater room for manoeuvre for their officials, guidelines given to negotiators rather than instructions, and the greater role of Permanent Representatives in domestic policy-making to ease their workload³⁸.

Although Faroese dealings with the EU could resemble those of the smaller EU Member States as described above, the size of the Faroese administration is much smaller than that of even the smallest EU Member States. Thus, even though the administrative burden may be limited by focusing on specific areas, it would not be feasible for the Faroese administration to implement and administer the *acquis communautaire* required for an independent Faroese EU membership. Hence, although the Government of Liechtenstein, a country smaller than the Faroes, is of the opinion that its smallness “cannot be a reason for not admitting Liechtenstein to the EU, although some problems could be raised with regard to its participation in the EU institutions”³⁹, it must be borne in mind, that Liechtenstein as an EEA member has already implemented about 80% of the *acquis communautaire* and has one of the EU’s working languages as its official state language.

In the case of the Faroes, provided Faroese became an official language, as an EU Member State the *acquis communautaire* would be translated into Faroese by the EU. Translation into Faroese at meetings, where possible, would not be entirely free of charge for the Faroes. This could be overcome by the Faroese speaking in Danish or English and listening to the Danish or English translation. It is worth noting, however, that in many meetings it is common practice that no translation is provided.

Independent Faroese EU membership would not only require an expansion of the Faroese public administration both in the Faroes and in Brussels. The industry and other interest groups would also have to increase their administrations in order to maintain influence and keep up with developments in the EU.

In addition to a representation to the EU in Brussels, most EU Member States also have representatives accredited to the other Member States. These missions may be useful in policy planning and preparation for meetings in the EU institu-

38) Thorhallsson, Baldur. “The role of Small States in the European Union” in *Small States in international relations*, ed Christine Ingebritsen, Iver Neumann, Sieglinde Gstöhl and Jessica Beyer, University of Washington Press, 2006, p. 218

39) Duursma, Jorri. “Micro-states: the Principality of Liechtenstein” in *Small States in international relations*, ed. Christine Ingebritsen, Iver Neumann, Sieglinde Gstöhl and Jessica Beyer, University of Washington Press, 2006, p. 117

tions. At present, the Faroes have a Mission to the EU in Brussels and representations in Copenhagen and London. A possible way to lessen the administrative and financial burden of representations abroad would be to have ‘simultaneous multiple representations’ rather than a representation in each country. The Faroes already have some experience with this approach, as the resident representative in London is also accredited representative to Ireland.

Joint representation with another state would also be an option, which has already been practiced by the Faroes, such as currently in London, where the Faroese representation is housed in the Danish Embassy. Until late 2007, the Mission of the Faroes to the EU was also housed in the Danish Embassy in Brussels.

Another solution could be joining the other Nordic Countries in a Pan-Nordic Embassy. There is no such embassy in existence, but the model is being discussed. One step in this direction has been taken in Berlin, where a ‘Nordic Embassy’ has been established, where embassies from Iceland, Denmark, Norway, Sweden and Finland are all located in the same complex.

Financial aspects

Compared to other options, the direct costs of independent Faroese membership of the EU would be the highest. This is based on the fact that as a state, the Faroes would most likely be a net contributor to the EU. The Faroes would also as a prerequisite have to take on the direct costs of gaining independence from Denmark, which involves assuming responsibility of all remaining matters and forgoing the annual grants. These costs are estimated to amount to around 30 million Euros⁴⁰ and 82 million Euros (615.5 million DKK for 2010)⁴¹ respectively.

The table below shows the composition of the EU revenues in the budget for 2010.

EU revenue for 2010⁴²

	Bil €	%
GNI-based resources	92.7	76%
VAT-based resources	13.3	11%
Traditional own resources	14.1	12%
Other resources	1.4	1%
Total	141.5	100%

40) Annual report of the Danish High Commissioner to the Faroes, 2008

41) National Budget for the Faroes 2010

42) EU General Budget 2010 <http://eur-lex.europa.eu/budget/www/index-en.htm>

The average EU GNI-based revenue in all Member States for 2010 is calculated to 1.04% of GNI (Gross National Income)⁴³. It could therefore be assumed that the Faroes as a member of the EU would pay 1.04% of the Faroese GNI. The Faroese GNI in 2008 was around 1.67 billion Euros⁴⁴. Based on these assumptions the Faroese payment for EU membership would amount to around 17.4 million Euros.

In addition, 75% of the customs revenues on imports of around 4 million Euros (2010), and 0.3%-points of the VAT revenues of around 153 million Euros (2010), which correspond to 0.5 million Euros, would be transferred to the EU budget⁴⁵.

Indirect costs, consisting of higher administrative costs in the Faroes, representation in different EU Member States and EU bodies and participation in various programmes, would vary in accordance with the ambitions of the Faroes. The costs must, however, be expected to be at a higher level than those associated with extending the Danish membership of the EU to cover the Faroes.

However, this analysis does not examine the issue of market access as a benefit for the Faroese industry. The potential benefits for the Faroes of taking part in various programmes, as well as access to regional funding from the structural funds, should also be taken into consideration.

43) *ibid*

44) This figure is actually for the GDP in 2008, but for the Faroese economy this is virtually equivalent to GNI
Statistics Faroe Islands (Hagstova Føroya)

45) National Budget for the Faroes 2010 & <http://ec.europa.eu/budget>

6. Faroese EEA membership

Legal aspects

The EEA Agreement⁴⁶ is an agreement covering 31 parties – the 27 EU Member States, three EFTA countries and the European Community. In order to become a party to the EEA Agreement a State has to be either a member of the EFTA or the EU. Of the EFTA Member States all countries, except Switzerland, are parties to the EEA. With regard to the EU, the competence under the EEA Agreement is shared between the EU and the Member States. Amongst other areas, the EU has the competence when it comes to trade policy and the CFP. Each party to the EEA Agreement has to implement all EEA legislation. For the three EFTA countries, Iceland, Norway and Liechtenstein, this provides for only indirect influence on the policy shaping in relation to the EEA Agreement.

Article 128 of the EEA Agreement outlines the process for acquiring membership to the EEA. The article stipulates that any European State which becomes a member of the EU shall apply for EEA membership. In addition, any European State, which becomes a member of EFTA, may apply for membership of the EEA.

As mentioned above, it follows from the EEA agreement that membership is only available to States which are either members of EFTA or the EU. Under its constitutional status the Faroes cannot become an independent Contracting Party to the EEA Agreement due to the fact that the Faroes are not a state. Furthermore, Faroese EEA membership is excluded due to the fact that Denmark is already a member of the EEA through its EU membership.

The Foreign Policy Powers Act of 2005 allows for the possibility of the Faroes becoming a part of EFTA as the “Kingdom of Denmark in respect of the Faroes”. This option, however, is subject to the political will of the EFTA Member States. Formally, it would be the Danish state in respect of the Faroes that would be the Contracting Party in EFTA. The relevant question is whether Faroese membership of EFTA could pave the way for the Faroes to become a party to the EEA? It is the opinion of the Danish Government that, due to the fact that Denmark is already a member of the EEA, the Faroes cannot attain a membership of their own in the EEA.

46) The EEA Agreement, <http://www.efta.int/eea/legal%20texts/main-text-of-the-agreement.aspx>

As mentioned above, it follows from section 1(4) of the Foreign Policy Powers Act that Faroese membership as an independent party to international agreements such as the EEA is not possible due to the fact that Denmark cannot participate in the EEA as both the “EU member Denmark” and as the “Kingdom of Denmark in respect of the Faroes”. It is the opinion of the Danish Government that “double” membership of the EEA would be in breach of the requirements of the Danish Constitutional Act. This interpretation was last expressed in spring 2009 when the Danish Minister of Foreign Affairs answered a question on this topic in the Danish Parliament. The question was raised by Mr Høgni Hoydal, Faroese member of the Danish Parliament, after a paper produced by a Danish Professor in Law, Ole Spiermann questioned the Danish Government’s interpretation of the Danish Constitutional Act⁴⁷. The Danish Foreign Minister was asked whether *“the Danish Foreign Ministry would support a possible Faroese application for membership of EFTA and EEA?”* Mr Per Stig Møller, former Danish Minister for Foreign Affairs answered that: *“The government actively supports the Faroese effort to achieve membership of EFTA. The issue mentioned in the legal paper does not cause the government to revise current views on a Faroese membership of the EEA”*⁴⁸.

There are, however, other ways to obtain EEA membership, where the legal obstacles seem less pronounced. One way is to become a part of the EU as a part of the Danish EU membership. Another way is for the Faroes to become a state and become either an independent member of EFTA or an independent member of the EU.

