



NORWEGIAN MINISTRY
OF FOREIGN AFFAIRS

Meld. St. 5 (2012–2013) Report to the Storting (White Paper)

The EEA Agreement and Norway's other agreements with the EU

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*Recommendations of the Ministry of Foreign Affairs of 12 October 2012,
approved by the Council of State on the same day.
(Government Stoltenberg II)*

1 Introduction

1.1 Purpose and scope

The Norwegian Government's European policy is based on the Agreement on the European Economic Area (the EEA Agreement) and Norway's other agreements with the EU. The EEA Agreement links Norway to the EU's internal market and forms the foundation of Norway's European policy. This White Paper will therefore not discuss other forms of association with the EU.

As set out in the Government's policy platform, the Government will pursue an active European policy and will work proactively to safeguard Norwegian interests vis-à-vis the EU.

It is important for Norway that the EEA cooperation is effective, flexible and that it ensures mutual responsibility. Here, the word "effective" is used to mean that the EEA Agreement should ensure equal treatment and predictability for Norwegian actors, as well as the greatest possible degree of Norwegian participation in EU processes. The word "flexible" is used to mean that due account should be taken of the varying needs

and interests of the parties to the Agreement in the ongoing EEA cooperation. The expression "mutual responsibility" is used to mean that both parties should follow up the Agreement in a correct and responsible way that secures the quality and efficiency of the cooperation.

Generally speaking, Norway benefits from the development of common rules and standards for the European market. In cases where the development of legislation is not compatible with Norwegian interests, the Government will use the opportunities and available options provided by the Agreement to safeguard Norway's interests.

In this White Paper, the expression "available options" is used to describe the opportunities the Government has to influence how Norwegian companies and Norwegian citizens are affected by the EEA Agreement and other aspects of Norway's cooperation with the EU. The expression is therefore used to describe both the opportunities the Norwegian authorities have to influence the content of EU legislation, and how, and to what extent, the legislation should be implemented at

the national level. An awareness of the available options that exist at any given time is essential for the sound management of Norway's agreements with the EU.

The main purpose of this White Paper is to promote the sound management of Norway's agreements with the EU. It is crucial to ensure the proper follow-up of the agreements, including the best possible use of the options available to Norway. This is essential not least in the light of the far-reaching changes the EU has undergone in recent years, for example enlargements to include a number of new member states, treaty reforms, new modes of governance, and most recently changes as a result of the financial crisis in Europe.

In its European policy, the Government will focus its main efforts on areas of particular importance to Norway. In following up Norway's agreements with the EU, the Government will promote openness and awareness-raising, and will give priority to enhancing knowledge and ensuring sound management.

At the beginning of 2010, the Government appointed a broad-based expert committee, the EEA Review Committee, to review Norway's experience of the EEA Agreement and its other agreements with the EU. The aim was to obtain the best possible body of knowledge on Norway's agreements and cooperation arrangements with the EU. The committee, chaired by Professor Fredrik Sejersted, presented its report on 17 January 2012 (Official Norwegian Report NOU 2012: 2 *Outside and Inside: Norway's agreements with the European Union*). The report is far-reaching and thorough. It contributes to the establishment of a sound body of knowledge as a basis for further developing Norway's European policy. The report's main conclusions, final remarks and summaries of consultative comments are reproduced in the Appendix of this White Paper (in the Norwegian version only). Other organisations and actors have also helped to foster a broad debate by providing their own analyses of Norway's links to the EU and possible alternatives to today's form of association. These analyses are also discussed in the Appendix.

1.2 Norway's cooperation with the EU

Norway and the EEA Agreement

When, in 1992, the required three-quarters majority of members of the Storting (Norwegian parliament) agreed to enter into the EEA Agreement, it

was with a view to ensuring that Norway would be able to participate in the internal market that was being developed in the European Community (EC). In the view of the Storting, safeguarding Norwegian companies' equal access to the Western European market was important for the Norwegian economy and value creation. The EEA Agreement established a dynamic and homogeneous economic area that ensured this.

There are close links between Norway and the EU countries due to historical and cultural ties, geographical proximity, common values and a shared commitment to the rule of law and human rights. Norway has therefore also chosen to develop its cooperation and agreements with the EU in areas outside the framework of the EEA Agreement. This applies to judicial and police cooperation, questions relating to asylum and immigration policy, and foreign policy and security policy issues. To a great extent, Norway has taken the initiative to develop and strengthen its cooperation with the EU in these areas. Successive Norwegian governments have been guided by a common recognition of the need for transnational cooperation in order to address transnational problems, and have sought to further develop Norway's cooperation with the EU in these areas, with broad support in the Storting.

The EEA Agreement has been in force for almost 19 years, and this period has mostly been one of stability and economic growth for Norway. The Agreement has remained an effective framework for economic relations between the countries in the EEA, at a time when there have been substantial changes in the EU cooperation, particularly the enlargements to include 12 new member states and changes to the founding treaties.

Europe is now dealing with the repercussions of the crisis that hit the global economy in 2008. Most European countries have felt the economic effects of the crisis, many have also been affected socially and politically. So far Norway has been spared the worst of the crisis in Europe. However, developments in the EU and in the countries in the EEA have important implications for Norwegian interests. It has therefore been natural for Norway to help reduce the effects of the current crises in European countries, for example by increasing its contribution to IMF funding schemes and by offering bilateral loans to neighbouring countries. The funding Norway provides under the EEA and Norway Grants and the contribution it makes as a long-term and reliable supplier of energy also have a positive impact on developments in Europe.

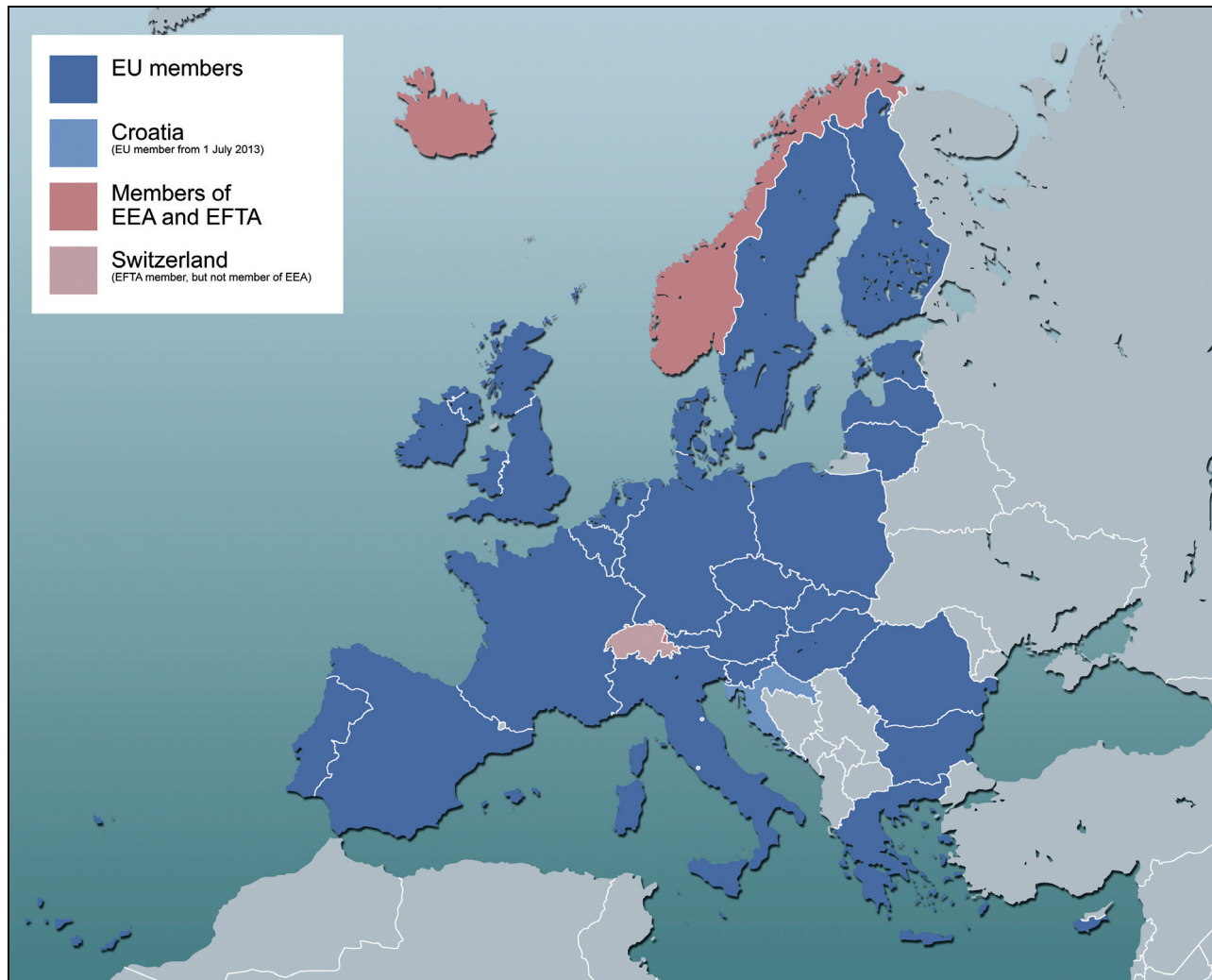


Figure 1.1 Map of the EU/EEA

At a time when the EU and many of the EU countries are experiencing their worst crisis for many years, the internal market has proved to be a robust framework for trade and economic relations between the countries in the EEA. The current problems facing the EU and EU countries have not led to the destabilisation or break-up of the internal market.

The EEA, the EU and the Nordic countries

The EEA Agreement links the Nordic countries together in a common internal market. Within this framework, integration between the Nordic countries has been consolidated and further developed in important areas such as the reduction and removal of border barriers, labour mobility, welfare and employment, the environment, and foreign and security policy.

Today Nordic cooperation provides an important framework for coordinating Nordic efforts

vis-à-vis the EU. At the same time, Nordic policy has become an increasingly important element of European policy for Norway and the other Nordic countries. Nordic cooperation has thus become an integral part of the European cooperation.

Cooperation between the Nordic countries on foreign and security policy has also been considerably strengthened, within the framework of the countries' respective memberships of the EU and NATO. Cooperation on defence policy has entered a dynamic phase, as illustrated by the establishment of the Nordic Battle Group and the Nordic declaration of solidarity, in which the countries state their willingness to assist one another in the event of natural or man-made disasters, cyber attacks or terrorist attacks.

Security policy and foreign policy cooperation between the Nordic countries is part of a new trend towards closer regional cooperation in Europe. The EU and key EU countries are showing increasing interest in the High North. Both in

the EU and NATO there is a growing interest in regional cooperation that includes both member states and non-member states. In the Nordic countries and in northern Europe this is illustrated not least by the fact that all the Nordic countries and the EU meet in the key, sub-regional cooperation forums: the Barents Euro-Arctic Council, the Council of Baltic Sea States, the Arctic Council and the Northern Dimension. Due to its history and broad set of common values, the Nordic cooperation is particularly well placed to play a role in further developing regional cooperation of this kind within a broader European framework.

1.3 The content of the White Paper

Chapter 2 provides a review of developments in the EU in recent years. Chapter 3 deals with Norway's cooperation with the EU, including the EEA cooperation, the Schengen Agreement/other agreements in the area of justice and home affairs, and foreign and security policy. Chapter 4 is concerned with goals, principles and the implementa-

tion of the Government's European policy, as set out in the Government's policy platform and Report No. 23 (2005–2006) to the Storting on the implementation of European policy. Chapter 5 discusses the Government's assessments of Norway's opportunities and available options in the management of its agreements with the EU in the areas of the EEA, justice and home affairs and foreign and security policy, respectively. Chapter 6 covers the Government's assessment of certain policy areas that will be given particular attention in Norway's cooperation with the EU in the time ahead, both broad cross-cutting areas and more specific ones. Chapter 7 discusses how EU and EEA expertise can be enhanced in the public administration and in society as a whole, as well as ways of involving relevant stakeholders more closely in the development of European policy. Chapter 8 contains conclusions and final remarks.

The English version of the White Paper only includes chapter 1, chapter 5 (here chapter 2), chapter 6 (here chapter 3) and chapter 7 (here chapter 4).

