

The EEA and the Continental Shelves

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The functional approach in EU Law

- «the body of recent case law points towards a clear rule: EU law is applicable when the activity falls within the sovereignty of a Member State, which, according to the Court, includes the sovereign rights enjoyed by coastal States in their EEZ and their continental shelf.»

(Nieuwenhout & Jaap Waverijn, Common Market Law Review, 2019, s. 1623–1648)

- «When a member State exercises rights of sovereignty over a portion of the continental shelf, the E.E.C. provisions relating to the right of establishment shall apply to that portion»

Cited in: Memorandum concerning the applicability of the Treaty establishing the European Economic Community to the continental shelf (SEC/70/3095)

- Includes exclusive sovereignty on the basis of UNCLOS article 77

EEA Agreement Article 2 and TEU Article 52

- 2 (b) the term "EFTA States" means Iceland, the Principality of Liechtenstein and the Kingdom of Norway
- 52.1: "The Treaties shall apply to the Kingdom of Belgium, the Republic of Bulgaria, the Czech Republic, the Kingdom of Denmark, the Federal Republic of Germany, the Republic of Estonia, Ireland, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Italian Republic..."
- Generally agreed: *EEA Agreement* applies to the continental shelves of the *EU Member States*. (Bekkedal & Andenæs [page 21](#))

St.prp. nr. 100 (1991–1992) p. 103

- «Offshore-sektoren er den klart største av de enkeltsektorer i Norge som vil bli omfattet av EØS-regelverket for offentlige innkjøp. Norsk sokkel utgjør et betydelig marked i europeisk sammenheng. Det norske offshore-markedet er nest etter det britiske, det største i Europa [...]. Den norske andelen av leveranser til britisk sokkel har hittil vært meget liten [...]. Reelle og likeverdige konkurranseforhold på offshore-markedene innenfor EØS forventes å gi økte muligheter for norsk leverandørindustri.»
- protocol 4, art 4 (1) j, «products extracted from marine soil or subsoil outside their territorial waters provided that they have sole rights to work that soil or subsoil»
- Bekkedal & Andenæs, [page 15-17](#)
- See, Evensen (1971), Bekkedal & Andenæs, [page 14](#)

VCLT article 29

- “Unless a different intention appears from the treaty or is otherwise established, a treaty is binding upon each party in respect of its entire territory”
- «The Commission preferred this term [‘entire territory’] to the term ‘all the territory or territories for which the parties are internationally responsible’, which is found in some recent multilateral conventions. It desired to avoid the association of the latter term with the so-called ‘colonial clause’. It held that its task in codifying the modern law of treaties should be confined to formulating the general rule regarding the application of a treaty to a territory.»
- ECJ relies on VCLT Article 29, Bekkedal & Andenæs [section 2.3](#)

The colonial clause

- 126 EEA: The Agreement shall apply to the **territories** to which the Treaty establishing the European Economic Community is applied and under the conditions laid down in that Treaty and to the **territories** of Iceland, the Principality of Liechtenstein and the Kingdom of Norway
- 355 TFEU: In addition to the provisions of Article 52 of the Treaty on European Union relating to the territorial scope of the Treaties, the ... provisions of the Treaties shall apply to Guadeloupe, French Guiana...
- ECHR 56 (“Territorial application”): Any State may ...declare by notification... that the present Convention shall... extend to all or any of the **territories for whose international relations it is responsible**.
- Memorandum Commission legal service: Article 126 – [colonial clause](#)