

The EEA Judicial System and the Supreme Courts of the EFTA States

Leif Sevón *

I. The Negotiations

1.1. In the negotiations concerning the Agreement on the European Economic Area (EEA), the judicial system and the mechanisms for dispute settlement turned out to be among the most difficult issues. The task of the negotiators was to create a judicial system which would provide legal security while simultaneously ensuring as uniform an interpretation and application as possible of rules within the whole of the EEA. In discharging this task the negotiators had to take into consideration the political sensitivity of the judicial system both in the EFTA States and in the Community, insofar as political factors may affect both the sovereignty of the Contracting Parties and the independence of their courts. The balance to be found between these requirements was crucial for the acceptability of the whole EEA Agreement.

1.2. Already at its first meeting in July 1989, the EFTA Working Group on Legal and Institutional Questions agreed amongst themselves and suggested to the Community representatives that procedures for uniform interpretation and dispute settlement within the EEA would be needed.¹ At that stage of exploratory talks the EC representative could envisage a mechanism of preliminary references to the EC Court of Justice (ECJ) with an ad hoc judge from the EFTA country concerned. He did not exclude, however, other options, such as the setting up of a new EFTA-EC judicial organ. This idea was developed further by the EFTA States, which suggested that an EEA court should be established and given the competence:

* Judge, Supreme Court of Finland.

¹ Present stage of discussions in EFTA-EC Working Group V with regard to a future EES Judicial Body, paragraph 2. The EFTA States promoted at that stage a formula based on Protocol No. 2 of the Lugano Convention but were also ready to discuss other means, including judicial procedures for the settlement of disputes concerning the application and interpretation of EEA rules, paragraph 3.

- to decide on disputes between the Contracting Parties concerning the application and interpretation of EEA rules and
- to give preliminary rulings or reasoned opinions on questions of interpretation of EEA rules. As to the composition of such an EEA court, it was merely suggested that it should be balanced.

Since these first exploratory talks, many ideas were advanced in the discussions on the judicial mechanism. The Community representatives suggested on several occasions that the judicial mechanism for the purposes of the EEA Agreement should be comprised of ECJ judges supplemented by one or more judges from EFTA States. It was suggested that such a solution would preserve the autonomy of the EC legal system while simultaneously permitting a homogeneous interpretation of EEA rules and the corresponding EC rules. The EFTA States, on the other hand, stressed the independence of the EEA judicial mechanism.

The most peculiar feature of these discussions is that they were successfully concluded so many times. On 14 May 1991, the EFTA and EC ministers adopted a resolution in which it was agreed, *inter alia*, to create an independent EEA Court composed of five judges from the ECJ and three judges from the EFTA countries, to be nominated to the court. The court was to be functionally integrated with the ECJ. It would have been competent to give rulings concerning dispute settlements at the request of the EEA Joint Committee or the Contracting Parties, concerning disputes between the EFTA Surveillance Authority and an EFTA State and cases brought by enterprises or States against decisions of the EFTA structure in the field of competition.² At the parallel Ministerial Meetings in Luxemburg on 21-22 October 1991, these results were basically upheld. In addition, it was agreed to add to the competences of the EEA Court the possibility of giving optional preliminary rulings.³

1.3. Before the Ministerial Meetings in Luxemburg the EC Commission had requested that the ECJ give an opinion under Article 228 of the EEC Treaty on the compatibility with that treaty of the system of judicial supervision which was proposed under the EEA Agreement. In its opinion the ECJ criticized the draft heavily.⁴ Binding on the Community and its institutions, the opinion necessitated renegotiations and a redistribution of the tasks which the EEA Court would have been entrusted with. The outcome of these renegotiations was submitted to the ECJ for a new opinion. In that opinion⁵ the Court found that the newly proposed provisions for dispute resolution passed muster, provided that the principle that Joint Committee

² Ministerial Meeting between the European Community, its Member States and the Countries of the European Free Trade Association. Joint Declaration, paragraph 22.

³ Summary results of the EEA Negotiations. Luxemburg, 22 October 1991, 1,45 hr, 3.6.1.

⁴ Opinion 1/91 of 14 December 1991, not yet reported. For a review of the main points of criticism, see above the contribution by Brandtner.

⁵ Opinion 1/92 of 10 April 1992, not yet reported.

decisions do not affect ECJ case-law be laid down in a form binding on the Contracting Parties.