2 Norway's options within the framework of its agreements with the EU

2.1 Introduction

The Government will pursue an active European policy and will focus on safeguarding Norwegian interests vis-à-vis the EU and EU member states. The Government's European policy is based on the Agreement on the European Economic Area (the EEA Agreement) and Norway's other agreements with the EU.

The Government intends to make use of the options that are available within the established framework in its management of the agreements. This involves both making use of the opportunities Norway has to influence the development of EEA legislation and Schengen rules, and utilising the options that are available as EEA legislation is implemented in Norwegian law. Knowledge and awareness of the options that are available at any given time is essential for the sound management of Norway's agreements with the EU.

This chapter discusses how we can make use of these opportunities in the management of the agreements on the EEA and in the fields of justice and home affairs and foreign and security policy. This is particularly important in the light of the far-reaching changes the EU has undergone in recent years.

2.2 Early involvement in the development of policy and legislation

Within the framework of Norway's agreements with the EU, Norway has greatest opportunity to participate in the development of EU policy and legislation at an early stage of the legislative process, i.e. during the preparation of Commission proposals and during preliminary discussions in the Council of the EU (the Council) and the European Parliament. There is less opportunity for Norway to have an influence towards the end of the legislative process in the EU, particularly as regards EEA legislation.

Norway participates more closely in the development of EU policy and legislation under the Schengen cooperation. The associated countries are involved in Council discussions through the Mixed Committee. Norway needs to provide input as early as possible in the process in this area too, so that its views can be taken into account before the framework for the decision-making process has been established.

It is important to ensure early involvement in legislative processes so that we can carry out a preliminary assessment of EEA relevance when the EU is preparing new legislation. Moreover, by being actively involved at an early stage we can develop insight that will help us to clarify and make use of the options that are available as we implement and apply the legislation in Norway.

In some respects the development of EU policy and legislation has changed considerably over the past ten years. Previously, legislation tended to deal with specific areas, and was based to a large extent on Commission proposals. Now there has been a move towards broad cross-sectoral policies and legislation, developed on the basis of extensive discussions in the Council and the European Parliament. One example is the EU climate and energy package, which was adopted in 2009. Another important feature is the development of broad framework legislation that establishes goals and general principles and leaves the further development and administration of the legislation to committees or other bodies under the Commission. This type of system is being used in a number of areas. A third key feature is that the decision-making process is now much quicker. In the past, new legislation usually required two rounds of discussions in the European Parliament and the Council, but now one round of discussions is sufficient in most cases.

All in all, it has become more difficult to ensure that Norwegian interests are safeguarded when new legislation is being developed in the EU. It is therefore crucial for Norway to establish its national positions at an early stage in the legislative process and to follow all stages of the pro-

Box 2.1 Consumer Rights Directive

In 2008 the Commission put forward a proposal for a new consumer rights directive. This was intended to replace four directives that set minimum standards for the protection of consumers with a new common directive, with a view to achieving full harmonisation of EU consumer law. The original proposal would have weakened consumer protection in Norway in several ways. The Norwegian Government established its position at an early stage, and had clear aims: to achieve a directive setting out minimum standards, and to ensure that overall consumer protection in Norway was not weakened. Policy guidelines for Norway's efforts vis-à-vis the EU were issued. Norway was working actively on this matter even before the Commission put forward its proposal. A coordination group was set up in the public administration, and maintained close contact with consumer and business organisations. Documents supporting Norway's arguments were drawn up. The EEA EFTA states also presented their views on the proposed directive in the form of an EEA EFTA Comment. The senior political staff of the relevant ministries played an active part in the process vis-à-vis the EU. They also held meetings with their Nordic colleagues. A Norwegian consumer rights expert was seconded to the unit of the Commission that was dealing with the proposed legislation.

The European Parliament presented a draft report on the proposed consumer rights directive in summer 2010 containing extensive amendments to the Commission's proposal. Norway held a consultation process at this stage, and a new EEA EFTA Comment was

issued. Following extensive discussions the Council agreed on a general approach in January 2011, and the Consumer Rights Directive was formally adopted in October 2011 following trilogue negotiations between the Council, the European Parliament and the Commission. In Norway's view, the Consumer Rights Directive as adopted is significantly better than the original proposal. Experience shows that that a broad-based national process at an early stage involving relevant stakeholders, combined with clear standpoints, is crucial if Norway is to exert an influence on a legislative process. This was the rationale behind Norway's targeted effort. Norwegian analyses and views developed at an early stage of the process served as a basis for contacts with stakeholders in the EU who had not yet established clear positions. It was also crucial to coordinate efforts and share information at national level in order to keep ourselves informed about progress within the EU. It was particularly important to submit specific suggestions and not just general comments to the European Parliament. During a trilogue, there can be opportunities to put forward concrete proposals that can help in reaching a compromise. At the administrative level, we established contacts with the support staff of relevant members of the European Parliament and the secretariat of the parliamentary committee. We found that our long-term involvement and participation in the process enhanced Norway's credibility and our access to relevant actors in the EU system. Some points in the final directive were changed in line with Norway's views and proposals.

cess closely from the preparatory or decision-shaping phase to the adoption of legislation. This may be followed by the development of common rules for implementing the legislation (comitology procedures) and amendments to the legislation. The capacity of the Norwegian authorities to participate actively in such processes is limited, and for this reason focus will be on major legislative and policy developments. However, it is also necessary to follow up less crucial developments, for example technical regulations, closely enough to ensure that we have the necessary information, can assess any proposed amendments and can

ensure that legislation is implemented correctly in Norwegian law.

The Norwegian public administration is generally well informed about legislation that is being developed in the EU. In addition, it is important that the Norwegian authorities are in a position to make rapid assessments of the consequences for Norway of any proposed legislation and are able to communicate their positions clearly in dialogue with representatives of EU institutions and EU member countries. This requires firm commitment and active involvement at the political level in the relevant ministries.

Box 2.2 The CCS Directive

Directive 2009/31/EC on the geological storage of carbon dioxide (the CCS Directive) was formally adopted by the EU in April 2009 and is part of the EU climate and energy package. It establishes a legal framework for environmentally safe geological storage of CO₂, including requirements for exploration and storage permits, the composition of the CO₂ stream, monitoring and reporting. The directive is largely based on rules that had been established in 2007 under multilateral agreements on the marine environment by which Norway is bound (the OSPAR Convention, which applies to the North-East Atlantic, and the global London Protocol). Norway played a leading role in discussions on CCS in OSPAR and other international forums from 2002 onwards. Norway's input was based on experience of CO₂ storage on the Sleipner field in the North Sea since 1996. The Norwegian authorities, including the Climate and Pollution Agency, prepared expert input, led working groups, and put forward proposals, often in cooperation with the UK, the Netherlands and France. The Norwegian authorities and Norwe-

gian experts were also actively involved in the preparation of the Special Report on Carbon Dioxide Capture and Storage by the Intergovernmental Panel on Climate Change (IPCC), which was published in 2005. These processes provided a starting point for drawing up the EU directive, which incorporates a number of the same principles. Norway continued to play an active role when discussions started in the EU in 2006, and was at an early stage invited to take part in the working group set up by the EU Commission to draw up the legislation. In addition to representatives of the Climate and Pollution Agency, Norwegian experts from institutions such as SINTEF and DNV were involved. Bellona also played an important advocacy role in the process. In cooperation with EU member states such as the UK and the Netherlands, and key members of the European Parliament, the alliance of which Norway was a part succeeded in gaining the necessary majority for integrating CCS into the EU's climate policy, and thus for the CCS Directive.

It is also important to involve stakeholders in civil society and the business sector in Norway in formulating Norwegian positions, so that Norwegian interests can be more clearly identified. This will enhance Norway's efforts in this area.

Sharing experience and results in specific areas at the appropriate time enables Norway as a non-member state to have its voice heard when new policies and legislation are being developed. Norway's targeted, long-term lobbying efforts vis-à-vis EU institutions have enhanced its credibility and provide a solid basis for Norway to have an influence.

Norway should seek to play an active role in EU legislative processes in all areas that have significance for Norway. In many cases Norway's input will be of interest to the EU. As a rule it will be easier to gain acceptance for Norway's views if these are also perceived as useful and relevant to other countries. It is important that Norway seeks to be involved as early as possible in EU processes, particularly in matters of importance to Norway. It is usually more effective to seek to persuade EU bodies to adjust proposed EU legislation before it is adopted than to negotiate adaptations to legal acts

when they are to be incorporated into the EEA Agreement. The European Parliament and the Council are showing an increasing tendency to make amendments to the Commission proposals for directives and regulations. Therefore it is important for Norway to focus not only on the Commission's work but also on the subsequent processes in the Parliament and Council.

Chapter 7 discusses ways in which knowledge of the EU/EEA in the public administration and in society as a whole can be strengthened, and how the level of stakeholder involvement can be increased.

2.3 Management of the EEA Agreement

As described above, Norway and the other EEA EFTA states have the opportunity to participate in the development of EU legislation during the preparatory stage. However, for the EFTA states the more formal procedures do not begin until after the EU has adopted a legal act in an area within the scope of the EEA Agreement. These procedures

can be divided into a number of different phases: determining whether the act is EEA relevant, establishing whether adaptations are needed to incorporate an act into the EEA Agreement, the decision-making process and national implementation. The Government will work actively to ensure sound management of the EEA Agreement in all these phases and to participate as effectively as possible during the preparatory stage of the development of EU policy and legislation.

2.3.1 Assessment of EEA relevance

With the development of the EU cooperation in recent years, the limits for what is covered by the EEA Agreement have become less clear than they were in the past. This is discussed in more detail in Chapter 2. EU legislation in areas within the scope of the EEA Agreement is dynamic. It is constantly being developed to take account of changing needs, framework conditions and policy objectives. EEA legislation must be developed correspondingly in order to ensure the homogeneity of legislation throughout the EEA, as set out in Article 102 of the EEA Agreement.

The EEA Joint Committee is responsible for assessing whether new EU acts governing areas within the scope of the EEA Agreement should be incorporated into the Agreement. This is a two-stage process. The first stage is to clarify whether the legislation is EEA relevant, i.e. whether it falls within the substantive and geographical scope of the EEA Agreement, as defined in the main Agreement and its protocols and annexes. EEA relevance is assessed on the basis of objective and legal criteria. However, the criteria set out in the Agreement are not precise, and assessments are therefore to a certain extent discretionary. If an act is found to be EEA relevant, the next step is to clarify whether it can be incorporated into the EEA Agreement as it is or whether it requires adaptations. A decision concerning this is taken on the basis of expert input and political and institutional considerations.

If an act is only partly EEA relevant, those parts that are not EEA relevant are removed through an adaptation text in the Joint Committee Decision. Thus, only those parts of the act that are EEA relevant will be incorporated into the EEA Agreement.

The substantive scope of the EEA Agreement

The substantive scope of the EEA Agreement can be inferred from its Article 1, which states

Box 2.3 Security of energy supply

Proposition No. 100 (1991–92) to the Storting on consent to ratification of the EEA Agreement made it clear that the EEA Agreement was not to encompass the development of a common energy policy. The EC's directives on oil stocks, which were designed to address the effects of a supply crisis during peacetime, were specifically discussed during the negotiations, and it was agreed that they were not to be part of the EEA Agreement. In accordance with this, the position of the EEA EFTA States has been that the EEA Agreement does not cover security of energy supply. In the light of this, Norway did not consider Council Directive 2004/67/EC on security of natural gas supply or Council Directive 2006/67/EC on the maintenance of minimum stocks of crude oil and/or petroleum products to be EEA relevant. However, if the substance of an act is considered to affect the functioning of the internal market, a different decision may be reached. For example, Directive 2005/89/EC on the security of electricity supply was incorporated into the EEA Agreement because of its clear impact on the internal market.

that the aim of the Agreement is to create a homogeneous European Economic Area. In order to achieve this goal, the cooperation is to entail the free movement of goods, persons, services and capital, the setting up of a system ensuring that competition is not distorted and that competition rules are equally respected, and closer cooperation in other fields, such as research and development, the environment, education and social policy. Assessment of the EEA relevance of legal acts requires specific consideration of which areas fall partly or wholly outside the scope of the EEA Agreement.