Political aspects

In the political debates in the Faroes, it is often argued that becoming party to the EEA agreement would meet all the needs of Faroese society, in terms of both education and the business sector. The problem for the fish farmers would not be solved, however⁴⁹. It is also argued that the EEA solution would be preferable to the discussion of membership since the EEA does not include the CFP.

The financial contribution of the EEA members and the administrative burden following an EEA membership are rarely debated. In addition to the legal constraints, Faroese membership of EEA still requires political will within EFTA to accept the Faroes as a member. The Faroes commenced a dialogue on the

47) Spiermann, Ole. Responsum om muligheder for Færøernes tilknytning til EFTA samt for Færøernes og Grønlands tilknytning til EU, <http://www.dnag.dk/get.file?ID=2795>

48) Folketinget 2008-09 S 1560 Svar på Offentligt. Besvarelse af spørgsmål nr. S 1560 af 9. Marts 2009 til Udenrigsministeren stillet af Høgni Hoydal (TF) <http://www.ft.dk/dokumenter/tingdok.aspx?samling/20081/spoergsmaal/s1560/svar/610731/660091/index.htm>

49) See Annex 2

issue with the EFTA States almost three years ago, and although Iceland and Norway have officially stated that they support a Faroese EFTA membership, the road does not seem to be so straightforward. The EFTA Convention⁵⁰ is currently only open to States, and Switzerland and Liechtenstein still seem to have reservations in this regard.

If the Faroes were to become a part of the EEA, the possibility of opt outs in certain areas should not be excluded beforehand. The status of Liechtenstein in the EEA could serve as an example⁵¹. Liechtenstein has restricted by decree the free movement of workers to its territory, one of the fundamental principles protected in the EEA agreement. These unilateral acts of the Principality have been accepted by the EU, which considers these acts justified by the 'particular geographic situation' of Liechtenstein⁵²

A possible Icelandic EU membership casts a new light on the future of the EEA. If Iceland becomes an EU member, only Norway and Liechtenstein will remain in the EEA agreement from the EFTA side. This raises the question as to whether the EU would still want to have an EEA agreement comprising only two EFTA countries. A possible Icelandic EU membership also puts the future of EFTA into question. An internal EFTA committee is currently discussing the future of the organisation, and one of the core issues under debate is the possibility of Iceland joining the EU and how this step would affect EFTA.

Administrative aspects

EEA membership would, as is the case for independent EU membership, require great efforts by the Faroese Parliament and administration, as this would entail taking over thousands of existing EU legislative acts, and consecutively implementing every new piece of EU legislation into national Faroese law. The EEA accounts for approximately 80% of the total *acquis communautaire*.

Unlike EU membership, where the EU would take care of the translation of the *acquis communautaire*, this is not the case for the EEA. One way of lessening the administrative burden could be to decide to adopt all or selected legal texts in one of the existing EU languages and thereby limiting or removing the costs of translation.

50) The EFTA Convention, <http://www.efta.int/legal-texts.aspx>

51) Article 112 in the EEA allows the contracting states to apply safeguard measures in case of 'economic, societal or environmental' difficulties (and thereby to derogate from one or more provisions of the

52) OJ L 1, 3.1.1994, p. 3

Furthermore, were the Faroes to gain EEA membership through an independent EFTA membership, they would need to have representatives accredited to the EFTA secretariats in Brussels and Geneva.

It may be worth mentioning that two of the smaller European states, Andorra and San Marino, have refrained from a possible EEA membership, mainly due to the increased administrative burden, which they see themselves as being unable to manage⁵³.

Financial aspects

Direct costs would include the EFTA membership fee, payment for EEA institutions and programmes and the financial mechanism fee, which is a development scheme for the new Member States in the EU since 2004. The Faroese proportion of costs is based on the estimation that the Faroese GDP is around 50% of Liechtenstein's GDP⁵⁴.

The two tables below show the EFTA expenditure in 2010 and how this is divided between the Member States. The proportion the Faroes would pay, if they were a member, has been included.

EFTA expenditure listed according to purpose in 2010⁵⁵

	Million Euros
Trade	3,05
Administration of the EEA Agreement	6,46
Statistical cooperation between EFTA and EU	0,59
Secretariat/services	1,45
EU-EFTA and EFTA cooperation	2,33
Internal operations in EFTA	2,91
EFTA –secretariat in total	16,79

Financing the EFTA expenditure in 2010

	Million Euros
Iceland (4,81%)	0,81
Lichtenstein (0,88%)	0,15
Norway (56,29%)	9,45
Switzerland (38,02%)	6,38
Total (100%)	16,79
Faroes (0,44%)	0,07

53) Interviews by Atli Suni Leo with the representations of Andorra and San Marino in Brussels, June 29th 2009

54) <http://www.as.llv.li> Liechtenstein GDP 5.339 million Swiss francs (2008) corresponding to around 3,58 billion Euros. Faroes GDP 1,67 billion Euros (2008)

55) www.efta.int

The table below shows the payment for EEA institutions and programmes.

EEA revenue 2009-2013 in million €⁵⁶

	2009	2010	2011	2012	2013
FP7	6.119	6.933	7.968	8.926	9.766
Lifelong learning	962	1.005	1.037	1.093	1.126
CIP Entrepreneurship and innovation	293	305	333	336	350
CIP Intelligent Energy	88	109	113	131	147
CIP ICT support policy	105	113	121	135	146
Youth in action	125	126	128	130	131
Other cooperation programmes	652	653	673	694	649
Programmes in total	8.344	9.244	10.372	11.445	12.316
EFSA	73	74	76	78	79
European Institute of Technology	6	50	60	75	115
Agency for Safety and Health at work	14	15	15	15	16
European Environment Agency	32	33	33	34	35
EMA European Medicines Agency	39	40	40	41	42
Centre for Disease Prevention and Control	50	56	58	59	60
Other institutions	180	118	114	121	121
Operation of EEA-institutions in total	394	386	397	422	467
Total expenditure of the EEA	8.737	9.630	10.768	11.867	12.784

Iceland, Liechtenstein and Norway's share of the total cost to the research framework programme is calculated according to the following formula:

$$\text{FP7-cost in total} * \frac{\text{GDP of Iceland, Liechtenstein and Norway}}{\text{GDP of EU27} + \text{GDP of Iceland, Liechtenstein and Norway}}$$

A similar financial system is applied to the LLL and other areas of cooperation.

The EFTA countries, which are members of the EEA, pay 2.39% of the total expenditure, shown in the table above. The internal distribution of the expenditure between Iceland, Liechtenstein and Norway is shown in the table below. The proportion the Faroes would pay, if they were a member, has been included.

56) www.efta.int & "Memorandum on the financial consequences of Faroese membership in the EU, EFTA and EEA" by Jonhard Eliassen, Brussels. 2008

Division of expenditure to the EEA between the EEA-EFTA-states in million Euros⁵⁷

	%-share	2009	2010	2011	2012	2013
Iceland	4,84	9,9	11,0	12,2	13,4	14,5
Liechtenstein	0,97	2,0	2,2	2,4	2,7	3,0
Norway	94,19	193,3	213,0	238,3	262,6	282,8
EEA-EFTA in total	100,00	205,2	226,2	252,9	278,7	300,3
Faroes	0,49	1,0	1,1	1,2	1,3	1,5

With regard to the EEA financial mechanism, the three donor states will provide €357.7 million per year to reduce social and economic disparities and promote cooperation in the EU in the period 2009–2014, with Norway representing 97% of this amount⁵⁸. Liechtenstein's contribution in 2009 to the EFTA membership fee is around 150 thousand Euros, their payment for EEA institutions and programmes is 2 million Euros while the financial mechanism fee is 2 million Euros. In direct costs, the Faroes could therefore expect to contribute approximately 2.1 million Euros.

Indirect costs, consisting of higher administrative costs in the Faroes, representations in different EU Member States and EU bodies and participation in various programmes, would vary according to the ambitions of the Faroes⁵⁹.

The income potential in this approach is high, but is somewhat restricted when it comes to market access for fish and fish products. The potential benefits for the Faroes of taking part in various programmes, as well as having access to regional funding for economic entities, should also be taken into consideration.

57) www.efta.int & "Memorandum on the financial consequences of Faroese membership in the EU, EFTA and EEA" by Jonhard Eliassen, Brussels. 2008

58) www.eeagrants.org

59) Estimations made in 2005 by the Prime Minister's Office of the increased (annual) costs of transferring of competence over intended areas were as follows: aviation 3-5 million DKK and financial regulation and supervision 2,5-3 million DKK. Memorandum by the Prime Minister's Office, Foreign Affairs Department, journal no. 403-002/05, 13.06.2005

Annex 1: Memorandum on mixed agreements

By Danish Ministry of Foreign Affairs⁶⁰

The Government of the Faroes has requested the Danish Ministry of Foreign Affairs to examine the legal possibilities of the Government of the Faroes to conclude mixed agreements with the EC.