II. The Judicial Mechanisms under the EEA Agreement

2.1. The mechanisms for settlement of disputes related to the EEA Agreement are to be found in Articles 108 and 111 and Protocols 33-35 of the EEA Agreement as well as in the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice (the 'ESA-Court Agreement' signed in Porto on 2 May 1992) and in Protocol 5 to that Agreement, containing the Statute of the EFTA Court.

Under the relevant provisions, disagreements between the Contracting Parties are settled by the EEA Joint Committee and, by application of the rules on *droit d'évocation*, the EEA Council. At the judicial level disagreements may, depending on the parties to the dispute and the issue at stake, be brought before ECJ, the EFTA Court of Justice, national courts and ad hoc arbitration tribunals. As the EFTA Court and the arbitration tribunals envisaged are newcomers, it may be appropriate first to give a brief description of them and their tasks.

The EFTA Court

2.2. The provisions on the EFTA Court are to be found in the ESA-Court Agreement, in Protocol 5 to that agreement containing the Statute of the EFTA Court, as well as in Protocol 7 on the legal capacity, privileges and immunities of the EFTA Court. In addition, according to Article 43, paragraph 2 of the ESA-Court Agreement, the Court shall adopt its rules of procedure to be approved by the Governments of the EFTA States by common accord. A draft for Rules of procedure is presently being prepared for the Court.

The EFTA Court shall consist of seven judges to be appointed by common accord of the Governments of the EFTA States for a term of six years (Article 28 and Article 30(1) of the ESA-Court Agreement). The Agreement contains a system of partial replacement of the judges (Article 30(2)). There will be no Advocates-General in the Court. The judges shall be chosen from persons whose independence is beyond doubt and who possess the qualifications required for appointment to the highest judicial offices in their respective countries or who are jurisconsults of recognized competence. No requirements as to nationality are established.

Cases are decided upon by the Court in plenary session. Decisions are valid if at least five members are sitting. The number of judges participating in a decision shall always be uneven (Article 29).

The Court shall appoint a Registrar.

The EFTA Court is competent mainly for four types of cases:

- cases brought by the EFTA Surveillance Authority (ESA) against an EFTA State for infringement of EEA related treaty obligations,
- EEA related disputes between EFTA States,
- the control of legality of acts of ESA and
- advisory opinions to national courts of the EFTA States.

The procedure of the Court has been modelled on the procedure of ECJ. It consists of a written and an oral part. The written procedure consists of the communication to the parties of applications, statements of case, defences and observations, replies and supporting papers and documents. Communications shall be made by the Registrar of the Court. The oral procedure consists of the reading of the report presented by the judge acting as rapporteur, the hearing by the Court of agents, advisers and lawyers as well as the testimony, if any, of witnesses and experts (Article 18 of the Statute of the Court). The EFTA Court may order that a witness be heard by the judicial authority of the place of his permanent residence (Article 25 of the Statute of the Court).

Arbitration Tribunals

2.3. The EEA Agreement envisages arbitration procedures in certain cases. Protocol 33 to the EEA Agreement contains provisions on such procedures. The provisions are based on a two-party arbitration concept even if there may be two or several participants on each side. Thus, according to Paragraph 1 of the Protocol, there shall be three arbitrators, unless the parties to the dispute decide otherwise. The two sides to the dispute shall each appoint one arbitrator (paragraph 2). The arbitrators designated shall nominate, by consensus, an umpire. If they cannot agree, the umpire shall be chosen from a list of seven persons established by the EEA Joint Committee (paragraph 3).

Unless the parties to the dispute decide otherwise, the arbitration tribunal shall adopt its rules of procedure (paragraph 4).

III. The Competences

3.1. Being the result of compromises and of compromises on compromises the judicial mechanism may seem rather complicated. If, however, it is approached from a functional viewpoint, it is not that difficult to determine what procedures are to be followed in order to settle a specific disagreement.

The judicial mechanism of the EEA Agreement forms a part of the broader context of dispute settlement. All disagreements within the framework of the EEA Agreement are not to be settled, or not exclusively settled, through judicial means. In some cases the same issue may be resolved through different procedures at the option of the claimant.

This paper deals mainly with the relation between the EEA judicial system and the supreme courts of the EFTA States. It is thus not possible to go into all details concerning the settlement of disputes related to the EEA Agreement. In order to assess the role of national courts and in particular the supreme courts of the EFTA States, it is nevertheless necessary to deal briefly with the overall picture of these mechanisms. In doing so, I shall distinguish between:

- fulfilment by the Contracting Parties of their obligations under the different agreements involved,
- infringements by private parties of the rules on competition of the agreements involved, and
- cooperation between the national courts of the EFTA States and the EFTA Court of Justice.