In assessing whether legal acts fall within the substantive scope of the EEA Agreement, the term EEA relevance may be used in more than one sense. In the narrowest sense, legal acts are EEA relevant if their substance means that they must be incorporated into the EEA Agreement. This applies to legislation relating to one of the four freedoms or in fields relevant to the implementation of the four freedoms, which must also be included to ensure that competition can take place on near equal terms. The

areas to which this applies are specified in Parts II–V of the EEA Agreement. These acts can be said to affect the functioning of the internal market by establishing rules of significance for free movement and competition across national borders. If such acts are not incorporated into the Agreement, the procedure set out in Article 102 may be applied, and the relevant part of the Agreement may be suspended. This procedure is described in more detail in Chapter 5.3.6.

In its broadest sense the term EEA relevance also encompasses activities (programmes and projects) in areas outside the four freedoms, in the fields set out in Part VI, Article 78, of the EEA Agreement. These fields are described in more detail in Chapter 3.1.1. Under the Agreement, the parties have undertaken to strengthen and broaden cooperation in these fields. This extends beyond the cooperation necessary to ensure the proper functioning of the internal market. In these cases, legal acts are only incorporated into the EEA Agreement if the EEA EFTA states identify a common interest in aligning themselves with EU cooperation in a specific field. A decision not to incorporate legal acts in these fields into the EEA Agreement will not trigger application of an Article 102 procedure.

An assessment of whether a legal act falls within the substantive scope of the EEA Agreement is based on an overall consideration of the provisions and intentions of the Agreement, particularly including the following factors:

- Whether the legal act deals with one or more of the fields specified in the main Agreement and its protocols and annexes.
- Whether it sets out rules of importance for the free movement of goods, persons, services and capital and free competition across national borders, and whether it imposes obligations on market actors that will have economic consequences.
- The purpose of the act, i.e. whether it applies to fields that are relevant for the functioning of the internal market, or whether its purpose is cooperation beyond this.
- Whether the act amends, follows up or supplements legislation that has already been incorporated into the EEA Agreement, and whether related legislation has been incorporated into the EEA Agreement.
- The conditions set by the Storting for Norway's adoption of the EEA Agreement in 1993, as described in Proposition No. 100 (1991–92) to the Storting.

It may also be relevant to consider the legal basis of the act. This may give an indication of its purpose, as well as in certain cases its impact on the internal market. This applies for example in cases where acts are adopted under Article 114 of the Treaty on the Functioning of the European Union on the internal market.

The geographical scope of the EEA Agreement

The geographical scope of the EEA Agreement is set out in Article 126. The EEA Agreement applies to the territory of the Kingdom of Norway, but not to Svalbard. Norway's position is that the term territory is to be understood in accordance with established practice in international law. This means that the EEA Agreement applies to Norwegian land territory, internal waters and territorial waters, but not to the exclusive economic zone, the continental shelf or the high seas. However, the geographical scope of the EEA Agreement is not considered to be a legal obstacle if Norway, after an assessment of a particular matter, decides to assume specific EEA obligations outside its territory.

If there is a strong thematic or economic link between parts of a specific activity that take place within Norway's territory and parts that take place outside Norway's territory, Norway may in certain situations choose to incorporate legal acts whose scope encompasses the exclusive economic zone or the continental shelf into the EEA Agreement. In such cases Norway has made it a condition that expanding the geographical applicability of certain acts does not change the principle on which interpretation of the geographical scope of the EEA Agreement is based. In other cases Norway can take a decision at national level to also apply rules outside its territory that an EEA act has established within its territory.

Differences between cooperation outside the four freedoms and legislation relating to the four freedoms

EU legislation relating to the four freedoms is regulated by the Parts II–V of the EEA Agreement, and is incorporated into one of its annexes. Cooperation in areas outside the four freedoms does not in principle entail a legal obligation to cooperate within the framework of the EEA Agreement, and is regulated by Part VI of the EEA Agreement. Legal acts in these areas are normally incorporated into Protocol 31 to the Agreement on cooperation in specific fields outside the four freedoms. If a legal act is incorporated into Protocol

Box 2.4 Marine Strategy Framework Directive

In 2008, the EU adopted the Marine Strategy Framework Directive (2008/56/EC), which requires Member States to draw up marine strategies (management plans) to achieve good environmental status in their marine areas. The overall criteria for assessing good environmental status are determined by the EU, and these criteria are adapted and further refined through work done under the regional marine conventions and at national level. The strategies are to include an assessment of the state of the environment and a description of environmental targets, monitoring programmes and measures to achieve or maintain good environmental status. The Directive does not regulate other activities that may be affected by measures of this kind, such as fisheries, maritime transport and petroleum activities. Over the past few years Norway has developed the basis for an integrated marine environmental policy based on the ecosystem approach. This approach is also enshrined in the Directive, and the Norwegian model has been

an important source of inspiration in developing the Directive. In practice, Norway fulfils the Directive's requirements on the development and implementation of marine strategies. The geographical scope of the EEA Agreement extends to the territorial limit, cf. Article 126 of the EEA Agreement. On the other hand, the scope of the Directive includes all marine waters, extending to the outer limits of national jurisdiction, and thus including the exclusive economic zone and the continental shelf. Its geographical scope therefore extends beyond that of the EEA Agreement. In 2011 the Government decided that the Marine Strategy Framework Directive was not to be incorporated into the EEA Agreement on the grounds that it applies largely to areas outside the geographical scope of the EEA Agreement. A decision was also taken to further strengthen the already close cooperation with the EU on management of the marine environment.

31, this creates the same type of legal obligation as incorporation into an annex, in that Norway is then obliged under international law to comply with the provisions of the act. Article 7 of the EEA Agreement, which deals with states' obligation to make acts part of their internal legal order, also applies to acts that are incorporated into Protocol 31. There are, however, several differences between incorporation of an act into an annex and incorporation into Protocol 31, the most important of which are:

Precedence: When an act is incorporated into an annex it can normally be assumed that later legislation relating to the same field will also be incorporated into the Agreement. This must be the basic assumption even though there is a formal requirement for a new, independent assessment of any new acts relating to the same field, including amendments, before a decision is made on their EEA relevance. The incorporation of an act into Protocol 31 does not set the same precedent, as in these cases there is in principle no legal obligation to cooperate within the framework of the EEA Agreement. The parties therefore have more freedom to assess whether they wish to develop the cooperation further.

Horizontal adaptations: Protocol 1 to the EEA Agreement, which deals with horizontal adaptations, including the distribution in the EFTA pillar of tasks that are carried out by the Commission in the EU pillar, applies only to acts listed in the annexes to the EEA Agreement and not to Protocol 31. If this needs to be regulated, it must be agreed on separately.

Surveillance and settlement of disputes: It follows from Article 79 (3) that Part VII of the EEA Agreement (Institutional Provisions) only applies to Protocol 31 when specifically provided for. This means that in principle, the EFTA Surveillance Authority and the EFTA Court have no role in this cooperation. Nor are the dispute settlement rules (including the Article 102 procedure) applicable. Any disputes have to be dealt with through consultations between the Contracting Parties in accordance with the intentions of the Agreement. If, for example, it is considered appropriate that an act incorporated into Protocol 31 is covered by the surveillance procedure, this must be specifically agreed.

The Government considers it important that legal acts relevant to the implementation of the four freedoms are incorporated into an annex, while acts regulating cooperation outside the four

freedoms should be incorporated into Protocol 31. This is in line with the intentions of the EEA Agreement, helps to clarify the basis for cooperation in each individual case and in general ensures that management of the cooperation is as orderly and predictable as possible.

Difficulties in assessing EEA relevance

In most cases it is a straightforward matter to determine whether or not an act is EEA relevant, but in some cases it can be more complex. The EU is adopting an increasing number of legal acts that fall partly within and partly outside the scope of the EEA Agreement. This is in part due to the increasingly cross-sectoral nature of the EU cooperation, in part due to the abolition of the pillar structure and in part due to changes that have been made to EU treaties over time. The original parallel between EU treaty provisions and the EEA Agreement is gradually being erased. This makes it a more complex matter to establish EEA relevance. It can also be difficult to assess the degree to which an act affects the internal market, and the parties may disagree on this.

New legal acts are incorporated into the EEA Agreement by consensus. The EEA Agreement contains no provisions for dispute settlement in the event of disagreement on the question of EEA relevance. The parties will therefore be obliged to find a political solution. If the EU is of the view that the legislation concerned should be incorporated into the EEA Agreement, the outcome may be that it initiates an Article 102 procedure, and the affected part of the legislation may be suspended.

Assessing EEA relevance requires technical and legal expertise, and must be carried out within the framework of the basic premises and principles of the EEA Agreement. However, there is also some room for discretion. The parties' priorities and objectives for the EEA cooperation can to some extent determine which factors are given most weight when assessing EEA relevance.

Each new legal act is independently assessed before a final decision is made on EEA relevance. Usually, however, if one legal act is incorporated into an annex to the EEA Agreement, it will be natural to incorporate subsequent legal acts in the same area into the Agreement as well, irrespective of whether they are revisions of the original legislation, related legislation or supplementary legislation. Nevertheless, in Norway's view, there is no obligation to incorporate subsequent legislation outside the four freedoms, even if it was

Box 2.5 On Article 194 of the Treaty on the functioning of the European Union

With the adoption of the Lisbon Treaty, Article 194 of the Treaty on the functioning of the European Union now provides the legal authority for the development of an integrated European energy policy, as well as for developing European legislation in the energy sector. Article 194 provides for the EU to adopt energy legislation to ensure the functioning of the energy market, ensure security of energy supply in the Union, promote energy efficiency and energy saving and the development of new and renewable forms of energy, and promote the interconnection of energy networks. This has given the EU broader powers in the following areas:

1. Security of energy supply in general (previously only in the event of serious problems relating to security of energy supply)
2. Infrastructure (previously only guidelines for infrastructure, as a general rule)
3. Energy efficiency in general (previously only in the context of the environment)

Since Article 194 provides for the adoption of legislation serving so many different purposes, it may be difficult to assess the EEA relevance of legal acts. It is likely that legal acts will be adopted that are intended to serve several purposes, of which one may be outside the scope of the EEA Agreement (such as security of energy supply), while others may come within it (such as ensuring the functioning of the energy market). There are also likely to be legal acts in which not all the provisions can be regarded as EEA relevant.

decided to incorporate the original legal act into an annex rather than Protocol 31.

In practice, it is important to ensure that there is a reasonable degree of consistency and coherence in what is incorporated into the EEA Agreement and what is not. This is necessary to ensure effective cooperation and a degree of predictability for relevant stakeholders.

In order to avoid confusion, it should be made clear when legislation and cooperation in areas outside the four freedoms are incorporated into the EEA Agreement that this is not something

that the parties are under a legal obligation to do. Clarity about the basis for cooperation in each case has become even more important as the procedures for the development of EU legislation have become more complex, so that the distinction between EEA-relevant elements of the legislation and elements that fall outside the scope of the EEA Agreement is sometimes less clear. When assessing whether or not a legal act should be incorporated into the EEA Agreement, and if so how, the Government will also seek to avoid setting unwanted precedents. The fact that it may be difficult to foresee how legislation will be further developed in a given area should be taken into account when making an assessment of this kind.

The Government's position is that Norway's obligations under the EEA Agreement only apply on Norwegian territory. If, in special cases, it is appropriate to extend the geographical applicability of legislation to the exclusive economic zone or the continental shelf, the Government's premise is that this does not change the fundamental principle that the geographical scope of the EEA Agreement is limited to Norway's territory.

The Government will seek to ensure a preliminary assessment of EEA relevance at the earliest possible stage when the EU is considering new legislative proposals. This is crucial if Norway's assessments and views are to be put forward effectively.

2.3.2 Possible adaptations when incorporating new legal acts into the EEA Agreement

The main principle underlying the EEA Agreement is that legislation should be implemented and applied in the same way throughout the EEA. This is essential to ensure the homogeneity of legislation, equal conditions of competition and predictability for companies and citizens alike. As a general rule, adaptations in the form of derogations and transition periods of any length are incompatible with this principle. However, if special circumstances so require, it will be natural to seek adaptations to legislation when incorporating it into the EEA Agreement.