After having consulted the Danish Ministry of Justice and the Prime Minister's Office, it is the opinion of the Ministry of Foreign Affairs that under the Danish Constitutional Act the Faroes cannot in their own name enter into mixed agreements which Denmark is party to.

The conclusion of the Ministry of Foreign Affairs is based on the following:

1. The Foreign Policy Powers Act

Pursuant to section 19 of the Danish Constitutional Act, the King (the Government) acts on behalf of the Realm in international affairs. Section 19 implies that separate parts of the realm cannot be attributed independent powers in the matter of international affairs. Thus, independent representation of the Faroes in international affairs would require an amendment of the Danish Constitutional Act.

By Act no. 579 of 24 June 2005 on Faroes Foreign Policy Powers ("Foreign Policy Powers Act"), the Faroes were given authority to conclude agreements on behalf of the Realm. The purpose of the Foreign Policy Powers Act is to give the Government of the Faroes express and general authority to negotiate and conclude international agreements with foreign States on behalf of the Realm. This authority is however qualified in so far as the Faroes only are authorised to conclude agreements which relate entirely to subject matters under the authority of the Faroes, see sections 1 and 2 of the Foreign Policy Powers Act. Since the Government of Denmark under section 19 of the Constitutional Act is wholly responsible for the foreign policy of the Realm, the Foreign Policy Powers Act require the Government of the Faroes to inform the Danish Ministry of Foreign Affairs of any of its international negotiations with a view to ensure a coherent administration of the Realm's foreign policy.

60) Please note that this text was drafted before the entry into force of the Lisbon Treaty

Furthermore, it is a central feature of the Foreign Policy Powers Act that the Faroes cannot conclude international agreements which are to apply to Denmark or which are negotiated within an international organisation of which the Kingdom of Denmark is a member. The explanation for this restriction of the Faroes' foreign policy powers is that the Constitutional Act presupposes that the Kingdom of Denmark is one State (the unity of the Realm). Consequently, under the Constitutional Act the Kingdom of Denmark cannot be represented in the same agreement as more than one State.

The precondition of the Constitutional Act that the Kingdom of Denmark is one subject under International law (the unity of the Realm) is also expressed in the Foreign Policy Powers Act section 1(4) according to which the Faroes may not negotiate or conclude agreements under international law with foreign states *"which are to apply to Denmark or which are negotiated within an international organisation of which the Kingdom of Denmark is a member"*. Moreover, the principle of the unity of the Realm is also expressed in section 1(2), cf. section 2(1) of the Act in accordance to which separate representation of Greenland and the Faroes are not allowed if both enter into the same international agreement.

The Foreign Policy Powers Act does not limit the Danish Government's constitutional responsibility and powers relating to international affairs.

2. Mixed agreements

Having examined the authority of the Faroes to conclude agreements under international law with foreign States, the pertinent question is whether the Faroes have authority to enter into mixed agreements. Mixed agreements are characterised by being agreements which include among their parties the European Community ("EC") and all or some of its Member States, and which subject matter falls partly within the competence of the EC and partly within the competence of the Member States. Thus, when entering into mixed agreements Denmark is represented not only through the EC but in its own name and in its own right.

3. Conclusion

Since mixed agreements are characterised *inter alia* by the fact that Denmark is a party to such agreements in its own name and right, it follows from the constitutional principle of the unity of the Realm, i.e. that Denmark is one subject under international law that the Faroes cannot participate in such agreements. See also the Foreign Policy Powers Act section 1(4).

Consequently, the Faroes can only become party to a mixed agreement through Denmark. In practice, this can only be done by having Denmark, when entering into the agreement or at a later stage, making a unilateral declaration in accordance to which the geographical application of the mixed agreement is extended to the Faroes. Whether it is possible to extend the application of a mixed agreement to the Faroes will depend on *inter alia* the political willingness of the other parties to the agreement (the Community, the Member States and third States), which all need to consent thereto. In that connection it will be of relevance if the extension will require renewed ratification or trigger other national procedural requirements of the participating States. Furthermore, the technical nature of the agreement in question might be of such kind that it practically is not possible to extend its application to the Faroes.

Annex 2: Views of the Faroese industry on closer relations with the EU

By the Faroese House of Industry⁶¹

Overall it must be concluded that, apart from improvements in market access in certain areas and importance for the aquaculture sector of avoiding possible anti-dumping charges, the Faroese industry does not see much need for closer relations with the EU at present.

In order to gather information for the analyses of the industry's need for closer relations with the EU, the House of Industry has been in a dialogue with all its members⁶². Meetings were also conducted with associations not members of the House of Industry, i.e. the Faroese Magazine Publishers' Association, Farmers' Association and the Ship-owners' Association (for fishing vessels). The conclusion of these meetings was that the ship-owners (fish catching sector) see no need for closer relations with the EU concerning market access. Also, the Ship-owners' Association sees no benefits for the Faroes in becoming part of the EU's CFP.

In general there are, however, two areas which create problems for the industry under present circumstances. These are access to manpower and market access, although a number of other areas have also been mentioned.

The areas of importance to the industry may be grouped as follows: 1) Access to labour in all areas of the industry, 2) Market access, 3) Right of establishment, 4) Services, 5.) Access to EU funds and 6) Other.

Re. 1. Access to workforce

Most industry sectors pointed out that the Faroese industry needs access to manpower and that the ideal relationship with the EU would entail the free movement of persons. The Faroese labour market is very open and the Faroese workforce highly mobile. This is not only a strength, but also a challenge. The strength is that when the Faroese unemployment rate is high the excess workforce seeks work abroad, and the weakness is that they may not return once the situation reverses. Also, while it is difficult for foreign workers to access the Faroese labour market, the labour markets in our neighbouring countries are open and accessible for Faroese workers.

61) Please note that this text was drafted before the entry into force of the Lisbon Treaty

62) The Faroese Employers Association, the Federation of Faroese Industries, the Faroese Employer's Association for the Financial Sector, the Faroese Merchant Ship-owners' Association, the Faroese Graphic Association, the Faroese Fish Farmers' Association, the Faroese Fish Producers Association, the Hotel and Restaurants Association, the Advertising Agencies Association, the Bank and Savings Bank Association, the Faroe Islands Grocers' Association, the Faroe Oil Industries Association and the ITC Association, the Consultants Association.

Fluctuations in the Faroese economy can be excessive due to, amongst other things, the natural resource dependence of the major industry and the very limited, but open, economy. Faroese industry adapts easily to changing conditions in all areas except access to labour, and there is therefore a need for more flexibility in this area. The consequences of not having better access to foreign labour when the economy is in an upturn are higher wages and deteriorating competitiveness.

Re. 2. Market access⁶³

Market access is one of the most important issues highlighted by the associations in the discussion on closer relations with the EU. This has also been evident in previous examinations on closer relations between the Faroes and the EU. Fear of dumping charges, the issue of documentation in connection with exporting goods to the EU, quotas and access to raw material are the main reasons behind the advocacy for Faroese EU membership.

Dumping: The dumping charges, which the Faroese fish farming industry has faced in connection with salmon and trout, are still fresh in the memories of the fish farming industry when discussing market access. The possibility of facing dumping charges is one of the biggest threats to the Faroese fish farming industry today. This is because such charges are very expensive and not least time consuming for the industry.

The last time the Faroese fish farming industry faced dumping charges, both with regard to salmon and trout, it was because they were included in the charges raised against Norwegian fish farmers. At present, the Norwegians are greatly expanding their salmon farming; 150,000 tonnes are expected in 2010 with a 7% increase per year in the coming years. This fact makes it plausible that dumping charges against Norway may reoccur, and it is feared that the Faroes as a fish farming country may once again be caught up in such charges.

There are also other aspects to this problem. The price of salmon varies greatly. History shows that there are times when the market price of salmon goes below the cost of production. The reason for this is that the 'braking distance' of the salmon production is very long, 18 months, and the fish

63) see annex 5

farming industry therefore has difficulties slowing down the production, should the price fall after the stocking of the salmon in sea-cages.

There are, however, formal requirements with regards to the accusing party, i.e. the industry in the country raising the charges, and the accuser shall also prove that, for example, Norwegian or Faroese fish farmers harm the industry of the accusing party (country) with their low prices.

Documentation: the fish processing industry points out that one challenge in connection with the export of fish products from the Faroes is the documentation required, both in practice and in connection with the extra costs which documentation incurs on the export. The documentation referred to is veterinary and customs documentation, which is required to accompany the goods when entering the EU.