The Fulfilment by the Contracting Parties of their Obligations

3.2. The EEA Agreement does not deal with all imaginable conflicts between the Contracting Parties concerning the interpretation or application of the Agreement. Although the EC Member States are parties to the EEA Agreement, the Agreement does not deal with *conflicts between EC Member States*. If a conflict concerning the interpretation and application of EEA rules would arise between EC Member States – an unlikely event since EC rules are applied between such states – it would be settled through internal Community procedures and, in last instance, by ECJ.

As regards the *conduct of the EFTA States*, several ways of resolving disagreements may be available. Firstly, the ESA shall, according to Article 5, paragraph 1 of the ESA-Court Agreement, ensure the fulfilment by the EFTA States of their obligations under the EEA Agreement and the ESA-Court Agreement. According to Article 31, the ESA may, if it finds that an EFTA State has failed to fulfil an obligation under the EEA Agreement or the ESA-Court Agreement, bring the matter before the EFTA Court. The procedure to follow corresponds broadly to that under Article 169 of the EEC Treaty. Should the EFTA Court draw the same conclusions as the ECJ regarding applicable procedures and the EFTA State concerned remedy its failure after the commencement of the case but before judgment, it would follow that the ESA would be permitted, but not required,⁶ to withdraw its application.

The EFTA Court will rule in its judgment that the State concerned has not fulfilled its obligations. Under Article 33⁷ of the ESA-Court Agreement the State is obliged to take the necessary measures to comply with the judgment. Moreover, a judgment can form the basis for state responsibility for the consequences of its

⁶ Cf. Case 7/61, *Commission v. Italy*, [1961] ECR 317. This would seem to apply at least if the Commission shows a sufficient interest, Case 26/69, *Commission v. French Republic*, [1970] ECR 565.

⁷ Cf. Article 171 of the EEC Treaty.

default.⁸ Clearly, the provisions of the ESA-Court Agreement do not provide for any penalty payment corresponding to that of Article 171 of the Treaty on European Union as adopted in Maastricht.⁹

Secondly, under Article 32 of the ESA-Court Agreement, the EFTA Court shall have jurisdiction in actions concerning the settlement of disputes between two or more EFTA States as to the interpretation or application of the EEA Agreement, the Agreement on a Standing Committee of the EFTA States or the ESA-Court Agreement. The provision is modelled upon Article 170 of the EEC Treaty. However, there are two important differences between the operation of the two provisions. First, the ESA Agreement does not contain any provision corresponding to Article 170, paragraph 2, of the EEC Treaty. According to that provision an EC Member State must bring a matter before the EC Commission before it takes the matter before the EC Court of Justice. The ESA-Court Agreement does not impose any obligation on an EFTA State to raise a matter before the EFTA Surveillance Authority before bringing it before the EFTA Court.

In addition, the ESA-Court Agreement does not contain any provision corresponding to Article 219 of the EEC Treaty. That Article contains a provision precluding EC Member States from submitting a dispute concerning the interpretation or application of the EEC Treaty to any method of settlement other than those provided for in that Treaty. The lack of an analogue to Article 219 indicates that Article 32 of the ESA-Court Agreement only establishes the competence of the Court; however, EFTA States may still settle a dispute between themselves by other means; (e.g., by raising the issue in the EEA Joint Committee).

From these differences one can see the contrast between EFTA-Community relations and the relations between the EFTA States. One should, however, have a closer look at the possible effects of the differences. The fact that the EFTA States need not submit a case to the EFTA Surveillance Authority in advance does not necessarily preclude that this procedure would in fact function in a similar way as Article 170 of the EEC Treaty, as the reasons for which this provision has not been broadly applied seem to be equally relevant for the EFTA States. Likewise, recourse to other means of settling a dispute would not in all cases lead to an outcome which would be binding on EFTA States not parties to that dispute. In addition, it does not deprive the EFTA Surveillance Authority of the possibility of raising the same matter before the EFTA Court. The possibility of reverting to other means of dispute settlement may thus prove to be useful primarily in cases in which the EFTA Surveillance Authority has not taken action with respect to matters brought before it.

⁸ Cf. Case 39/72, *Commission v. Italy*, [1973] ECR 101.

⁹ Article 171 of that text provides that if the Commission considers that a Member State has not taken the necessary measures to comply with the judgment of ECJ it may, after having observed certain procedures, bring the case before ECJ. If ECJ finds that the Member State concerned has not complied with its judgment it may impose a lump sum or penalty payment on it.