Almost all new EU legislation is incorporated into the EEA Agreement unchanged. This being said, the Agreement does allow for the parties to agree on substantive adaptations. In such cases, the general objective of ensuring the homogeneity of legislation will be part of the political assessment. Adaptations may concern delimitation of substantive or geographical scope, institutional

adjustments, transitional arrangements or derogations. Adaptations of this kind may be particularly appropriate if only parts of the legislation are EEA relevant, if it contains institutional solutions that need to be adapted to the two-pillar structure of the EEA Agreement, or if special circumstances in Norway make them necessary. In some instances adaptations may also be appropriate if the legislation involves a change in Norwegian policy that is considered to be problematic.

The EU's increasingly cross-sectoral approach to developing legislation, the abolition of the pillar structure within the EU and new regulatory methods may mean that it becomes more relevant to negotiate adaptations in the form of substantive delimitations and institutional adjustments when incorporating legislation into the EEA Agreement.

In certain cases, there may be a need to make a joint or unilateral declaration when incorporating legislation into the EEA Agreement, to clarify or delimit the parties' understanding of the legislation in question. A joint declaration expresses the parties' common understanding of the legislation, while a unilateral declaration only gives Norway's interpretation.

Few transitional arrangements and derogations have been agreed for the legal acts that have been incorporated into the EEA Agreement. This is partly because the EEA EFTA states have considered it to be in their interests to have common rules wherever possible, and they have therefore sought to limit the use of different rules at national level. It is also because the EU follows a restrictive line as regards transitional arrangements and derogations, because its aim is to achieve the greatest possible degree of homogeneity throughout the EEA. The question of substantive adaptations to legal acts that are incorporated into the EEA Agreement should also be seen in the context of the options available to Norway when implementing EEA legislation at national level. Even if Norway does not gain acceptance for an adaptation when incorporating an act into the EEA Agreement, it may in a number of cases nevertheless be possible to implement the legislation in a way that also safeguards Norwegian interests.

2.3.3 Bodies with powers to make decisions that are binding on authorities, companies or individuals

To an increasing extent, the EU is adopting legislation that gives agencies and supervisory bodies

Box 2.6 Derogations from EU legislation

When the EEA Agreement was concluded, Norway was granted some adaptations and derogations, for example with regard to the Television Without Frontiers Directive, the Community Co-Insurance Directive and legislation on pesticides. Moreover, transitional arrangements were agreed in the chemicals field so that Norway could maintain a high level of protection. Norway's technical input during the development of EU chemicals legislation helped to bring the level of protection provided under EU legislation closer to that provided under Norwegian legislation, so that there was no longer any need for derogations. Norway has also obtained some derogations since the EEA Agreement was concluded. One of these concerns Directive 2004/54/EC on tunnel safety, and permits Norway to make use of other safety facilities than emergency exits. According to Official Norwegian Report 2012:2, *Outside and Inside*, by June 2011 Norway had obtained derogations from a total of 55 legal acts, Iceland from 349 and Liechtenstein from 1056 legal acts. The majority of these derogations are in the areas of goods and transport. The main reason for the large differences between the EEA EFTA countries is that a number of legal acts are not relevant to Iceland and Liechtenstein for geographical or other reasons. Liechtenstein's bilateral agreements with Switzerland are another reason for the differences.

powers to make decisions that are binding on authorities, undertakings or individuals in member states. This raises questions of a legal and political nature, including in relation to the EEA Agreement's two-pillar structure and the Norwegian Constitution.

The concept "two-pillar structure" refers to the fact that the EEA cooperation is organised in two separate pillars: the EFTA pillar and the EU pillar (for more on this see Chapter 3.1.3). This is reflected in Part VII of the EEA Agreement, on institutional provisions. The principle is that it should be an EEA EFTA body that exercises authority vis-à-vis an EEA EFTA state.

In cases where the European Commission, EU agencies or supervisory bodies have the power to

make decisions that are binding on authorities, companies or individuals in the EU, the EEA EFTA states must decide whether and how corresponding powers are to be exercised in the EFTA pillar. This may be done by giving the EFTA Surveillance Authority corresponding powers, by deciding that corresponding decisions are to be made by the EEA Joint Committee, or by assigning the powers to national authorities in the respective EEA EFTA states. It is generally only in the field of competition that the EEA Agreement explicitly gives the EFTA Surveillance Authority the authority to make decisions that have a direct effect on companies. However, the EEA Agreement and the Storting's basis for accepting the Agreement in 1993 cannot be said to rule out a limited transfer of powers in other areas, providing that Norway agrees to this in each case. The EEA Agreement also provides for departures from the two-pillar structure through special adaptations. This means that in special cases, it may be decided to grant EU agencies or supervisory bodies powers to make decisions that are binding on EEA EFTA states, or that have a direct effect on legal entities in the EEA EFTA states.

When it is proposed to transfer powers to a body either in the EU pillar or the EFTA pillar, the applicability of the rules on the conclusion of treaties set out in the Norwegian Constitution must be clarified. The basic premise of the Constitution is that the authority with which it is concerned is, as a general rule, to be exercised by the Norwegian branches of government. Therefore, any transfer of legislative, executive or judicial authority that has direct legal effect in Norway is in principle incompatible with the Constitution and must therefore be effected in accordance with the rules on amendments to the Constitution set out in Article 112. Alternatively, in some cases, powers may be transferred with the consent of the Storting under Article 93 of the Constitution, which requires a three-fourths majority and applies to the transfer of powers to an international organisation to which Norway belongs or will belong.

According to established constitutional practice, an agreement involving a transfer of powers that is considered not to encroach too far on constitutional powers may be entered into in the same way as an ordinary treaty, cf. Article 26 of the Constitution. Article 26 does not itself give any guidance on how to assess when this is the case. An assessment of what can be accepted must be based on the specific provision of the Constitution granting the powers that would be affected in each case (Article 3, 49, 75, 88, 90, etc.).

Box 2.7 Common rules for civil aviation and the power of the EFTA Surveillance Authority to impose fines

Before Regulation (EC) No 216/2008 on common rules in the field of civil aviation was incorporated into the EEA Agreement, its relationship to the Norwegian Constitution was considered. The Regulation authorises the European Aviation Safety Agency to request the Commission to impose fines and periodic penalty payments on national companies for breaches of provisions of EASA rules or individual certificates. Because of the two-pillar structure of the EEA Agreement, an adaptation text was needed giving the EFTA Surveillance Authority the same powers as regards companies in the EEA EFTA states. The adaptation text also had to be assessed against the constitutional requirement for the Storting to give its consent to transfer of these powers to the Agency.

The Legislation Department of the Ministry of Justice considered the matter and concluded as follows in a statement issued on 18 January 2010:

“...In principle, transferring the power to impose sanctions directly on Norwegian undertakings [to a body outside Norway] must be regarded as a considerable encroachment on Norway's administrative authority. On the other hand, the transfer of powers in this case has limited substantive scope, in that it will only have an impact on undertakings that already have or later obtain certificates issued by the European Aviation Safety Agency. Currently, this only affects four Norwegian undertakings. Fur-

thermore, it does not appear to be politically controversial to put further sanctions at the disposal of the European Aviation Safety Agency in addition to its already existing power to withdraw certificates. This would make it possible to respond in a more balanced and proportionate way to breaches of the rules, and would be beneficial for the Agency's work on aviation safety. On this basis, we are inclined to conclude that, all in all, the transfer of powers set out in Article 25 of Regulation (EC) No 216/2008 is not too much of an encroachment on constitutional powers, so that the Regulation can be incorporated into the EEA Agreement, provided that the Storting gives its consent in accordance with Article 26, second paragraph, of the Constitution. As mentioned initially, however, the Storting's views on the constitutional assessment will be of importance in cases of doubt.”

The Regulation was incorporated into the EEA Agreement on the basis of the Ministry's statement. Constitutional requirements were indicated, meaning that the consent of the Storting is required before the Regulation can enter into force in the EEA EFTA states. A declaration from the EFTA states was also appended to the Joint Committee's decision, stating that giving the EFTA Surveillance Authority the authority to impose fines in the area of aviation safety is without prejudice to solutions in similar cases in the future.

Practice, primarily as expressed in the Storting's deliberations on previous cases, will provide guidance on where the line should be drawn. According to this, relevant factors in an assessment include the type of powers to be transferred and the scope of the transfer, including whether or not the transfer of powers would apply to a specific and well-defined area. It is also of importance whether the transfer of powers would be based on reciprocity and equal participation. In practice, importance has also been attached to the degree to which the Norwegian authorities would be able to mitigate any undesirable effects of the transfer of powers. The nature of the social or political

interests that would be affected is also taken into account.

So far, solutions have been found that have made it possible to incorporate rules of this type into the EEA Agreement in most cases. However, the increased competences being given to new EU agencies and supervisory bodies are creating challenges as regards the two-pillar structure of the EEA Agreement. In certain cases, it has been decided to depart from the general two-pillar principle, either because it is not always possible to adapt the EU cooperation to the traditional two-pillar structure, or because it, for resource or other considerations, has not been considered appropri-

ate to give the EFTA Surveillance Authority the same powers as the European Commission.

It is important for Norway to have the opportunity to participate in the shaping of legislation that takes place in EU agencies and supervisory bodies. Developments in the EU and new forms of cooperation mean that in a growing number of cases the EFTA states may have to accept new solutions as a condition for being able to participate. However, the EU member states must acknowledge that the EEA EFTA countries participate in the internal market on other institutional and legal terms than they do, and that this places constraints on the solutions that can be chosen.

In the Government's view, balanced and well-functioning cooperation requires a pragmatic approach from all parties to the agreement. Practical solutions should be sought that will in the best possible way take account of the institutional structure of the EEA Agreement, the desire for legislative homogeneity and national interests. The Government will consider the consequences of the growing number of EU agencies and supervisory bodies for Norwegian participation, processes and policy formation, and which approach will best safeguard Norway's interests in interactions with these bodies.

2.3.4 The options available when implementing EEA legislation in Norway

It follows from Article 3 of the EEA Agreement that Norwegian law must be in accordance with EEA obligations. Article 3 states that the parties must take all appropriate measures to ensure that they fulfil their obligations under the Agreement, and abstain from any measures that could jeopardise the attainment of its objectives. This is known as the general principle of loyalty in the EEA. The principle applies to the implementation of legal acts that are incorporated into the EEA Agreement, and also to Norwegian legislation in areas that are within the scope of the EEA Agreement, but not regulated by specific acts. Norwegian legislation must be in line with the general provisions in the main part of the EEA Agreement, such as the provisions on the free movement of goods, persons and services across national borders, unless EEA law provides for derogations.

On this basis, the Norwegian authorities can use various options to enable them to implement legislation in a way that takes different considerations into account. As far as directives are con-

Box 2.8 Gaming and betting services

The Storting has decided that certain services of particular social significance are only to be provided by the state, i.e. a public agency or a wholly state-owned company. One of the services covered by this decision is gaming and betting services. In Norway, the state lottery (Norsk Tipping) has sole rights to operate the most important money games, such as Lotto and betting on sports competitions, while the horse-betting service Norsk Rikstoto can only offer betting on trotting races and flat-racing. In 2003, the Storting extended this right so that it now also applies to gaming terminals.