Also, the EU veterinary stamp has characteristics, which identify to the consumer that the product is an EU product. Faroese products do not have this stamp. It is therefore possible for the European consumer to distinguish between EU products and products from a third country like the Faroes. Whether or not this has any effect on the sale and hence the market access is, however, difficult to estimate.

Quotas: Below is a list of the existing duty free quotas on certain fish products exported from the Faroe Islands to the EU:

Trout: 700 tonnes

Prawns, peeled: 6,000 tonnes

Fish feed: 20,000 tonnes

Crab: 750 tonnes

Common whelk: 1,200 tonnes

Dried and salted coalfish: 700 tonnes

salmon and trout: Prepared or preserved fish; caviar and caviar substitutes prepared from fish eggs: 400 tonnes

Alaska pollock, hake, saithe and cod. Prepared or preserved fish: 1,200 tonnes

The industry sees these quotas as an obstacle to the development of the exporting industries in general. The fact that the Faroes at present do not utilise the quotas to the full is a different question, but it is plausible that the quotas affect the future prospects of the industry and hence have a limiting effect upon the development of the industry. With regards to trout farming, it is likely that the anti-dumping duty, which was put on the trout when the Faroes were charged with dumping, has had a negative effect on trout farming, with the result that it is now almost non-existent, even though it is difficult to document a direct connection between these two factors. There are no prospects of any trout being farmed in the Faroes in the coming years.

The fact that the Free Trade Agreement between the Faroes and the EU has a positive list of products which may be imported duty free or by quota to the EU, instead of a possible negative list, is also seen as an obstacle to the development of the Faroese industry.

Access to raw material: the representatives from the fish processing industry point out that EU membership would enhance the possibilities for a more stable production. This view is based on the fact that EU processors can buy third country fish, paying for example 7% duty on the commodity, process the fish and sell it on the EU market without added duty. The only alternative perceived by the fish industry would be a customs union, including fish and fish products.

Agriculture: the Farmers' Association points out, that closer relations with the EU may have both a positive and a negative effect on the agricultural industry in the Faroes. The present situation, however, poses an obstacle to the development of the industry, due to the lack of access to the EU market for animal products.

One of the expected positive effects of an extended cooperation with the EU within agriculture or an EU membership would be the implementation

of the *aquis communautaire*, which would raise the standards of production. Also, the possibility for agricultural funding was mentioned. The negative effect would be the possibility of the Faroese farming industry losing its cultural heritage, i.e. traditions, which are not in accordance with EU agricultural regulations.

All in all the Farmers' Association is of the opinion that if closer relations with the EU are desired by the Government, then EU membership would be the best option, because no other form of agreement would secure the Faroese farming industry an equal footing with the farming industry in the EU.

Re. 3. Right of establishment

The Faroese legal system allows the establishment of foreign insurance companies in the Faroes, but in order for Faroese insurance companies to be established abroad, a bilateral agreement must first be in place. At present there is only one such bilateral agreement and that is with Iceland.

The same situation is applicable to the banking sector. However, in addition Faroese banks also have the possibility of establishment in Denmark, though not in the rest of the EU Member States.

Should Faroese banks or insurance companies wish to establish themselves in an EU Member State they would have to buy a company/subsidiary in the said country. It is not possible for them only to establish a branch of the Faroese company in another country. The problem with this system is that if a company is bought, or a subsidiary is established, then the administrative costs are higher and the bureaucracy burden larger, because the bank would have to proceed according to several rules/conditions. Also, such a subsidiary in a foreign country would become more distant from the headquarters in the Faroes.

According to the Faroese bank and insurance sector an agreement between the Faroes and the EU on closer relations would not solve any of these problems, given that these involve areas of mixed competence. The only alternative to a number of bilateral agreements would be full EU membership.

Re. 4. Services

The fact that there is at present no free movement of services between the Faroes and the EU has been perceived as an obstacle to the development of the Faroese industrial sector in the long run.

The Faroese merchant fleet is, amongst others, unable to operate on inland/intra island routes within the EU, for example in Greece or on the German canals.

The ECAA agreement is yet to be finalised. It is anticipated that once the agreement is in place Faroese airline companies will have the opportunity to operate on EU routes, and EU airline companies will be able to set up routes to the Faroes.

The Association of Consultants and the Craftsmen's Association find that the present situation fulfils their need for access to the EU market, but they are of the view that a new agreement bringing the Faroes closer to the EU would make it easier for them to enter the EU market. EU or EEA membership would mean that all contracts over a certain size would have to be open for bidding from companies from all EU Member States. This would inevitably increase the competition and would probably also reduce the flexibility of the Faroese market. These conditions, however, are not unknown to the Faroese industry, which has been operating on this basis for some time.

Re. 5. Access to EU funds

The question of access to EU funds by the Faroese industry was raised by most associations. They were positive about the result of the negotiations with regards to Faroese association to the FP7, and attention was also paid to access to EU investment funds especially designed for peripheral regions in the EU.

In the answers given to the questionnaires, the associations pointed out that through EU membership the Faroes would access the funds designed for the peripheries. It is therefore of utmost importance that the actual conditions for access to these funds are examined in order to avoid any misconceptions on this matter.

Re. 6. Other

One question which has been raised in connection with the discussion on closer relations with the EU is what will happen with a number of special arrangements, such as the condition in the Parliamentary Act on Hydrocarbon Activities (the Petroleum legislation) that all goods and services must pass a Faroese quayside or Faroese airport⁶⁴, and the stipulation that foreign investment in the Faroese fish catching sector must not exceed 1/3 of the total. With regards to the ‘quayside’ stipulation it is of utmost importance to that sector of the industry to ensure that this condition remains unchanged, even though the terms may have to be adapted for legal reasons should a new agreement on closer relations between the Faroes and the EU so require.

It has also been discussed how the Faroese industry could use the situation of remaining outside the EU in a positive way. In addition, other conditions which might affect the Faroes, such as labour market legislation and its effects on the Faroese labour market, are unclear.

The question of how closer relations with the EU would affect the administration of the associations also needs consideration. For example, in Iceland the Employers’ Association has 3 members of staff working full time on EU-related issues. Furthermore, the different branches of the Icelandic industrial sector have people appointed to deal with EU affairs. Most probably this would induce the associations to expand their administrations in order to keep up with developments in Brussels.

2. Long-term perspectives

The fish farming industry is of the opinion that it is not acceptable to have to live with the constant fear of dumping charges from the EU. Such conditions create instability and insecurity with regard to the future of the industry. The fish processing industry is of the view that greater stability would be achieved if the Faroes had closer relations with the EU. The fish farming and the fishing industries are primary industries for which it is of utmost importance to have the same conditions as their competitors on the EU-market.

64) “The terms and conditions of licenses granted...shall stipulate that any transport of equipment and passengers to and from Faroese territory shall be conducted via Faroese quay or Faroese airport.” Parliamentary Act on Hydrocarbon Activities, Part 3, section 11 (1), March 16th 1998, www.jardfeingi.fo

The shipping industry acknowledges that it would have better access to the internal market were the Faroes to have an agreement with the EU in this area. It is believed that such an agreement would provide the sector with great opportunities for future growth and development.

With regard to Faroese banks and insurance companies, the EU market has been looked upon as a future market albeit with restrictions, since bilateral agreements would have to be made with each country of interest. Previously, banking and insurance services were subject to mixed competences. With the entry into force of the Lisbon Treaty, the competence has shifted to the EU exclusively. This can be of importance for the future aspirations of the banking and insurance sector in the Faroes vis-à-vis the EU.

The fish processing industry has pointed out that matters would be less complicated if the Faroes had the Euro. The finance sector, on the other hand, advises against the Faroes having a different currency than Denmark, because relations with Denmark are so closely interconnected in this sector. Should Denmark join the Euro, they assume that the Faroes will follow, because the Faroes have the same currency as Denmark.

Being a small community in Europe, which exports its goods to Europe, the Faroes are to a great extent attached to the EU market and the EU system. Therefore the Faroes would be highly affected should the EU apply a stricter protectionist policy. Consequently the Faroes have to consider whether they can afford not to achieve stronger relations with the EU.

The Faroese industry needs to obtain free access to the workforce, both in the short and in the long run. This is of utmost importance for the growth of the Faroese industry.

3. Conclusion

The Employers' Association believes that, although the present needs of the industry in general are met by the existing relationship with the EU, when focusing on the needs of the industry in the long run, it is of importance to the industry that the Faroes achieve closer relations with the EU. The EU is the Faroes' most important trading partner and future competitors with

Faroese companies will come from the EU. It is therefore of importance to growth and the future prospects of Faroese companies and goods that they can compete on an equal footing with EU companies and EU goods.