There may also be *disagreements between one or several EFTA States and the Community*. Such a disagreement may be caused by the conduct of one or several EC Member States, the Community as a whole, or one or several EFTA States. The first step in such a case is that the disagreement is brought up before the EEA Joint Committee.¹⁰ Under Article 111 of the EEA Agreement, the EEA Joint Committee may settle disputes which concern the interpretation or the application of the Agreement. It shall make an in-depth examination of the situation, with a view to finding an acceptable solution. It shall examine all possibilities for maintaining the good functioning of the Agreement.

Dispute settlement in the EEA Joint Committee is basically a political process. The solution to a problem may be found in a field different from that in which the disagreement has arisen. The political solution may also be based on legal arguments such as arguments concerning the correct interpretation of a provision of the Agreement. In some cases no further procedures for dispute settlement are provided beyond the efforts in the EEA Joint Committee. The parties to the dispute may, however, find it useful to seek other means in order to settle the disagreement. For example, they may seek opinions from experts in the field concerned and agree to resolve the dispute in accordance with the advice given. Indeed, they are encouraged to do so insofar as, if no solution is found, a Contracting Party may either take safeguard measures or invoke the provisional suspension provided by Article 102(5) of the EEA Agreement to remedy a possible imbalance caused by the conduct of the other party to the dispute.

In two cases the EEA Agreement provides for additional judicial remedies. The first case concerns disagreements on the interpretation of provisions of the Agreement, which are identical in substance to corresponding rules of the EEC Treaty or the Treaty establishing the European Coal and Steel Community (sometimes referred to as ‘mirror legislation’). In such cases the Contracting Parties to the dispute may agree to request that the ECJ give a ruling on the interpretation of the relevant rules (Article 111(3)). In this context such a ruling is binding on the parties requesting it.

The second case concerns disputes on the scope or duration of safeguard measures taken in accordance with Article 111, paragraph 3, or Article 112 of the EEA Agreement, or the proportionality of rebalancing measures taken in accordance with Article 114. In case of such a dispute any Contracting Party may refer the dispute to arbitration under the procedure laid down in Protocol 33.¹¹ However, in this procedure questions of interpretation of provisions of the Agreement which are

¹⁰ Under Article 5 of the EEA Agreement a Contracting Party may at any time raise a matter of concern at the level of the EEA Joint Committee or the EEA Council. The possibility to apply this provision to the EEA Council would seem to prevail in respect of difficulties arising from the dispute settlement at early stages of disagreement. However, as disputes are to be settled by the EEA Joint Committee it does not seem possible to transfer the procedures to be carried out by the EEA Council.

¹¹ 2.3. above.

identical in substance with corresponding EC provisions may not be dealt with. This has raised the question whether it is possible to have any arbitration at all. My impression is that this is possible. Since arbitration can be resorted to in questions concerning the scope and duration of safeguard measures, provisions governing the procedures cannot alter the autonomous right to trigger such measures. It is therefore difficult to see how provisions of this kind could be applicable to the substance of the dispute.

In addition to these general rules on disputes between Contracting Parties, there are some provisions on certain specific kinds of disputes such as those on State aid.¹² I shall not discuss these disputes in the present paper.

Infringements by Private Parties of the Rules on Competition

3.3. According to Article 5, paragraph 1, subparagraph (b) of the ESA-Court Agreement, the ESA shall ensure the application of the rules of the EEA Agreement on competition. This paper does not deal with the distribution of competences between ESA and the EC Commission in the field of competition. The competence of courts (i.e., the EFTA Court, the EC Court of First instance and the ECJ) follows the distributions of competence between the surveillance authorities.

Under Article 36, paragraph 2, of the ESA-Court Agreement, the EFTA Court shall have jurisdiction in actions brought by a natural or legal person against a decision of ESA on grounds of lack of competence, infringement of an essential procedural requirement, infringement of the EEA Agreement, the ESA-Court Agreement or any law relating to their application or misuse of powers. Such an action may be brought if the decision is addressed to that person or if it is of direct and individual concern to him.

For the purposes of assessing the competence of national courts, attention should be drawn to Part I, Chapter I, Article 9, paragraph 3 of Protocol 4 to the ESA-Court Agreement. According to that paragraph the authorities of the EFTA States shall remain competent to apply certain provisions on competition of the EEA Agreement, provided that the ESA has not initiated procedures under the Protocol. It follows from this provision that the competence of the national competition authorities ceases when ESA takes such action.