Gaming and betting services are covered by EEA legislation. Since 2003, two cases have been filed on this issue in the EFTA Court. In the first of these, the gaming machine industry lodged a complaint against the Norwegian state with the EFTA Surveillance Authority, and brought a case before a Norwegian court. The gaming machine industry argued that the extension of the Norwegian system to prohibit gaming machines run by private operators was a contravention of the EEA Agreement. In the second case, the international bookmakers and gaming company Ladbrokes claimed that the Norwegian state monopolies (Norsk Rikstoto and Norsk Tipping) and the fact that only Norwegian charitable organisations could offer certain kinds of games were a violation of the EEA Agreement. The Norwegian state won both cases outright. The Ladbrokes case continued to be brought before various Norwegian courts for many years, but was eventually withdrawn. In the meantime, the European Court of Justice had passed a judgment in a similar Portuguese case, making clear that national authorities have a good deal of latitude to make use of state monopoly schemes in the gaming industry. Thus, the EEA Agreement allowed for the continuation of the Norwegian monopoly arrangements.

cerned, the authorities can as a general rule decide on the best approach to implementation in Norwegian law. Thus, Norwegian values and political and economic considerations can be taken into account within the framework of the

Box 2.9 The system of reversion

In June 2001, the EFTA Surveillance Authority argued that Norway's 1917 Industrial Licensing Act infringed Articles 31 and 40 of the EEA Agreement on freedom of establishment and non-discrimination between Norwegian and foreign undertakings. This was because licences without time limits for the acquisition of property rights to waterfalls could only be issued to Norwegian public undertakings. In all other cases, the property rights would revert to the state after a certain period. The Norwegian response was based on the argument that the system of reversion forms part of Norway's national management of its natural resources and is therefore outside the scope of the EEA Agreement. Furthermore, Norway held that the system of time-limited licences and reversion of property rights to the state is part of the Norwegian state's system for managing property rights to hydropower resources, and Article 125 of the EEA Agreement states that the Agreement "shall in no way prejudice the rules of the contracting parties governing the system of property ownership". The EFTA Surveillance Authority recognised a state's right to decide whether or not a natural resource is to be used, and the fact that states are fully entitled to manage their own resources. However, it argued that the management system must be in accordance with the provisions of the EEA Agreement. Discrimination on grounds of nationality was a key element of the Authority's arguments. When the EEA Agreement was concluded, Norway changed the system of reversion so that Norwegian private undertakings and undertakings from other EEA states were treated equally. However, Norwegian public undertakings were still given preferential treatment in the form of licences with no time limits and exemption from the system of reversion. According to the Authority, this entailed indirect discrimination

against foreign undertakings. In June 2007, the EFTA Court found that the differences between the rules applying to public and private owners of hydropower resources constituted an indirectly discriminatory restriction on the EEA rules on the right of establishment and the free movement of capital. According to the EFTA Court, the problem was not Norway's system of reversion and state ownership in itself, nor was it the fact that the system involved national restrictions. However, restrictions could only be justified as part of a complete and consistent system of public ownership. As a result of the EFTA Court's judgment, the Norwegian authorities had to find other ways of safeguarding the system of reversion. But this also provided the key to a new solution: Norway could comply with the judgment by strengthening public ownership. On 10 August 2007, the Government adopted with immediate effect a provisional ordinance under Article 17 of the Norwegian Constitution, to rectify the situation that had arisen following the ruling of the EFTA Court. Its purpose was to ensure that Norway's hydropower resources are under public ownership and that they are managed for the common good. Under the ordinance, private undertakings were no longer to be granted licences for the acquisition of waterfalls and power plants. On the other hand, private undertakings could own up to a third of the capital and votes in public undertakings that had ownership rights to waterfalls. The provisional ordinance was later replaced by amendments to the Industrial Licensing Act adopted in the autumn of 2008 and set out in Proposition No. 61 (2007–2008) to the Odelsting. In the spring of 2009, the Storting adopted additional amendments that allowed the letting of hydropower plants for periods of up to 15 years, as set out in Proposition No. 66 (2008–2009) to the Odelsting.

directive. This will vary depending on how the provisions of the directive are formulated. If a directive is very clear and concise and leaves little room for interpretation or discretion, it will be difficult to depart from the wording of the directive to any great extent. In cases where the directive merely gives a more general description of the rules that are to be implemented in

national law, or explicitly sets out that states may depart from the provisions of the directive in one way or another, the authorities will have considerably more leeway when implementing the directive at the national level. In such cases, the authorities should implement the directive in a way that is in accordance with established Norwegian legislative practice, as this will make it simpler

for those affected by the legislation to understand and interpret it. Furthermore, in areas such as the environment, where minimum directives are often used, it is possible to set more stringent national requirements, so that the authorities can choose from a wider range of options.

As a rule, the greatest range of options is available in areas that are not regulated by specific acts. In these cases, it is the general provisions in the main part of the EEA Agreement that apply. Much of the public regulation of Norwegian society has a bearing on the four freedoms (free movement of goods, services, persons and capital), and EEA law provides some flexibility here. Restrictions on the exercise of one of the four freedoms can be justified on the grounds of public interest if the public interest cannot be safeguarded as effectively using less restrictive measures (the principle of proportionality).

The narrowest range of options is available when an area is governed by a regulation that has been incorporated into the EEA Agreement. Under Article 7 of the EEA Agreement, a regulation must be made part of Norway's internal legal order. This is interpreted as meaning that regulations must be implemented in national law verbatim, normally as an act or regulation stating that the regulation concerned (in EEA-adapted form) is to apply as Norwegian law.

The number of new EU regulations has increased in recent years. Key examples in this context are the EU's comprehensive legislation on chemicals (the REACH regulation) and food security, both of which have been incorporated into the EEA Agreement. Recently, there has also been a trend towards the use of regulations in the area of financial markets. Following the financial crisis of 2008–09, the EU has made increasing use of regulations to ensure as much legal homogeneity in this area as possible. Previously, legal acts in the area of financial markets were generally directives, often minimum directives, which gave member states various options for implementation in national law. These developments show how important it is for Norway to make use of opportunities to exert influence at an early stage in the development of EU legislation.

It will often be possible to realise Norway's policies and objectives through various types of regulatory measures, some of which will be more readily compatible with EEA law than others. Both central and local authorities should be aware of this. There are a number of factors that affect

Box 2.10 Tax deductions for donations to charitable organisations

The tax deductions scheme for donations to charitable organisations has existed since 2000, and is very important for Norwegian organisations. Under the scheme, taxpayers can claim a tax deduction for donations of over NOK 500 per organisation per year, to certain charitable organisations, with a ceiling of NOK 12 000 per taxpayer. In 2009, the European Court of Justice ruled that a similar scheme in Germany infringed EU law. In the same year, the EFTA Surveillance Authority delivered a reasoned opinion to Norway, maintaining that the Norwegian tax deduction scheme was an infringement of the EEA Agreement and that the legislation would have to be amended. The reason was that the Norwegian tax deduction scheme only applied to organisations with headquarters in Norway, and not to organisations in other EEA countries. In the Authority's view, this was incompatible with the provisions in the EEA Agreement on the free movement of capital. Norway had two choices: either to abolish the scheme or to change its tax rules so that the tax deductions scheme also applied to donations to charitable organisations headquartered in other EEA states. The Government chose to change Norway's tax rules, so that all organisations within the EEA that meet certain requirements are now treated alike. This case shows that it may be possible to continue Norwegian schemes within the EEA, provided that they treat Norwegian and foreign organisations equally and do not discriminate on grounds of nationality.

the options available, including how national regulatory measures are designed, their purpose, and the grounds given for using them.

National regulatory measures that do not discriminate on the basis of nationality or origin can under EEA law be justified on many more grounds of public interest than measures that are directly discriminatory. Such public interests include environmental concerns, consumer interests, considerations of regional policy and social policy, as well as public order, public security and

public health. It is important to make it clear which grounds are used to justify such regulatory measures, both in preparatory documents and elsewhere. Usually this means that the public interests that are to be safeguarded must be clearly stated. It must also be shown that the proposed arrangement will be suitable for this purpose, and that these public interests cannot be safeguarded as effectively by other means that would limit trade within the EEA to a lesser extent.

Much of EEA legislation is technical in nature. In these cases, it will be purely technical and scientific considerations that determine how the legislation is to be implemented in Norway. In areas where Norway has important interests, the Government will make use of the options available to safeguard them.

In order to identify the options available under EEA law, the public administration must have a high level of expertise in the EEA legal system, EEA legislation and the case law of the EU Court of Justice and the EFTA Court. The Government will therefore give priority to further developing this expertise in the public administration, and to ensuring that good routines are established for using the options available actively and appropriately.

Before EU legal acts are incorporated into the EEA Agreement, they must be translated into Norwegian. Unofficial translations are sufficient at the time of incorporation, but these must later be thoroughly revised before they are made official. High-quality translations are needed to ensure correct implementation at the national level. This is important for the Norwegian authorities, Norwegian companies and other stakeholders who have to comply with the legislation in question. The steady increase in the amount of legislation being incorporated into the EEA Agreement has led to a significant increase in translation work. The Government will ensure that priority is given to this work.

2.3.5 The surveillance and court system: Norway's approach

EU law is dynamic, and the European Court of Justice plays an active role in its development through its case law. To ensure the homogeneity of legislation, EEA law should as a general rule be developed correspondingly. When the EFTA Court and the European Court of Justice make statements concerning the interpretation of EEA legislation they influence the development of EEA law. In the same way, decisions taken by the EFTA

Surveillance Authority may have implications for how EEA legislation is applied in practice. Thus, the decisions of the courts and the Authority may affect the development of Norwegian law in areas that fall within the scope of the EEA Agreement.

Provision has been made for the EEA EFTA states to influence such decisions and thereby the development of EEA law. Norway can have an influence in two types of cases in particular. Firstly, it can defend its position in cases where it is claimed that Norway has not complied with EEA law in a certain area (infringement cases, see Figure 5.1). Secondly, Norway has an opportunity to exert an influence in cases where the EFTA Court and the European Court of Justice make statements on how EEA law is to be interpreted, either in the form of preliminary rulings/advisory opinions or when the EFTA Court deals with infringement cases against other states. In both cases, Norway can make submissions detailing Norway's interpretation of EEA law.

Previously, the EEA EFTA states and the EFTA Surveillance Authority were also able to intervene in cases relating to EEA law between EU member states and EU institutions before the European Court of Justice, for example if the Commission initiated infringement proceedings against an EU state. Since 2010, the European Court of Justice has followed a different practice, and the EEA EFTA states have no longer had the same opportunity to intervene. Norway considers it important that the EEA EFTA states have this opportunity, and the EEA EFTA states and the Authority have raised the issue with the EU, both in the EEA Joint Committee and in the EEA Council. The Government will continue to work actively to gain acceptance for its view on this matter.

In December 2011, the EFTA Court proposed to the EEA EFTA states a number of amendments to the Surveillance and Court Agreement relating to the composition of the EFTA Court and its formation. The proposals aimed to further reinforce the professional competence and standing of the Court and thus to enhance its legitimacy.

The proposed amendments contained three elements: the possibility of calling ad hoc judges to the bench for an Extended Court in important cases, the establishment of an Evaluation Panel for candidate judges, and the creation of the post of Advocate General at the EFTA Court.

Thus far, the Government has not seen a need to make amendments to the institutional setup of the EFTA Court. The proposals of the Court are currently under review by the three EEA EFTA States.