This conclusion should be seen solely from an industrial perspective. The Employers' Association does not at present have a position on which type of cooperation with the EU is best for Faroese society. The association is of the view that it is important to have greater knowledge of the facts concerning closer relations between the Faroes and the EU before a broader conclusion on the matter can be reached, and prefers to await the results of the Committee's report before taking any further stance on the matter.

From the perspective of the different industrial sectors it can be concluded that the Faroese industry, apart from the issues highlighted above, has a limited need for closer relations with the EU at present. Nevertheless, it is of great importance for some sectors of the industry to avoid the threat of possible sanctions from the EU. Also, the industry has a particular interest in an agreement with the EU on free movement of labour.

With regard to the fishing industry the Employers' Association does not believe that it is advisable for the Faroes to become part of the CFP. This view is based on the fact that the Faroes would be the only member of the Union whose economy more or less depends on fisheries and the challenges the Faroese industrial policy faces, are therefore quite different for the Faroese fishing industry than those of the EU's fishing industry.

The amount of fish products which the Faroes can provide to the EU market is limited and therefore very small in relation to the EU market. Subsequently the Employers' Association is of the view that an agreement with the EU on complete free trade in fish products should be possible, or at least the FTA should be amended so that the parties have a negative list rather than a positive list of the goods that can be traded free of duty.

Annex 3: Views of the trade unions under the umbrella of SAMTAK

By Samtak

The trade unions under the umbrella organisation Samtak are of the opinion that relations between the Faroes and the EU could improve in several areas, however, they do not think it advisable to embark on a process towards an EU membership as long as the EU's fisheries policy is centrally governed from Brussels and the structure of the policy remains unchanged.

The European policy of the Faroese Government

The members of Samtak support the Government's European policy of recent years, where the aim has been to achieve Faroese membership in EFTA and the EEA.

The unions are of the opinion that EFTA membership would suit the Faroes better than EU-membership. This is based on the fact that the EFTA co-operation is not as political as the EU co-operation and that the scope of the EFTA co-operation is not as wide as that of the EU. Regardless of the constitutional situation of the Faroes with regard to Denmark, the limited scope of cooperation within EFTA is better suited to the Faroes from an industrial, political, legal and social point of view.

It is assumed that an EFTA membership would not place as many demands on the Faroes as would EU membership, and the EFTA cooperation covers all the areas which are considered beneficial in a closer relationship with the EU/EFTA. An EFTA membership would fulfil the Faroese aim of closer relations with the EU, especially with regard to education, culture, research and the four freedoms.

In addition, EFTA offers the possibility for the Faroes to become party to the many trade agreements which EFTA has with third countries. This, however, depends on the readiness of the EFTA Member States to extend the EFTA membership to new countries. It remains to be seen whether this is possible, but the possibilities for the Faroes to extend the cooperation in trade with third countries would certainly increase through an EFTA membership compared to remaining outside.

On the other hand, with regard to the Icelandic position vis-a-vis the EU the future of EFTA is uncertain. Were Iceland to become a member of the EU it would probably put pressure on the remaining EFTA members to follow suit.

There is no reason at present to change the Faroese European policy with regards to EU/EFTA. However, it is necessary to make sure that the Faroes are prepared should the EU/EFTA situation change significantly.

Improved market access

An improved market access for fish produce and industrial goods produced in the Faroes would be optimal.

The Faroes-EU FTA is rather limited when it comes to new products, as the positive list means that any newly developed Faroese fish products do not automatically have free market access. The best situation would be for the Faroes to have equally favourable access for their goods to the EU as the EU has for its goods to the Faroese market. It is therefore strongly recommended that the Faroes continue to work for a negative rather than a positive list for fish products which can be exported to the EU duty-free, as well as the removal of remaining quota limitation.

Cumulation of origin of goods

Several years have passed since the Faroes became party to the Pan-Euro-Med System of Cumulation. The trade unions have the impression, however, that the possibilities in this system have not been exploited to the full.

The Government should aim to conclude more FTAs with the parties to the Pan-Euro-Med, so that Faroese industry is able to draw on the agreement in order to increase the possibilities for import of goods duty-free from a larger number of countries. This would create a good basis for new industries and improve conditions for those already in business.

There should be more information available on the Pan-Euro-Med and the possibilities it offers Faroese industry with regards to cumulation.

The EU Common Fisheries Policy

The EU CFP has been a scandal, and it would not appear that it will be sufficiently reformed by 2013 for the Faroes to be able to accept it unconditionally. Although decision-making will to a greater extent be in the hands

of Member States/regions, attempts are underway to improve measures to prevent discards and more importance is being placed on sustainability, it is still not plausible that these changes will be great enough for the Faroes to accept the CFP. Compared with the economies of the EU Member States the Faroese economy is 90% dependent upon export and it is therefore crucial that fisheries management has its basis in the structure of Faroese industry. Were the EU to remove the requirement for all Member States to adopt the CFP, this would change the implications of Faroese EU membership to such an extent, that the issue of membership would warrant much more detailed consideration. There is, however, no indication that opt outs on the CFP will be possible for Member States.

Administrative burden

With only 48,000 inhabitants and 25,000 wage-earners there are obvious limitations to the administrative capacity of the Faroes. The Faroese administration cannot grow much larger than it is at present, so it is doubtful how extensive and wide a cooperation with the EU/EFTA the Faroes can manage. Were the Faroes to become a member of the EU, the country would become a part of an enormous *acquis communautaire*, which demands a large administration. The question is whether the Faroes can either now or in the future shoulder such a large administrative burden.

The Four Freedoms

The issue of the four freedoms needs closer examination, both with regards to the advantages and disadvantages. The Faroese administration would also need to be prepared were the Faroes to enter unconditionally into such cooperation.

Were the Faroes to become part of the internal/inner market and the free movement of goods, services, people and capital, this would place great demands on the administration and the legal system of the Faroes. Samtak believes that the national labour market needs to be taken into consideration to allow for restrictions on the free movement of labour should the unemployment rate in the Faroes exceed, e.g. 3.5%. Because of its small size the Faroese labour market is fragile, and it is therefore not certain that a structure designed with a basis in a labour market, 100 times larger than the Faroes is best suited to Faroese interests. It is necessary that the legal system

states more specifically that rules and agreements must be followed. Emphasis should also be placed on safeguarding existing labour market collective agreements, rules and regulations.

If the establishment of foreign companies in the Faroes were unrestricted, adjustments would be required in order to ensure equal competition between Faroese and possible foreign services providers.

General questions

The question of Faroese EU membership begins and ends with the issue of fisheries. It is nevertheless important to have a much broader discussion on the fundamental political, social, cultural and industrial values associated with the question. Do the Faroes wish to become a member of what is commonly called “the world’s finest club”? Were the Faroes to become a member of the EU, the Faroes would at the same time become part of a union which is probably one of the most successful examples of regional cooperation in the world. In no other part of the world has there been such an extensive and close cooperation as with the EU, and it appears to be working. Since the foundations were laid through industrial cooperation on coal and steel production in the early fifties, EU cooperation has become wider and deeper and more and more States have joined. On the other hand, there is no escaping the fact that the EU is a good example of a colossal bureaucracy, with limited transparency. Questions are often raised about the level of democracy in the EU decision-making process, and the limited support for and powers of the institution elected by the people. The trend has been that more and more decisions are taken centrally. Although attempts have been made to change this, more and more decisions which were previously taken by the Member States are taken in the EU in order to maintain the same standards across Europe. There are obvious gains in having common standards in several areas in all Member States. The disadvantage is that Member States and their citizens have to live with decisions which are basically foreign to them and which they have virtually no power to change, compared with national decision-making procedures. For a country like the Faroes, with the close proximity between decision-making institutions and the general public, a consequence of EU membership would be that popular political participation would be limited, as the Faroes would in practice have no real influence on a legal system that applies to 100 million people.

Annex 4: Micro States and the EU

By the Faroese Ministry of Foreign Affairs

Although not a state, the Faroes share similarities with some of the Western European micro states, such as size, population, close historical ties to a neighbouring country and the decision to remain outside the EU. The current construction of the EU and the ongoing European integration do not seem to accommodate the interests of the European micro states. Liechtenstein, Andorra, San Marino and Monaco have all chosen to stay outside the EU. This annex briefly outlines the current relationship these micro states have with the EU.

Liechtenstein

The foreign policy of Liechtenstein is based on close cooperation with its neighbours, especially Switzerland and also aims for an even closer relationship with the EU than at present. Liechtenstein has been part of the EEA Agreement since 1995, thereby being part of the single market with partial application of EU law⁶⁵. There are very few areas not covered by this Agreement. By making use of EEA Article 112, Liechtenstein has restricted by decree the free movement of workers to its territory; this includes restrictions on the right of residence⁶⁶. Liechtenstein has had a customs and monetary union with Switzerland since 1924⁶⁷ and is strongly integrated in the Swiss economy, in addition to its participation in the EEA. EEA law takes precedence in Liechtenstein over Swiss customs regulations in relation to states party to the EEA Agreement.

