

Chapter 14

Some Reflections on the EEA Integration Process Extending Deeper Into the Financing of Public Services and Limiting States' Legislative Freedom Through State Aid Rules



Part III has analysed the EEA integration process in the field of financing public services and the state aid provisions. The overall question was the extent to which the EU/EFTA institutions applying EEA law have paralleled the EU legal order in the field of competition and state aid despite the lack of a parallel revised constitutional framework.

Chapter 11 began with a rough outline of the development of public services and the European integration process including the privatisation and de-monopolisation of these services in states. The following chapters were then divided in two distinct sections. Chapter 12 dealt with the case law from the CJEU based on the revised constitutional framework leading to increased protection from free movement and competition law for the provision of state welfare services. The analysed case law from the EFTA Court supported the understanding of similar developments in the EEA integration process paralleling concepts of economic/non-economic activity, the concept of an undertaking as well as the Altmark doctrine.

Chapter 13 dealt with the increased scope of scrutiny through state aid provisions into the provision of state welfare services in particular including almost all social services. A case study was undertaken in the field of a largely non-economic service such as public service broadcasting. The analysed practices from the EFTA Surveillance Authority both in terms of paralleling general guidelines as well as individual cases led to the finding that the EEA integration process includes the same scope of state aid review reaching far into the social domain of the EFTA States and involving the balancing of welfare concerns.

It is demonstrated here that the EFTA Surveillance Authority has, in line with the European Commission's interpretation of Article 107 TFEU, interpreted the prohibition of state aid in the EEA Agreement (Article 61 EEA) as granting wide discretionary powers to the Authority. When applying this power, the Authority has taken on a policymaker role. This role played by the Authority in the EEA arguably exceeds the preventive control system targeted at addressing distortions of competition that had originally been envisioned in the prohibition of state aid in the EEA Agreement.