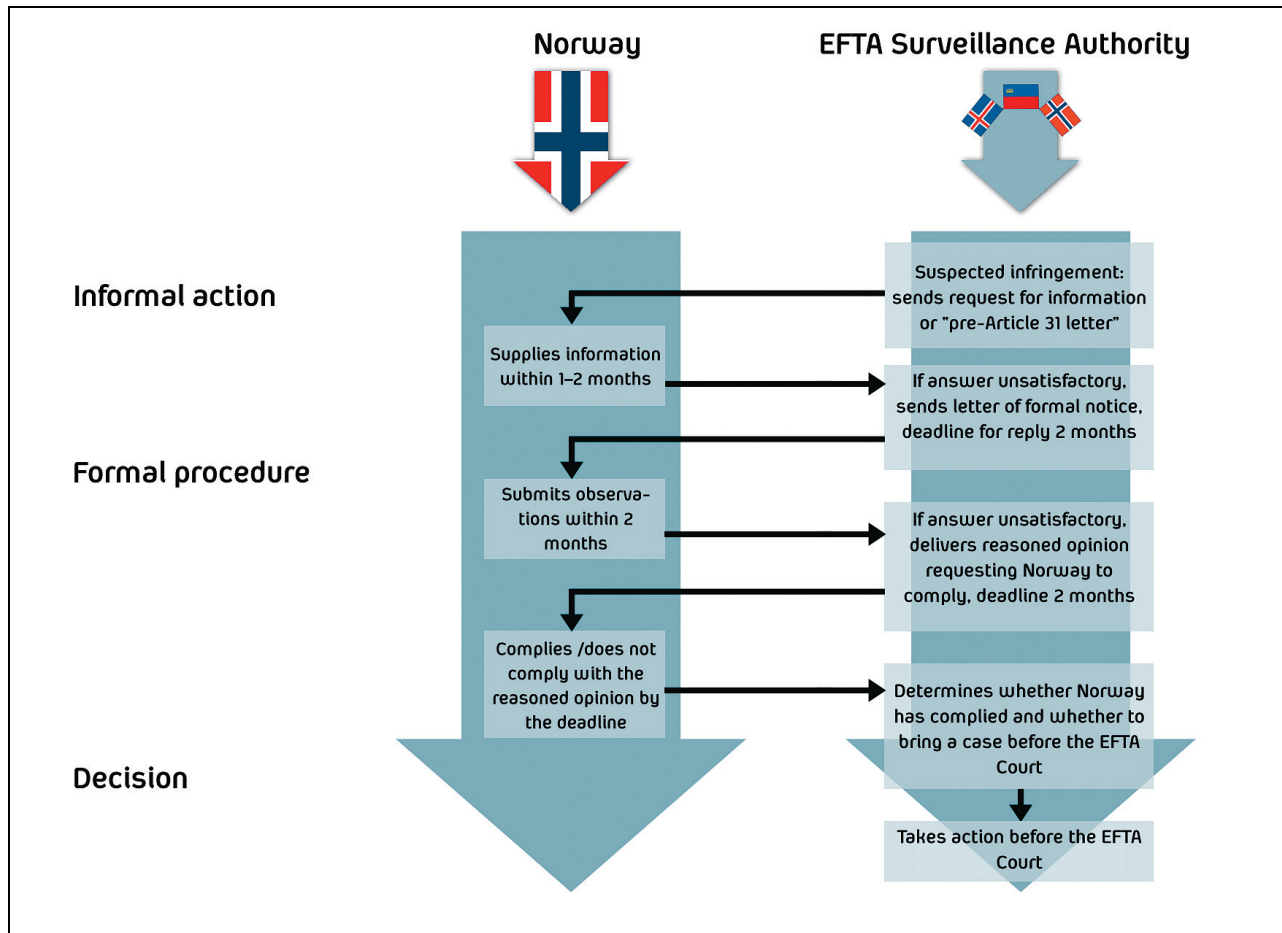


Figure 2.1 Procedures in possible infringement cases

Infringement cases

Under the EEA Agreement, it is the task of the EFTA Surveillance Authority to ensure that the participating EFTA states respect their obligations under the Agreement. The Authority can do this on its own initiative or on the basis of complaints from private parties.

There have been disagreements between the EFTA Surveillance Authority and Norway on the interpretation of the EEA Agreement in a number of individual cases. In some of these the Authority's position has been upheld, while in others Norway's views have won acceptance. Experience shows that close dialogue with the Authority is important if Norway is to gain acceptance for its position. This should be initiated before any formal case is brought, to ensure that Norway is aware of the Authority's assessments at an early stage. In order to safeguard Norwegian interests, it is also important that the Authority receives all relevant information as early as possible and that

Norway's point of view is supported by sound, consistent arguments. It is crucial that there is close coordination between the relevant ministries in processes relating to the EFTA Surveillance Authority. The involvement of the Ministry of Foreign Affairs, other relevant ministries and the Office of the Attorney-General is determined in each case in accordance with specific guidelines. Procedures have also been established for submitting matters relating to the EFTA Surveillance Authority to the Government.

The Government attaches importance to ensuring the best possible coordination between the relevant ministries and the Office of the Attorney-General. This will ensure that we have as much information as possible about a case at an early stage and can put forward a coherent argument.

In cases where it is not possible to reach agreement with the EFTA Surveillance Authority, the Government may decide to bring the case before the EFTA Court.

Advisory opinions from the EFTA Court and preliminary rulings by the European Court of Justice

A national court may ask the European Court of Justice or the EFTA Court to give its interpretation on a point of EU or EEA law by referring to them for a preliminary ruling or requesting an advisory opinion respectively. The European Court of Justice and the EFTA Court only give an opinion on questions of EU/EEA law. It is the national court that takes the final decision in a case.

Norway is entitled to make submissions relating to all requests to the EFTA Court for an advisory opinion and to all questions referred to the European Court of Justice for a preliminary ruling that fall within the scope of the EEA Agreement.

It is established procedure that the Ministry of Foreign Affairs submits all such matters that may have EEA relevance to the ministries concerned. The ministry responsible assesses whether Norway should make use of its right to make a submission to try to ensure that the law is interpreted in a way that accords as closely as possible with Norwegian interests. The Office of the Attorney-General and the Ministry of Foreign Affairs act as the legal representatives for the state in these cases.

The court proceedings are mainly written, and considerable effort goes into this part of the process. A short oral hearing is usually held after the written submissions have been received. If this is done, parties other than those who made written submissions also have an opportunity to make oral submissions. In cases where it is initially concluded that there is no need for a written submission from Norway, but where it subsequently becomes clear that written submissions by other parties include information or assertions that Norway should comment on, a possible solution may be to request an oral hearing and to make a statement there.

In cases where other EEA states have similar arrangements to Norway or have a similar understanding of the legal act in question, the possibility of establishing contact and where appropriate also coordinating arguments is considered.

In Norway's experience, submissions made by Norway to the European Court of Justice are considered on an equal footing with submissions made by member states. It is the quality of the submission and the strength of the arguments that determine whether the views put forward gain acceptance. It is difficult to gauge the extent to which a submission has influenced the Court in its final decision, particularly when several states

have put forward similar arguments. There are, however, several examples where it is apparent that the Court has based its decision directly on arguments put forward by Norway, including in cases where Norway's views have differed from those of other actors.

The same applies to the EFTA Court. Fewer states tend to make submissions to the EFTA Court than to the European Court of Justice. This means that there is an even greater need for Norway to comment on cases and try to ensure that the best possible decisions are made from Norway's point of view.

In the Government's view, Norway should make active use of opportunities to make submissions relating to requests for advisory opinions and references for preliminary rulings in order to set out Norway's interpretation and understanding of the legislation in cases of importance for Norway. Norway should as a general rule make submissions relating to requests for advisory opinions from the EFTA Court. Norway should also make submissions relating to questions referred to the European Court of Justice for a preliminary ruling if they are particularly relevant for the interpretation of the EEA Agreement in areas of importance to Norway.

2.3.6 Article 102 procedures

In the event of disagreement between the parties to the EEA Agreement on whether new EU legislation is to be incorporated into the Agreement, the procedures set out in Article 102 may be applied: these describe what happens if a party decides not to incorporate legislation, including the possibility of provisional suspension of the affected part of the Agreement. The provisions of Article 102 stipulate that the parties are to make every effort to reach agreement. It is the party that wants a legal act to be incorporated into the EEA Agreement that decides whether and when an Article 102 procedure is to be initiated. Such a decision is not conditional on the other party having expressed a formal reservation about the incorporation of the new legislation; it may also be based on the fact that one party is of the opinion that a disproportionately long time is being taken to incorporate the act into the EEA Agreement.

Since the EEA Agreement entered into force the procedures set out in Article 102 have been activated twice. The first time was in 2002, and concerned Liechtenstein and the EU Second Money Laundering Directive. The second time was in 2007, and concerned Iceland/Liechtenstein

and legislation for the free movement of persons. In both cases the EU considered that it was taking too long to incorporate the legislation into the EEA Agreement. Following further dialogue, the parties reached agreement and the acts were incorporated into the EEA Agreement.

Norway has stated that it does not intend to incorporate the Third Postal Directive, but the EU has so far not initiated an Article 102 procedure.

Once an Article 102 procedure has been initiated the EEA Joint Committee has six months to try to find a solution. The parties have a duty to make every effort to reach agreement. The EEA Joint Committee must examine all possibilities to maintain the good functioning of the EEA Agreement. If the parties fail to reach agreement, and if the EEA Joint Committee has not taken a decision to the contrary, the affected part of the EEA Agreement will be provisionally suspended. However, a suspension may not take effect if the Parties agree that it is not necessary. In practice, it is up to the EU to decide whether a reservation by an EFTA state should result in parts of the EEA Agreement being provisionally suspended or not.

According to Article 102 (5), it is “the affected part” of the Annex to the EEA Agreement into which the act should have been incorporated that is to be provisionally suspended. In Norway's view, this means that only the part of the relevant Annex that is directly affected can be suspended. This view is based on a joint reading of Article 102 (2) and (5). The EEA Agreement does not provide a more detailed definition of what is meant by the directly affected part of the Annex. If there is disagreement between the parties on which acts are affected, a political solution must be sought. In practice it is difficult to make a general assessment of the possible extent of a suspension. This must be considered in the light of each specific situation.

As described above, experience of the application of Article 102 is limited. According to the wording of the provision, once the procedure has been initiated and the deadline of six months has expired without the parties having reached agreement, suspension will take effect without a prior decision by the EEA Joint Committee. However, when the EEA Agreement was signed, the parties agreed (in the Agreed Minutes Ad Article 102(5) EEA in the Final Act to the EEA Agreement) that if a provisional suspension does take effect, its scope and entry into force should be adequately published. In other words, there must be some kind of confirmation of the suspension that

ensures that the legal situation is sufficiently predictable for those affected by the suspension.

The purpose of Article 102 is to ensure that the EEA Agreement functions as intended, and its procedural rules are formulated with this in mind. Even if agreement on the incorporation of a legal act into the EEA Agreement is not reached, and parts of the Agreement may be temporarily suspended, the EEA Joint Committee will pursue its efforts to agree on a mutually acceptable solution in order for the suspension to be terminated as soon as possible.

Any decision not to incorporate legislation into the EEA Agreement must be based on an assessment that takes into consideration both Norway's interests in the matter in question and the risk and potential consequences of a possible negative response on the part of the EU. Generally speaking, Norway benefits from the development of common rules and standards for the European market. Experience has shown that relevant legal acts have been accepted by Norway. Nevertheless, the possibility of entering a reservation is an integral part of the EEA Agreement. It is a necessary mechanism for those cases where there are important strategic interests that warrant its use. The Government will consider entering a reservation in cases where particularly important Norwegian interests may be jeopardised by legal acts that are proposed for incorporation into the EEA Agreement.

2.4 Management of agreements in the area of justice and home affairs

Justice and home affairs has become an increasingly important area of cooperation for the EU, primarily within the EU itself, where ensuring the freedom and security of EU citizens is an important goal. Transnational crime in its many forms makes effective international police cooperation essential. International cooperation is also required to meet the challenges Europe is facing in terms of refugee flows and illegal immigration. The common external border and the internal free-travel area mean that all participating states must implement and apply the common rules in an effective and responsible manner. Policy instruments in the area of justice and home affairs are also an important component of the EU's external policy.

Norway participates in important aspects of EU cooperation in this area. As a Schengen member state, we are dependent on the effective implementation of legislation and measures relating to

control of the common external border across the entire Schengen area.

Other parts of the EU cooperation in this area also affect us in varying degrees. For this reason it has been Norwegian policy to seek broad participation in EU cooperation in the field of justice and home affairs and to work actively to ensure that this cooperation functions well.

The most important aspect of Norway's participation in EU cooperation in the area of justice and home affairs is its participation in the Schengen cooperation, with all its practical implications. As a Schengen member state, Norway is entitled to take part in Council discussions on legal acts and measures at all levels, at expert, senior official and ministerial level. The Government intends to continue to build on the Schengen cooperation.

In addition, Norway has entered into several specific association agreements through which it participates in other parts of EU cooperation in the area of justice and home affairs. These agreements cover areas such as cooperation with Europol, the European Police College (CEPOL) and the European Union's Judicial Cooperation Unit (Eurojust), mutual assistance in criminal matters, access to other countries' criminal records (under the Prüm Convention), adoption of the European arrest warrant, and participation in EU agencies. Norway also participates in EU cooperation on combating terrorism through the Counter-Terrorism Group (CTG). In addition, Norway participates in cooperation under the Dublin Regulation, which establishes the criteria and mechanisms for determining the member state responsible for examining an asylum application.

The Norwegian authorities have found that there are good opportunities for cooperation and dialogue with the EU in the field of justice and home affairs in areas where Norway has experience and expertise. This also applies to areas such as asylum and refugees, where we have not entered into separate association agreements with the EU. Norway is a valuable partner for the EU when it comes to developing asylum systems in a number of EU member states and third countries.

2.4.1 The Schengen cooperation

Norway's agreement with the EU on participation in the Schengen cooperation entitles us to take part in Council discussions on new legislation. Norway and the other non-EU Schengen states (Iceland, Liechtenstein and Switzerland) participate in the EU's negotiations through the Mixed Committee. This has implications for the way Schengen mat-

ters are dealt with at the national level, not least the need to develop Norway's positions and ensure that these have the necessary political backing at all levels throughout the legislative process from initial discussions up to a final decision by the EU.