In addition to the EEA Agreement, the EU has bilateral agreements with Liechtenstein on subjects such as taxation of savings⁶⁸. Liechtenstein will also be part of the Schengen/Dublin co-operation. While the Schengen Agreement is about strong outer border control and free movement of persons within the inner borders of the EU, the Dublin cooperation concerns asylum policies. Negotiations on EU-Liechtenstein co-operation on combating fraud and exchange of information on tax matters are expected to be concluded in the near future. Liechtenstein uses the Swiss franc as currency and not the Euro⁶⁹.

65) OJ L 1, 3.1.1994, p. 3-36

66) Dózsa, Dániel. "EU Relations with European Micro-States. Happily Ever After?" *European Law Journal*, Vol. 14 (1), January 2008, Blackwell Publishing Ltd, UK. 2008, p. 100

67) Liechtensteinisches Landesgesetzblatt, Jahrgang 1923 Nr. 24, ausgegeben am 28. Dezember 1923, <http://www.liechtenstein.li/en/fl-aussenstelle-bern/fl-aussenstelle-bern-bilateral.htm>

68) OJ L 379, 24.12.2004, p. 84-104

69) http://ec.europa.eu/external_relations/liechtenstein/index_en.htm and Delegation der Europäischen Union für die Schweiz und Liechtenstein http://delche.ec.europa.eu/de/eu_liechtenstein/

Andorra

Andorra is surrounded by the European Union and it is therefore important for the country to keep close ties of cooperation with the EU. Andorra focuses on a policy of proximity with the EU that started in 1990, with the signature of a Commercial Agreement. The wish is to strengthen the relationship even further without seeking membership. Membership is not considered an option due to the size of the country and the administrative burden membership would entail.

The EU has always considered Andorra as a third country, which in practice means that in areas not covered by bilateral agreements stating the opposite, the *acquis communautaire* is generally not applicable in Andorra⁷⁰. The contractual relations with the EU are based on an Agreement between the EEC and the Principality of Andorra in the form of an exchange of letters, which was signed on 28 June 1990 and entered into force on 1 July 1991⁷¹. The Agreement establishes a customs union/commercial agreement applying to products falling within Chapters 25 to 97 of the Harmonised System (HS), excluding agricultural products. The Agreement also includes provisions applicable to products falling within Chapters 1 to 24 of the HS (which are not covered by the customs union). This Agreement was notified to WTO under Article XXIV of GATT 1994 in February 1998. The factual examination of this Agreement at the WTO Committee on Regional Trade Agreements was concluded in October 1999.

Andorra is treated as an EU member in trade in manufactured goods and as a Non-EU member in trade in agricultural products. On 16 April 1997, a Veterinary Protocol was signed, as a complement to the Custom Union Agreement⁷². In addition, a Cooperation Agreement was concluded, covering a wide range of issues, including environment, communications, information, culture, transport, regional and cross-border co-operation, and social issues⁷³. An Agreement on the Taxation of Savings was signed on 15 November 2004 and entered into force on 1 July 2005⁷⁴.

Andorra maintains its border controls by staying outside of Schengen though citizens holding a Schengen visa can enter. Andorra is the only micro state to use the Euro without an official agreement, having not had its own currency before the Euro, when it used both the French franc and the Spanish peseta⁷⁵.

70) Dózsa, 2008, p. 96

71) OJ L 374, 31.12.1990, p. 14-32

72) OJ L 148, 6.6.1997, p. 16-18

73) OJ L 135, 25.5.2005, p. 14-18

74) OJ L 359, 4.12.2004, p. 33-53

75) European Commission, External Relations, Andorra, http://ec.europa.eu/external_relations/andorra/in dex_en.htm and Government of Andorra, Ministry of Foreign Affairs and Institutional Relations, "Fonctions de la direction Générale et du département des relations institutionnelles et des affaires Européennes", <http://www.mae.ad/angles/htmls/menu/funcionsdireccio.html>

San Marino

It is important for San Marino to have close relations with the EU in order to *“avert the danger of remaining isolated in an anachronistic position, and, at the same time, to preserve the political and cultural but also economic and social features typical of a small State”*⁷⁶.

The establishment of official relations between San Marino and the EU dates back to February 1983. The current policy of San Marino in respect of the EU, along with a description of the current framework of cooperation is outlined in an Aide Memoire⁷⁷.

San Marino has been considered part of the EU customs territory since 1968 and in 1991 a Cooperation and Customs Union Agreement between the Community and San Marino on the matter was negotiated, which entered into force in 2002⁷⁸. (An interim agreement with substantially the same provisions had been in force in the meantime). Compared to the agreement with Andorra, the customs union concluded between the EC and San Marino concerns both agricultural and industrial products. Similarly to the cooperation agreement between the EC and Andorra, the customs agreement between the EC and San Marino allows the extension of its scope by mutual consent in order to establish a dynamic legal framework for future cooperation. With the customs union certain areas of the *acquis communautaire* must be adopted, including common commercial policy, regulations relating to agriculture and the EU veterinary framework, plant health and quality regulations. Equal treatment with respect to employment and social security must also be respected; however, this excludes the freedom of movement⁷⁹.

In view of the introduction of the Euro, Italy negotiated on behalf of the EC an Agreement on monetary relations between the EC and San Marino, which was signed in 2000⁸⁰. This entitles San Marino, *inter alia*, to use the Euro as its official currency, to grant legal status to Euro banknotes and coins and to issue a limited quantity of Euro coins with its own national sides.

Furthermore, San Marino has concluded an Agreement on savings taxation⁸¹ and the country has an open border, though not Schengen, with the Union⁸².

76) Aide-Mémoire by Republica di San Marino, Segretaria di Stato per gli Affari Esteri: http://ec.europa.eu/external_relations/sanmarino/docs/aidememoire_en.pdf

77) *ibid*

78) OJ L 84, 28.3.2002, p. 43-52

79) Dózsa, 2008, p. 98

80) OJ C 209, 27.7.2001, p. 0001-0004

81) OJ L 381, 28.12.2004, p. 32-32

82) European Commission, External Relations, San Marino, http://ec.europa.eu/external_relations/sanmarino/index_en.htm

Monaco

There is no agreement in force between Monaco and the EC concerning customs matters. However, through its special relationship with France, Monaco participates directly in certain policies of the EU. Monaco is an integral part of the EU customs territory (Article 3 (2) (b) Customs Code) and applies directly most measures related to Value Added Tax (VAT) and excise duties, in particular those related to the free movement of goods within the EU⁸³. The participation in the customs territory of the EU does not extend to the area of external trade. Preferential trade agreements concluded by the EC apply only to goods originating on the territory of the EU. Goods produced in Monaco may not claim EU origin and are generally not included in an extended application of the protocol of origin with the trade partners of the EC.

In view of the introduction of the Euro, the EU Council of Ministers authorised France to negotiate a new Monetary Agreement with Monaco⁸⁴. It entitles Monaco, *inter alia*, to use the Euro as its official currency, to grant legal status to Euro banknotes and coins and to issue a limited quantity of Euro coins with its own national sides. The annexes of the Agreement were updated in 2006⁸⁵.

On 1 May 2004 an Agreement regarding the application of EU legislation to pharmaceuticals, cosmetic products and medical devices entered into force. It provides for the application of the relevant EU legislation in Monaco. However, the goods produced in Monaco are not assimilated to products of EU origin⁸⁶.

Monaco has concluded an Agreement on savings taxation, which entered into force on 1 July 2005⁸⁷. Through France, Monaco is also integrated into the Schengen area⁸⁸.

Summary

The four micro states aim at having closer cooperation with the EU and it seems that their close historical relations with their neighbouring countries have to some extent formed their different levels of cooperation with the EU. The four micro states have established close ties with the EU concerning customs cooperation. Liechtenstein partly applies the customs regime of the EEA and partly that of Switzerland. San Marino and Andorra have a customs

83) OJ L 302, 19.10.1992, p. 1-50

84) OJ L 142, 31.5.2002, p. 59-73

85) OJ L 219, 10.8.2006, p. 23-27

86) OJ L 332, 19.12.2003, p. 42-51

87) OJ L 19, 21.1.2005, p. 55-69

88) OJ L 239, 22.9.2000, p. 0001-0473. European Commission, External Relations, Monaco: http://ec.europa.eu/external_relations/monaco/index_en.htm

union with the EU and Monaco is part of the EU's customs territory because of its customs union agreement with France, although Monaco does not have any bilateral agreement as such with the EU concerning customs matters.

