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The EEA Agreement, often described as the ‘Norwegian model’ extends the Single Market to Norway, Liechtenstein and Iceland. This Monckton Brexit Blog post provides insights into the fundamental principles of EEA law and their role in achieving a level playing field across the Single Market.

Principles of EEA Law

The EEA Agreement is an international treaty *sui generis* which contains a distinct legal order of its own.\(^1\)

Two fundamental principles of EEA law are homogeneity and reciprocity.\(^2\) Although EU and EEA law constitute two separate legal orders, they must essentially be identical in substance and they must develop in a homogeneous way. ‘The EEA Agreement has linked the markets of the EEA/EFTA States to the single market of the European Union.’\(^3\) The EEA Single Market can only function in an undistorted manner if there is a level playing field for the market operators, producers, workers, consumers, dealers, and investors. Competition must, as a matter of principle, be led by economic and not regulatory advantage.\(^4\) It must be emphasised that homogeneity is not something which can be achieved in every single case; a process-oriented approach is necessary.\(^5\) Reciprocity means that when it comes to remedies, EU operators must basically have the same rights in the EFTA pillar as EFTA operators enjoy in the EU pillar.\(^6\)

While the EEA Agreement is of a *sui generis* nature, there is almost the same (that is “same but different”) approach to some of the fundamental principles. Instead of primacy, direct effect and State liability in the EU, there is quasi-primacy, and quasi-direct effect.\(^7\) This particular difference finds its foundations in Protocol 35 EEA and Article 7 EEA.

The Sole Article of Protocol 35 EEA reads “*For cases of possible conflicts between implemented EEA rules and other statutory provisions, the EFTA States undertake to introduce, if necessary, a statutory provision to the effect that EEA rules prevail in these cases.*”

Article 7 EEA reads “*Acts referred to or contained in the Annexes to this Agreement or in decisions of the EEA Joint Committee shall be binding upon the Contracting Parties and be, or be made, part of their internal legal order as follows :*

\(a\) an act corresponding to an EEC regulation shall as such be made part of the internal legal order of the Contracting Parties;

\(b\) an act corresponding to an EEC directive shall leave to the authorities of the Contracting Parties the choice of form and method of implementation.”

Since legislative power was not to be transferred by the EEA Agreement from the States that adhered to the dualistic principles (at the time Finland, Iceland, Norway and Sweden), the
principles of ‘direct effect’ and ‘primacy’ of EU law were not made a part of the EEA Agreement. Instead the drafters sought other solutions, which produce results similar to those under EU law. Consequently, State liability in the EFTA pillar is arguably much tougher than its EU law equivalent (in order to balance out the inherent weaknesses of quasi-primacy, and quasi-direct effect).  

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3 Case E-10/14 Enes Deveci [2014] EFTA Ct. Rep. 1364, paragraph 64.