The Cooperation between the National Courts of the EFTA States and the EFTA Court of Justice

3.4. As in the Community, the administration of the EEA Agreement will mainly be the task of national authorities. Correspondingly, the administration of justice will to a considerable extent be the task of the national courts. The good functioning of the

¹² See, e.g., Article 1, paragraph 2 of Protocol 3 to the ESA-Court Agreement.

EEA Agreement will thus depend on the knowledge and skill of these authorities and courts.

The EEA Agreement and the ESA Agreement contain two possibilities for assistance to national courts in the administration of justice. First, under Article 1 of Protocol 34 to the EEA Agreement, the EFTA States may permit their courts to request that the ECJ decide on a question of interpretation of provisions of the EEA Agreement which are identical in substance to provisions of the Treaties establishing the European Communities, or of acts adopted pursuant to these treaties. An EFTA State which intends to make use of this possibility shall under Article 2 of the Protocol notify the Depository of the EEA Agreement and ECJ how and to what extent the Protocol will apply to its courts and tribunals. The EFTA States thus have discretion as to the courts which would be entitled to seek a decision.

Since reference is made in the Protocol to a decision by the ECJ, an interpretation by that court would be binding on the requesting court. In light of this fact and the views held by the EFTA States during the negotiations, it is unlikely that any of the EFTA States could avail itself of this possibility, since such possibility would require constitutional amendments even in States where seeking an advisory opinion would not so require.

The other possibility follows from Article 34 of the ESA-Court Agreement. Under that provision the EFTA Court shall have jurisdiction to give advisory opinions on the interpretation of the EEA Agreement. An EFTA State may in its internal legislation limit the right to request such an opinion to courts and tribunals against whose decisions there is no judicial remedy under national law.

This possibility differs from the preliminary rulings under the EEC Treaty in three respects. First, no obligation to seek an advisory opinion is established. Secondly, an opinion may be sought only on the interpretation of the EEA Agreement, not on the validity of acts of the bodies established under the Agreement. Thirdly, the response by the EFTA Court is not binding on the requesting court.

In my view, the advisory opinions offer useful assistance to national courts. The courts would otherwise be faced with the task of deciding matters concerning the interpretation of the EEA Agreement. Such matters may arise occasionally before courts which do not have a clear view of the Agreement and the methods for its interpretation. The need for assistance may be particularly great at the outset. Upon the entry into force of the EEA Agreement and the agreements between the EFTA States, the national courts are faced with some 14,000 pages of new rules and a considerable number of amendments to existing legislation.

One may ask whether it would be desirable to limit the right to request opinions to the courts of last instance. Arguably, only those courts would be sufficiently competent to request opinions and to formulate the kinds of questions likely to make such opinions useful. However, it seems more important that such a limitation may delay the final resolution of the case and may lead to an increase in appeals as the

parties seek such an opinion. At least at the outset, it seems unlikely that the workload of the EFTA Court will give rise to procedural delays in the delivery of opinions.

IV. The Role of the Supreme Courts of the EFTA States

How does the EEA Agreement affect the national courts of the EFTA States and, in particular, the supreme courts? What may be expected from such courts in the aftermath of the Agreement?

4.1. First, the EEA Agreement does not establish any judicial body which would be hierarchically superior to the supreme courts of the EFTA States. The Agreement opens no avenue of appeal from those courts to any supranational body.

Under Article 3 of the EEA Agreement and Article 2 of the ESA-Court Agreement, which are identical, the Contracting Parties and the EFTA States are under an obligation to take all appropriate measures to ensure fulfilment of the obligations arising under the Agreements. Moreover, they shall facilitate cooperation within the framework of the Agreements.

The corresponding provision in Article 5 of the EEC Treaty has been given far-reaching effects.¹³ It also applies to national courts, subject to Article 177 of the EEC Treaty. Such courts must not give effect to any rule of national law which is contrary to the State's duties under Community Law.¹⁴ In addition, the national courts are under an obligation to enforce the rights of private parties against the State and public authorities.¹⁵

The combination of Article 3 of the EEA Agreement and Protocol 35 to the Agreement seems to produce a result which is similar to the state of play within the Community. If the national courts of an EFTA State do not appropriately apply the EEA Agreement and if they do not permit EEA rules to prevail over other statutory provisions of their respective States, such failure is an infringement by such EFTA State of the EEA Agreement.