The micro states have all concluded agreements on savings taxation. Monaco and San Marino have signed agreements allowing them not only to use the Euro, but to mint their own coins, while Andorra uses the Euro without an official agreement. Monaco is integrated into the Schengen cooperation, Liechtenstein will become part of Schengen in the near future and San Marino has open borders with the EU.

The fact that Liechtenstein, Andorra, San Marino and Monaco have chosen to stay outside the EU indicates that their political and economical interests are better guarded as non EU members and that their relationship with the EU seeks to accommodate their different needs. As with the Faroes, the micro states share concerns in areas such as the administrative costs associated with a possible EU membership.

Apparently the micro states do not seem to fit within the general foreign policy framework of the EU and there does not appear to be any systematic arrangement or clear political strategy from the side of the EU towards the micro states.

Annex 5: Autonomous Regions and the EU

By the Faroese Ministry of Foreign Affairs

This paper gives a short introduction to the relations with the EU of self-governing regions belonging to a Member State. As with the Western European microstates, these regions also seem to have different levels of cooperation with the EU, depending on their needs and their relationship with the Member State to which they belong. With the exception of the Åland Islands, the regions concerned are not members of the EU.

The Channel Islands and Isle of Man

The Channel Islands (which comprise the Bailiwicks of Jersey and Guernsey (the latter includes the islands of Alderney and Sark) and the Isle of Man are self-governing dependencies of the British Crown and are not part of the United Kingdom. The islands operate largely as autonomous jurisdictions with wide powers of self-government and their own independent legal, administrative and fiscal systems. The United Kingdom has responsibility for their international affairs and defence.

Essentially, the Channel Islands and Isle of Man have the same relations with the EU. They are not part of the EU nor EEA. Their relations are governed by Article 355 (formerly Article 299) of the Treaty on the Functioning of the European Union⁸⁹. This means that the islands effectively remain outside the EU, with the exception of certain provisions which are principally contained in Protocol 3 to the Treaty of Accession by the United Kingdom⁹⁰.

The islands are excluded from most of the effects of the Treaty on the Functioning of the EU, other than those concerning trade in goods. In essence, protocol 3 provides that the Islands are in the Customs territory of the EU. This means that they benefit from free movement of industrial and agricultural goods. In this sense, they are part of the Common Customs Tariff (CCT), which allows export access to EU Member States without tariff barriers. Implementation of the provisions for the free movement of persons, services and capital is not required, but the islands are subject to the duty to apply the same treatment to all natural and legal persons of the Union.

89) OJ C 115, 9.5.2008, p. 47-388

90) OJ L 73, 27.03.1972, p. 164

The Channel Islands and Isle of Man are not eligible to benefit from EU funds nor do they make any financial contribution to these funds⁹¹.

Åland

In 1991 the League of Nations affirmed that Åland was a selv-governing territory of Finland, but at the same time guaranteed their cultural rights as a Swedish ethnic minority. The Autonomy Act from 1920 was replaced by another Act in 1951 and the latest updated legislation entered into force on 1 January 1993⁹². Finland has among other areas assumed responsibility for customs affairs, foreign affairs, financial affairs and defence. By law, Åland is politically neutral and entirely demilitarised⁹³.

The Government of Åland accepted to join the EU with Finland in 1995 after having had a referendum on the subject and after it had become evident that the relationship between Åland and the EU *acquis communautaire* should be regulated in a separate protocol. Protocol No. 2 to the Finnish Accession Act lists the exemptions that apply to Åland⁹⁴. Article 1 states that the existing restrictions for foreigners (i.e., persons who do not enjoy "home region rights" (*hembygdsrätt*) in Åland) to acquire and hold real property or to provide certain services shall not be changed. Article 2 contains a derogation from EU indirect taxes whereby Åland is regarded as a third country in this regard. This derogation was permitted in view of the fact that the Åland economy depended in large measure on income from the ferry crossings between Åland and Sweden and Finland. The EU, however, inserted a safeguard provision in Article 2 paragraph b, which provides that the objective of the derogation is to maintain a "*viable local economy in the islands*" and should not have any adverse effect on the EU⁹⁵. The derogations are, however, not permanent. Should the exemption have an adverse effect on the EU, the Commission may submit proposals to the Council, which shall act in accordance with relevant Treaty articles⁹⁶.

According to Chapter 9a, section 59a, of the Autonomy Act of Åland, Åland is given the right to participate in the preparation of the national positions of Finland concerning decision-making in the EU if the matter falls within the power of Åland or if the matter otherwise may have special significance to Åland. If a EU decision pertains in full or in part to the application of a common policy of the European Community in Åland the Government of Åland

91) States of Jersey, Government and administration, International Affairs, Jersey's relationship with the UK and EU <http://www.gov.je/HomeAffairs/CusAndImm/Customs+and+Excise/Traders+Information/Jerseys+relationship+with+the+European+Union>, Isle of Man Government, External Relations, Relationship with European Union <http://www.gov.im/cso/externalrelations/eu.xml> and Isle of Man, External Relations, Our relations with the United Kingdom, <http://www.gov.im/isleofman/externalrelations.xml>

92) Ålands Lagting, Ålands självstyrelse, Självstyrelselagen, <http://www.lagtinget.ax/text.con?iPage=59&m=228>

84 93) Act on the Autonomy of Åland (16 august 1991/1144): <http://www.finlex.fi/en/laki/kaannokset/1991/en19911144.pdf>

has the right to “*formulate the position of Finland in so far as the matter would in other respects fall within the powers of Åland... Upon request, the Government of Åland shall also be reserved an opportunity to participate in the work of the Finnish delegation when matters falling within the powers of Åland under this Act are being prepared in the European Union*”⁹⁷.”

Åland has obtained one seat in the Committee of Regions⁹⁸.

Greenland

Like the Faroes, Greenland is a self-governing territory within the Kingdom of Denmark. With the introduction of home rule in 1979 and Self Rule in 2009, Greenland has extensive powers of self-government. Denmark remains in charge of foreign affairs, security, defence and monetary policy⁹⁹.

In 1972 a Greenlandic referendum turned down EC membership, but Greenland had to follow Denmark into the Community in 1973 since it did not have home rule at that time. In 1982 a new referendum was held and a majority voted in favour of withdrawal due to the desire to have full control over their fishing territory and also due to an overall desire to minimise the direct influence from outside Greenland. Negotiations on the terms of withdrawal took place and on 1 February 1985 Greenland formally withdrew from the EC¹⁰⁰.

Simultaneously with the agreement on withdrawal a fisheries agreement was concluded between the parties in which Greenland kept its financial contribution from the EC and the EC kept its fishing rights¹⁰¹. The agreement on withdrawal gives Greenland tariff free access for fish products to the EU as long as there exists a satisfactory fisheries agreement between the two parties. Also Greenland was associated with the EC through its participation in the Overseas Country and Territories Association Decision¹⁰².

In 2003 the fisheries agreement was divided into two parts: a continued fisheries partnership agreement on commercial terms and a partnership agreement¹⁰³. On 1 January 2007 the new commercialised fisheries partnership agreement came into force¹⁰⁴. EU pays 17.8 million Euro per year for fishing rights and quotas in Greenlandic waters. The objective of the agreement is to provide the EU with fishing quotas and to maintain and strengthen the relationship in fisheries between the EU and Greenland¹⁰⁵.

94) Act concerning the conditions of accession of the Kingdom of Norway, the Republic of Austria, the Republic of Finland and the Kingdom of Sweden and the adjustments to the Treaties on which the European Union is founded, Protocol No 3 – on the Åland islands, OJ C 241, 29.08.1994, p. 352

95) Protocol No 2 on the Aaland Islands, <http://eur-lex.europa.eu/Notice.do?mode=dbl&lang=en&ihtmlang=en&lng1=en,da&lng2=da,de,el,en,es,fi,fr,it,nl,pt,sv,&val=201434:cs&page>

96) Åland.ax, det offentliga Åland, <http://www.aland.ax>

97) Act on the Autonomy of Åland (16 august 1991/1144), section 59a

98) Fagerlund, Niklas: “Chapter 9: The Special Status of the Åland Islands” in *Autonomy and Demilitarisation in International Law: The Åland Islands in a Changing Europe*, ed. Lauri Hannikainen and Frank Horn, Kluwer Law International, The Hague, 1997, p. 231

The Protocol lays down the fishing opportunities for EU vessels, the financial contribution, the categories of fishing activities and the conditions governing these¹⁰⁶. The protocol covers a period of 6 years (2007-2012). In the Protocol there is also a possibility for closer economic cooperation in the fishing industry through the possibility of setting up joint enterprises involving companies from both parties.