Schengen relevance

When the Commission draws up draft legislation in the area of justice and home affairs, it must consider whether the proposed legislation is Schengen-relevant or not. This will determine whether the legislation in question is to be discussed in the Mixed Committee and could be binding for Norway.

Under the Schengen association agreement, its procedures are to be followed when any legislation that changes or builds on the existing Schengen *acquis* is being drafted. In most cases it is clear whether a proposed legal act falls within or outside this definition. However, in some cases this may be more difficult to determine, for example if some parts of an act build on the existing Schengen *acquis* while other parts do not.

The issue of Schengen relevance has given rise to disagreement primarily in cases where Norway has sought to associate itself with cooperation areas that in the view of the Commission or some of the member states fall outside the scope of the Schengen Agreement. The solution has generally been for Norway to enter into separate agreements with the EU in the areas concerned.

If a legal act is deemed to be Schengen-relevant and the procedures set out in the Schengen association agreement are followed, Norway will be notified when the act is finally adopted by the EU. Norway must then consider whether the act in question should be accepted and implemented in Norwegian law. The issue of Schengen relevance must therefore be clarified before discussions in the Council working group begin, so that Norway has the opportunity to participate and influence the content of the legal acts by which it will later be bound.

Some legal acts are in a grey zone between the Schengen Agreement and the EEA Agreement. Others might fall within the scope of both agreements. In such cases, Norway and the EU must agree on what form of association Norway should have with the legislation in question. So far in these cases, solutions have been found that have taken Norwegian considerations into account. This issue is also relevant for other countries. Switzerland is not a party to the EEA Agreement, and the UK and Ireland do not participate in the Schengen cooperation.

Horizontal legislation

Assessing Schengen relevance has become more difficult in step with institutional developments in the EU. Justice and home affairs is no longer defined as a separate pillar of the EU cooperation. With the entry into force of the Treaty of Lisbon, the EU adopted a standard decision-making system that generally applies to all types of legal acts, including those in the area of justice and home affairs. The system enables the adoption of horizontal legislation that applies to several different policy areas. Some of these areas may be Schengen-relevant, while others are not. Other legal acts may contain certain provisions that seen in isolation are Schengen-relevant, while the rest of the act is not. It may be difficult to apply the definition of Schengen relevance set out in the Schengen association agreement to these types of acts.

Experience to date has shown that in some cases the EU has applied a somewhat narrower definition of Schengen relevance than the definition used by Norway. The abolition of the pillar structure could lead to an increase in the number of disagreements regarding Schengen relevance. Effective cooperation on border controls requires the participation of all the parties concerned, and cooperation with the EU in this area is in general characterised by a will to find solutions within the framework of our association agreement. The Government will seek to maintain close contact with the Commission to ensure that the interests of the non-EU Schengen states are taken into consideration when new laws are being drafted.

The importance of the Mixed Committee

Norway takes part in Council discussions on Schengen-relevant legislation through the Mixed Committee. Norway and the other non-EU Schengen states do not have the right to vote at any stage of the decision-making process and do not participate in the formal adoption of legislation. In practice, however, experience has shown that this is less important than the opportunities we have to influence other countries by putting forward effective, coherent arguments.

The most important stage for influencing the development of Schengen legislation is early in the Council's decision-making process, i.e. in working groups and committees under the Council, immediately after the Commission has put forward a proposal for a legal act. Schengen member states, including Norway, participate at this stage by providing expert input in the fields concerned.

The extent to which the efforts of each of the countries have an impact at this stage depends largely on the quality of the expertise provided and the arguments used. Norway has the same opportunities to promote its views as the EU member states.

Norwegian politicians and representatives of the Norwegian public administration take part directly in discussions on Schengen-related matters at all levels under the Council, on an equal footing with EU member states. This means that Norway's Schengen-related work requires a different approach from that needed under our other agreements with the EU. Norway has to develop its positions on an ongoing basis before relevant legal acts are discussed in the Mixed Committee. This means that Norway's views need to be regularly reviewed and endorsed at the political level, which helps to ensure the involvement of the senior political staff in the relevant ministries.

Because of these differences in how Norway is involved in the different processes, it can be difficult to draw parallels between Norway's efforts to exert an influence in the Schengen cooperation and its efforts to do so under the EEA Agreement. Experience has shown, however, that active involvement at the political level at an early stage is essential if Norway is to gain acceptance for its points of view.

The Government will continue to give priority to making use of the options available under the Schengen cooperation by developing national positions that can be put forward at an early stage of the decision-making process in Brussels.

Implementation in Norway

Once new Schengen legislation has been adopted, Norway's options for implementation will depend among other things on whether the act is a directive, a regulation or a decision. Particularly if an act establishes common minimum standards, there may be a number of options.

As regards Schengen legislation, it is essential for Norway to put forward its national positions at an early stage of the Mixed Committee's discussions. There is no opportunity at a later stage to seek adaptations, either in terms of content or timing of implementation. If Norway needs to seek adaptations of any kind this must be done during discussions in the Council's working groups and committees. Thus it is essential for Norway to have clear national positions that have the necessary political backing.

Evaluation mechanism and the courts within the Schengen cooperation

There are normally no checks on persons at the internal borders of the Schengen area. This makes it essential for all the Schengen countries to implement and enforce the Schengen rules effectively. The Schengen Agreement was originally an intergovernmental agreement, and it is still the Schengen member states that have the main responsibility for regular evaluation of the implementation of the Schengen *acquis*. Application of the Schengen *acquis* in Norway, Iceland, Liechtenstein and Switzerland is evaluated in the same way.

In addition, the Commission has competence to monitor EU countries to ensure that they apply the Schengen area rules correctly, and the jurisdiction of the European Court of Justice has now been extended to include Schengen cases and the rest of the area of justice and home affairs.

Norway's association agreement with Schengen is an agreement between Norway and the EU. The EFTA bodies do not play a role in the Schengen cooperation. This means that neither the EFTA Surveillance Authority nor the EFTA Court has competence to make decisions on legal issues relating to Norway's implementation of the Schengen Agreement. In the event of a dispute about the application of the *acquis*, the dispute settlement arrangements set out in the agreement must be initiated.

However, Norway is entitled to make submissions to the European Court of Justice in cases referred by national courts in the EU member states that relate to the interpretation of the Schengen *acquis*. This does not apply to cases between the Commission and EU member states. This means, for example, that Norway cannot make submissions in cases brought against the Commission concerning the definition of the term Schengen relevance.

So far Norway has not made use of its right to make submissions in Schengen cases. The Government will do so, if appropriate, both in cases dealing with matters of principle and those where the ruling could have a direct impact on Norway's implementation of the *acquis*.

Interparliamentary cooperation

The joint declaration on parliamentary consultation contained in the Final Act to the Schengen association agreement paves the way for interparliamentary cooperation between Norway and the

European Parliament on Schengen-related matters. Experience of interparliamentary cooperation under the EEA Agreement has shown that this is a useful channel into the European Parliament's work on EEA matters. The Government assumes that this would also be the case under the Schengen cooperation. So far none of the parties have taken the necessary steps to establish such consultations. It is up to the Storting to consider whether cooperation with the European Parliament should also encompass Schengen-related matters.

2.4.2 Development of cooperation in other justice and home affairs areas

The Government has a stated aim of pursuing an active European policy in the field of justice and home affairs, including areas that fall outside the framework of the Schengen cooperation, as set out in the White Paper on Norwegian refugee and immigration policy in a European perspective (Meld. St. 9 (2009-2010)), which discusses challenges and cooperation relating to illegal immigration. Closer cooperation in police and criminal law matters will be useful for preventing and combating crime. In addition, enhanced judicial cooperation in civil matters will contribute to the implementation of the internal market.

Norway currently has formal cooperation arrangements with the EU in a number of justice and home affairs areas beyond the Schengen, Dublin and EEA cooperation.

In certain areas, such as asylum, Norway has developed its own legislation independently but to a large extent in line with EU legislation.

In areas where Norway and the EU have a mutual interest in developing closer cooperation, and where the aim is to create mutual rights and obligations between the parties, formal agreements need to be put in place. Some agreements of this kind have been developed in cases where there has been an absence of full agreement within the EU as to the Schengen relevance of specific legal acts. There are also some separate agreements in areas where Norway and the EU for varying reasons have had a common interest in further developing cooperation.

Experience shows that negotiations on these separate, specific agreements are time-consuming. Since Switzerland and Liechtenstein joined the Schengen cooperation, these two countries have also been invited to take part in negotiations on participation in areas outside the Schengen cooperation. The negotiating processes may be

further complicated by the fact that the EU wants its agreements with each of the four associated countries to be as near identical as possible.

In Official Norwegian Report NOU 2012:2 *Outside and Inside: Norway's agreements with the European Union*, the EEA Review Committee describes Norway's overall affiliation to EU justice and home affairs policy as inadequate. The committee recommends that the Norwegian authorities explore the possibility of establishing a comprehensive framework agreement for Norway's association with EU cooperation in the area of justice and home affairs, which would encompass the Schengen cooperation, the other areas in which Norway has specific association agreements and any other areas the parties may agree on. The issue of establishing a more comprehensive framework for Norway's agreements with the EU is also raised in the Council conclusions on EU relations with EFTA countries of December 2010.

In the Government's view, establishing a more comprehensive framework agreement encompassing the Schengen legislation, other current agreements and any other possible areas of cooperation would not be in Norway's interests. As mentioned above, within the framework of the Schengen cooperation the associated states are entitled to take part in Council discussions through the Mixed Committee. Other separate association agreements do not allow for this. Furthermore the need to develop cooperation and specific association agreements will vary from area to area in the field of EU cooperation on justice and home affairs.

However, there may be reason to look into the possibility of simplifying procedures for association with parts of the EU justice and home affairs legislation outside the Schengen cooperation if Norway is interested in this. Aspects of the EU's judicial cooperation in civil and criminal matters, in particular, may be relevant in this context. There has been extensive cooperation between the Nordic countries in the area of civil law, which has become more difficult as a result of the countries' differing forms of association with the EU. Norway has already entered into some agreements in the areas of criminal law and police cooperation.

The EU's judicial cooperation in civil matters primarily encompasses legislation on the mutual recognition of legal and administrative decisions. It also authorises the development of measures to enhance cooperation on serving judicial and extrajudicial documents, taking evidence, rules on

applicable law, and access to justice. To a certain extent it allows for the development of rules that harmonise national legislation, but the main emphasis is on procedural cooperation based on the national legislation of the member states. Legislation has been adopted on bankruptcy, measures to simplify the recovery of small and uncontested claims, the service of documents in other states, the taking of evidence in other states, compensation for victims of violent crime etc.

Norway is a party to the Lugano Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, a parallel to the EU's Brussels I Regulation. We have also requested negotiations on Norwegian association with EU legislation on the service of documents and the taking of evidence. This is currently under consideration in the Commission.

The EU's judicial cooperation in criminal matters is also based on the principle of mutual recognition of judgments and judicial decisions by member states, and it allows for the development of legislation on recognition of all types of judicial decisions and on the prevention and settlement of conflicts of jurisdiction. The EU treaties also authorise the harmonisation of national legislation on both criminal procedure and criminal law. Measures to support the member states' crime prevention efforts may also be developed. There are also provisions relating to the EU's Judicial Cooperation Unit (Eurojust) and the establishment of a European public prosecutor's office.

Secondary legislation has been adopted in the area of judicial cooperation in criminal matters, such as the European Arrest Warrant, which simplifies surrender procedures; rules on taking evidence and the recognition of evidence taken in other states; the recognition and implementation of alternative sanctions to custodial sentences; conditional release; the transfer of sentenced persons; the collection of fines; and the use of certain coercive measures in criminal investigations. Rules governing the exchange of information from national criminal records have also been adopted.

The Schengen agreement contains certain provisions relating to cooperation in criminal matters. However, most of the cooperation that takes place in this area lies outside the scope of the Schengen cooperation. Norway has signed a parallel agreement to the European Arrest Warrant, an agreement on mutual assistance in criminal matters and an association agreement with Eurojust.

The EU's police cooperation mainly encompasses information gathering and exchange. Nor-

way is associated with parts of this cooperation through the Schengen agreement. Norway has also signed a parallel association agreement to the Prüm Decision, and association agreements with Europol and with the European Police College (CEPOL).