The duty of national courts – and the Contracting Parties – to adopt the general principles of Community law is less clear. These principles emerge frequently from cases on matters outside the scope of the EEA Agreement. In the light of the different objectives of the Treaty of Rome and the EEA Agreement so eloquently elaborated by ECJ, one could therefore conclude that these principles are not incorporated in the

¹³ See, e.g., Temple Lang, 'Article 5 of the EEC Treaty: the Emergence of Constitutional Principles in the Case-Law of the Court of Justice', 10 *Fordham International Law Journal* (1987) 502-537, and Temple Lang, 'Practical Consequences of the Legal Duties of Member States to Cooperate with the Community Institutions', *Tidskrift utgiven av Juridiska Föreningen i Finland (JFT)* (1991) 348-370.

¹⁴ Temple Lang, *JFT*, at 352.

¹⁵ *Ibid.*, at 357.

EEA Agreement. But such a view cannot be reconciled with the objective of homogeneity so strongly stressed in the EEA Agreement. In fact, the rejection of the general principles for the purpose of the EEA Agreement implies a questioning of the viability of the Agreement as a whole: why adopt over 13,000 pages of Community legislation if one does not have the ambition to ensure a uniform interpretation and application of the EEA Agreement and the corresponding parts of Community Law?

4.2. Secondly, the EEA Agreement would not seem to affect the present jurisdictions of national courts. The cases for which the EFTA Court is competent thus concern the conduct of the Contracting Parties to the EEA Agreement and would not fall within the competences of national courts. In the field of competition the issue is not equally clear since such cases concern the conduct of economic operators. The ECJ has concluded that ‘authorities of the Member States’ encompasses national courts.¹⁶ However, it has also ruled that whilst the initiation of proceedings by the EC Commission under Regulation 17¹⁷ will operate to deprive Member States of the competence to apply Articles 85 and 86 of the EEC Treaty pursuant to Article 88 of that Treaty, proceedings before national courts are not affected thereby. As such, a national court is not obliged to stay its proceedings pending the outcome of proceedings before the EC Commission.¹⁸

4.3. Thirdly, one may ask what policies national courts should adopt in respect of the EEA Agreement. One must bear in mind that under the EEA Agreement and the ESA-Court Agreement, a party who believes that he has not been treated in accordance with the Agreements may have several possible remedies. If a Swiss firm believes that it has been discriminated against in one of the EC Member States, it may raise the matter before the national authorities of that State or bring the matter before a court of that State. Such a court may under Article 177 of the EEC Treaty ask for a preliminary ruling by ECJ. This remedy would probably be preferable from the firm’s point of view since the relief that could be granted by a national court would probably best serve its needs. But if the firm has lost confidence in the courts of the State concerned it may alternatively bring the matter before the EC Commission, which may or may not take action against the EC Member State concerned. Thirdly, the Swiss firm may petition the Swiss Government to raise the matter in the EEA Joint Committee and/or before the EEA Council in accordance with Article 5 and Article 89(2) of the EEA Agreement.

¹⁶ Case 43/69, *Bilger v. Jehle*, [1970] ECR 127.

¹⁷ Council Regulation 17/62, First Regulation implementing Articles 85 and 86 of the Treaty. Article 9, paragraph 3 of this Regulation contains the provision of Community law which is reflected in Part I, Chapter I, Article 9, paragraph 3 of Protocol 4 to the ESA-Court Agreement.

¹⁸ Case 127/73, *BRT v. SABAM*, [1974] ECR 51 and 313. See also C.S. Kerse, *EEC Antitrust Procedure* (1988) 306-308.

Recourse to national courts is thus only one alternative. If parties find that national courts do not provide adequate protection, they will certainly opt for other alternatives. It must therefore be a question of pride and ambition of the national courts to deliver the protection sought. In doing so, the possibility of cooperation can be viewed as an advantage rather than a nuisance.

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In conclusion, I would therefore note that the EEA Agreement, possibly the most comprehensive international agreement ever made, deals with a great number of questions. It is not easy to get an overall view of the Agreement and one can certainly feel considerable sympathy for those who do not find reading the Annexes to the Agreement to be the most exciting experience. Nevertheless, States as well as courts, economic operators and individuals will have to face the fact that the Agreement has an impact on their activities. From the point of view of the courts, issues relating to the Agreement may be found in surprising contexts. One must remain alert to this fact and to the fact that it is in the interest not only of the Contracting Parties to the Agreement, but also of the national courts to see that they discharge their tasks under these circumstances with the same skill and competence as in other cases.