In June 2006 the Partnership Agreement was ratified and entered into force on 1 January 1 2007. The main focus of the agreement is education and training, allocating Greenland 25 million Euros yearly for this purpose.

Greenland is also seeking to strengthen cooperation with the Community in other areas such as environment, research and food safety. Such cooperation is possible through Greenland's OCT association¹⁰⁷.

The OCT Association Decision

There are 20 overseas countries and territories (OCTs) associated with the EU and they are linked to Denmark, France, the Netherlands and the UK.

The OCTs are associated with the EC through the provisions of Part IV of the EC Treaty and the detailed rules and procedures laid down at present in the OCT decision of 27 November 2001.¹⁰⁸ The purpose of the OCT association is to promote the economic and social development of these particular countries and territories and to establish close economic relations between them and the Community as a whole. The arrangements for the association of the OCTs are in particular designed for those overseas countries and territories that lag far behind in structural terms often linked to their particularly severe geographical and economic handicaps¹⁰⁹.

The EU lays down a development strategy for each OCT in the form of a Single Programming Document (SPD). For the years 2008-2013, OCTs have in total been allocated 286 million Euros of European development funding.

The OCTs benefit from association arrangements focusing on: 1) Economic and trade cooperation, with a very advantageous trade system, offering duty

99) Act No. 577 of November 29th 1978, The Greenland Home Rule Act, http://www.stm.dk/_a_1602.html

100) OJ L 29, 1.2.1985, p. 0001

101) OJ L 29, 1.2.1985, p. 9-12

102) OJ L 29, 1.2.1985, p. 3

103) OJ L 342, 30.12.2003, p. 37-48

104) OJ L 172, 30.6.2007, p. 4-25

105) OJ L 208, 29.07.2006, p. 28-31

106) OJ L 172, 30.6.2007, p. 9

free access for their goods to the EU, with favourable rules of origin. 2) Sustainable development focusing on support for policies and strategies relating to production, trade development, human, social and environmental development, cultural and social cooperation. 3) Regional cooperation and integration focusing on support for economic cooperation and development, free movement of people, goods, services, labour and technology, liberalised trade and payments, and 4) sectoral reform policies at regional level¹¹⁰.

The OCTs are eligible for participation in and funding from EU programmes such as the research framework programme, education and training programmes, the competitiveness and innovation framework programme, cultural and audiovisual programmes.

The future of EU-OCT relations

In view of the expiry of the current Overseas Association Decision at the end of 2013 the Commission wishes to carry out a review of the relations between the EU and the OCTs and to consider a substantial revision of the OCT-EC association.

The Commission is seeking a significant change in the approach to the association of the OCTs with the EU. With such a change the Commission finds it important that the EU signals that the EU and the OCTs have a special relationship. This should lay the foundations for a new partnership based on mutual interests, reciprocity, rights and obligations from both sides.

The Commission states in its Communication from 2009 that the relationship between the EU and the OCTs should change from the classic development cooperation approach to a partnership which supports the OCTs's sustainable development, while at the same time promoting the EU's values and standards in the wider world. The Commission believes that the future relationship should be based on mutual interests: "Mindful of this new rationale, the future association should aim to enhance the OCTs' competitiveness, strengthen their resilience and promote cooperation between the OCTs and other partners in the regions where they are located, in the EU and beyond. This no longer requires a relationship between donor and aid partner as is the case today, but calls for a new framework of cooperation."

107) European Commission, Development, Geographical Partnerships, Regions and Countries, Overseas Countries and Territories (OCTs), Greenland, http://ec.europa.eu/development/geographical/regionscountries/countries/country_profile.cfm?cid=gl&type=short&lng=en

108) Council Decision 2001/822/EC of 27 November 2001 on the association of the overseas countries and territories with the European Community ("Overseas Association Decision"), OJ L 314, 30.11.2001

109) Declaration 36 to the Treaty of Amsterdam, OJ C 340 10.11.1997, p. 138

110) European Commission, Development, Geographical Partnerships, Regions and Countries, Overseas Countries and Territories (OCTs), http://ec.europa.eu/development/geographical/regionscountries/regioncountriesocts_en.cfm

Annex 6: Previous Committee Reports

By the Faroese Ministry of Foreign Affairs

In the 1990s the Government of the Faroes commissioned three reports on the possibility of expanding the relations between the Faroes and EU. The members of the three committees were Faroese government officials, Faroese EU experts and representatives from Faroese industry.

The aim of the first report, the Pink Report from 1991¹¹¹, was to examine the possibilities for a free trade agreement between the Faroes and the EC. Institutions, associations and companies in the Faroes were asked to list advantages and disadvantages in connection with a free trade agreement, a customs union, EEC membership or status as a third party in relation to the EEC. The conclusion was that none of these options was optimal for the Faroes. They were considered to be either unrealistic or too comprehensive.

While the work on the Pink Report was under way, initial negotiations were being held between the EFTA countries and the EC about an EEA agreement, which came into force in 1994. Although an EEA agreement was not mentioned as an option, the committee writing the Pink Report concluded that an EEA agreement might be the most compatible solution for the Faroese society; as such an agreement would still allow the Faroes to regulate their own fisheries. The committee thus considered the EEA agreement, including cooperation in the fields of education, research and culture, to be a sensible solution for the Faroese society.

The second report, the Blue Report from 1995¹¹², examined how the Faroes could achieve the best possible access to the EU common market. The conclusion of the Blue Report was that by remaining outside the EU, EFTA and the EEA, the Faroes would lag behind in acquiring access to free trade in Europe. Therefore it was recommended that the Faroes should aim for an “EEA-like agreement with a customs union” or EU membership through Denmark.

The committee which prepared the Blue Report based its recommendations on the fact that the broad scope of cooperation in the EEA, covering the internal/single market, veterinary issues, education, research, and communi-

111) “Føroyar og EF – Útlit fyri samvinnu”, Frágreiðing latin Føroya Landsstýri 14. juni 1991

112) “Møguleikar fyri samvinnu við Evropeiska Samveldið.” Frágreiðing frá nevdini at kanna gagnligastu marknaðaratgongd til ES. Fróðskaparsetur Føroya fyri Føroya Landsstýri., 1995

cation amongst others, would give the Faroes advantages. With regard to fish and fish products, the EEA agreement alone gives roughly the same market access to the EU as the existing FTA from 1991, and therefore it was advised that the Faroes should aim for a customs union with the EU in order to achieve better market access for these products.

The Committee which prepared the Blue Report also realised that it would be difficult to reach these goals. There were several reasons for this:

- There were no pre-existing cases of the EU entering into a customs union with a third country which included fish and fish products.
- Due to the constitutional status of the Faroes within the Kingdom of Denmark, negotiations between the Faroes and EU would partly relate to Faroe-Danish relations on the one part and the EU on the other, and partly to the relations between the Faroes and Denmark.
- The fishing industry is the main industry in the Faroes. In the EU the fishing industry is a highly sensitive industry. Fisheries policies are difficult to negotiate within the EU.
- An EEA-like agreement combined with a customs union would be difficult to negotiate. No precedence existed for such a combined agreement and it was doubtful whether the EU would agree to negotiate such a new agreement with the Faroes.

The third report, the Red Report from 1998¹¹³, examined the possibilities for the Faroes in negotiations with the EU on a new FTA. The Red Report was based on the conclusions reached in the Blue Report. The task of the committee which prepared the Red Report was to further examine the findings of the Blue Report. The conclusion was that some possibilities do exist for negotiations towards a special agreement on an “EEA-like agreement with a customs union”.

The committee that prepared the Red Report came to the conclusion that the most realistic path for the Faroes was to widen the FTA between the Faroes and the EU to an EEA-like agreement. This road was considered to be the least radical and the most likely to achieve the goals, of greatest interest for the Faroes in a closer relationship with the EU.

113) “Frágreiðing um samráðingar við Evropeiska Samveldið. Frágreiðing frá nevndini, ið varð sett at gera tilmæli um samráðingar við Evropeiska Samveldið”, Føroya Landsstýri, 1998

The committee also discussed the question of a customs union on its own. The conclusion was that if the Faroes were to achieve better customs conditions on the EU market for fish and fish products than in the current FTA, and better conditions than Norway and Iceland had gained in the EEA agreement, then the Faroes would have to offer the EU fishing rights in Faroese waters in return. If the Faroes wanted total exemption from duty in a customs union the EU would demand that the Faroes should take part in the CFP.

The general conclusion of the Red Report was that an EEA-like agreement combined with a customs union would accommodate the needs of the Faroes.

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Besvarelse af spørgsmål nr. S 1560 af 9. marts 2009 til Udenrigsministeren

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