As regards the fight against transnational crime, Norway is in many ways in the same situation as the EU member states. More extensive cooperation with the EU on police and criminal matters could have a positive impact on crime prevention in Norway.

It would be useful to clarify whether negotiations with the EU in the areas mentioned above could be speeded up. This would not entail any obligation for any of the parties to enter into new agreements, but could simplify the negotiating process.

The Government will examine the possibility of establishing an understanding with the EU that would make it quicker and easier for Norway to enter into new agreements with the EU in specific areas, in cases where this is of mutual interest.

2.5 Cooperation on foreign and security policy

Norwegian foreign policy is based both on the need to safeguard clearly defined national interests and on recognition of Norway's responsibilities in an increasingly globalised world. The Government presented the main features of Norwegian foreign policy in the White Paper *Interests, Responsibilities and Opportunities* (Report No. 15 (2008–2009) to the Storting).

The EU is seeking to develop a more uniform foreign policy, which will also have implications for our cooperation with the EU. Our Nordic neighbours Sweden, Denmark and Finland are members of the EU, as are most of our closest allies in NATO. Norway and the EU countries share fundamental values and attitudes and often similar objectives. This applies to core policy areas such as human rights, democracy-building, our policy of engagement, climate change and the environment. The EU supports the international legal order and has a stated aim to promote global peace, security and development. It is in Norway's interests that the EU has a clear foreign policy in areas where we have common interests. It is often also in Norway's interests to cooperate closely with the EU on foreign policy in order to achieve greater influence and have a greater impact internationally.

A number of steps have already been taken to further develop the EU's common foreign policy, including the establishment of the European External Action Service (EEAS), which has provided a more coherent organisational framework for EU foreign policy. The EEAS has an important role to play in carrying out the responsibilities of the High Representative for Common Foreign and Security Policy. The High Representative and the EEAS are therefore important dialogue partners for Norway in the field of foreign policy. However, some key areas continue to fall under the competence of the Commission.

Norway generally cooperates with the EU in areas where the parties share common interests and see each other as relevant partners. In order for Norway to be able to gain a hearing for its views in the EU, it is essential that we can offer experience, expertise and networks that give added value. Norwegian experience that is of value in one area can serve as a door opener to EU activities in other areas. This is the rationale behind our efforts to maintain and further develop the meeting places we have with the EU in the foreign policy field.

The absence of formal agreements in the field of foreign and security policy has not prevented us from extending our cooperation with the EU in a number of foreign policy areas where Norway and the EU share common interests. At the same time, there are a number of options open Norway in its foreign policy cooperation with the EU, and the Government intends to make use of these.

2.5.1 Opportunities for Norwegian involvement

Norway is often regarded by the EU as an important partner with interests that coincide with those of the EU and a global policy of engagement. This was evident, for example, during the climate negotiations in Durban in 2011 in which the EU was a leading force, in alliance with the least developed countries and small island states. Norway played a key supporting role for the EU in the discussions.

At the international level Norway has taken on a particular responsibility for climate change financing and efforts to reduce deforestation and forest degradation, and has been a leading advocate of ambitious targets for emissions reductions, with a view to achieving the goal of limiting the rise in global temperature to 2°C. These will continue to be key areas in our cooperation with the EU at the regional level and in our role as a strate-



Figure 2.2 EU High Representative for Foreign Affairs and Security Policy Catherine Ashton visited Oslo and Svalbard for talks on developments in the Arctic and High North in March 2012. Here seen talking to Governor of Svalbard Odd Olsen Ingerø at the Return of the Sun celebration in Longyearbyen on 8 March.

Photo: Lars-Erik Hauge, Norwegian Mission to the EU

gic partner to the EU in the global climate negotiations. Norway and the EU cooperate both formally and informally in the global climate negotiations and our positions often coincide. This cooperation is valuable; experience shows that by maintaining close dialogue with the EU, Norway is able to influence the EU's negotiating positions. As a non-member state, Norway has more latitude on issues where the EU's freedom of action may be limited by internal processes. This may be particularly valuable for maintaining the momentum of the negotiations. Norway and the EU worked together successfully to secure an agreement in Durban on a new commitment period under the Kyoto Protocol, as well as the launch of negotiations for a legally binding agreement for the period after 2020, to include all countries, and a workplan designed to achieve greater emissions cuts before 2020. There is a widely held view that the future climate agreement must be an ambitious one that can limit the rise in global temperature to below 2°C, and under which each country contributes according to its capacity.

The EU's ability to respond rapidly and flexibly in negotiations can be limited in certain situations by the requirement for internal consensus. In such cases Norway has more latitude to advocate views that many EU countries may agree with, but that they cannot always promote actively outside the EU while the member states are still in the process of developing a common position. We have seen evidence of this in connection with the Middle East peace process and the EU's policy towards Myanmar. In these areas, Norway is a partner the EU listens to. Norway may also be perceived by many partner countries and by countries receiving international aid as a more flexible actor than the EU.

The High North is Norway's most important strategic foreign policy priority. It is therefore in Norway's interests to maintain close dialogue with the EU on developments in the High North. Arenas such as the Northern Dimension enable Norway – and Iceland and Russia – to maintain a close dialogue with the EU on High North policy. Since 2008 the EU has been working on develo-

ping a common Arctic policy. The Norwegian authorities have had extensive discussions on the High North with EU institutions. For Norway it has been important to provide adequate information and to explain and promote its views on key issues: the established legal framework in the High North, in particular the UN Convention on the Law of the Sea, and the importance of ensuring that the Arctic remains a peaceful region, where cooperation and mutual respect for duties and rights is the norm, including issues relating to the situation of the indigenous peoples in the region. The Government has attached importance to demonstrating that Norway is a responsible steward of the environment and maintains high safety standards in the High North.

The Government has made it clear that it is willing to cooperate with the EU on Arctic issues. The EU has recognised the Arctic Council as the key political cooperation forum for Arctic issues and the European Commission is now seeking permanent observer status in the Council. A decision on this issue is expected to be taken at the Arctic Council's ministerial meeting in May 2013. The Government has openly and consistently supported the Commission's application.

Relations with Russia are another important area for Norway. Norway enjoys constructive, pragmatic cooperation with its neighbour Russia, based on common interests. The two countries maintain a particularly close dialogue on issues relating to the High North. Norway and Russia signed the Treaty concerning Maritime Delimitation and Cooperation in the Barents Sea and the Arctic Ocean in 2010, and it entered into force in 2011. The treaty has created a basis for enhanced cooperation between our two countries in the High North. Relations with Russia are also important for the EU and it is of consequence to Norway that the EU and Russia enjoy constructive cooperation.

Developments in other parts of Europe, outside the EEA, are also a priority for the Government, and one we share with the EU. The EU defines the countries of the Western Balkans as part of the European project and is working to enhance the prospects of EU membership for both the candidate countries and other countries. Norway attaches importance to supporting common European stabilisation and development efforts in the Western Balkans. Norway's efforts in the Western Balkans are in line with a broad-based international approach that seeks to support these countries' aim of integration into Euro-Atlantic structures (the EU and NATO).

Norway and the EU cooperate closely and are strongly engaged in the Western Balkans. Our interests in the region coincide to a large extent. Norway has been recognised for its efforts and the EU has sought Norwegian participation for example in developing the justice sector and independent control bodies. Both Norway and the EU give priority to improving coordination of assistance to the region. Norway is regularly invited to consultations with the EU on the Western Balkans, and in addition Norway holds consultations on the Western Balkans at senior-official level in EU capitals. These are examples of Norway's successful political and practical cooperation with the EU.

The transition processes in North Africa in the wake of the Arab Spring have led to a much stronger engagement in the region by Norway and the EU, both politically and in the form of aid. The new strategy for the European Neighbourhood Policy, which was presented in May 2011, is the EU's long-term response to political developments in its neighbouring areas, particularly in the South. The aim of the policy is to promote sustainable stability through lasting democratic change and inclusive economic development in the EU's neighbouring countries to the South and the East. Relations with the EU will focus not only on market access and economic integration, but also on promoting respect for common democratic values. The EU also attaches importance to the implementation of migration initiatives (such as return agreements and control measures.)

Norway's objectives in the region coincide to a large extent with those of the EU: the promotion of democracy, economic development, the rule of law and good governance. Dialogue with the EU on the neighbourhood policy is valued by both parties. Norway and the EU also have many of the same partners in the region, such as the UN system, the World Bank, the Council of Europe and the European Bank for Reconstruction and Development. In connection with their efforts to support democratic reform processes it is useful for Norway and the EU to be able to exchange political assessments of developments in the region. Thus, it is in Norway's interests to be invited to participate in forums where the neighbourhood policy is discussed.

Norway is also strongly engaged in other more general foreign policy issues, such as human rights, democracy building, humanitarian issues and development. The EU is an important actor in these areas – not least as the world's largest development aid donor, providing approxi-

mately 60 % of the total global volume of aid. Norway has aligned itself with EU positions in international forums on several occasions (for example in connection with the Paris Declaration on Aid Effectiveness and the Accra Agenda for Action). EU priorities in the area of development policy have over time gradually moved closer to Norwegian priorities. Norway has on several occasions been invited to participate at informal meetings of development ministers and has played an active role at these meetings.

The EU's role in the field of human rights is also developing. The EU has begun the process of accession to the European Convention on Human Rights, and the European External Action Service is playing an increasingly important role in coordinating EU positions in the UN Human Rights Council. In June 2012 the EU adopted a Strategic Framework on Human Rights and Democracy, which sets out the EU's updated policy for promoting human rights in all its external relations. EU priorities include promoting freedom of expression and freedom of religion or belief, fighting discrimination in all its forms, and continuing the campaign against the death penalty worldwide, priorities which Norway also shares. An Action Plan on Human Rights and Democracy has also been adopted to implement the Strategic Framework, and an EU Special Representative for Human Rights has been appointed. This is the first time the EU has appointed a non-geographically based special representative in a cross-cutting field.

To make progress in multilateral efforts in the field of human rights, it is essential to be able to wield the necessary influence, and the EU is an important actor in this respect. At the same time, Norway as a non-EU member country can act as a bridge-builder between different groups of countries and in this way help to create coalitions and secure broader international support for key initiatives.

2.5.2 Norway's participation in crisis management and military capacity building

During the last 10 years Norway's participation in EU crisis management operations has been an important factor in its close cooperation with the EU in the area of foreign and security policy.

Participation in EU operations provides an important basis for active dialogue with the EU on key security policy issues. It makes Norway a relevant partner and provides us with insight and opportunities to exert an influence, both on the

ground in areas where we have a presence, and at strategic level in formal and informal forums in Brussels.

Norway provided a larger contingent to the EU's police mission in Afghanistan from 2007 to 2012 than many EU member states, thereby gaining the right to participate in decision-making during the mission.

The EU has become more receptive to the idea of Norway and other third countries participating in crisis management operations. At Norway's request, for example, the EU allowed third country participation in the civilian mission in Iraq (the European Union Integrated Rule of Law Mission for Iraq (EJUST LEX-Iraq), which is providing assistance to the Iraqi authorities in developing the criminal justice system. Norway is now participating in the mission and is the first third country to do so. Our participation in this EU operation gives us access to far more information than we would have were we operating alone. We would also face far greater security challenges if we were operating on our own.

Norway is also closely involved in efforts to alleviate the situation in the Horn of Africa in both humanitarian and political terms. The EU is also actively engaged in the region. Norway is now more often being invited to take part in talks about operations that are still at the planning stage. Previously we often received the first formal information only after the decision to establish a mission had been taken. We have noticed this over the course of the past year; the EU has consulted Norway more extensively than it has done in the past on the planning of a new mission to support maritime capacity building in the Horn of Africa. This gives us more time and a better basis for considering whether we wish to participate in an operation when it is launched.

To ensure an integrated strategic approach to the EU, there is close cooperation between the various Norwegian actors involved in security and defence policy (the Ministry of Foreign Affairs, the Ministry of Defence and the Ministry of Justice and Public Security).

2.5.3 Dialogue and cooperation

The Government is working to strengthen cooperation arenas with the EU to ensure that they remain relevant and effective. The Norwegian Mission to the EU in Brussels plays an important role in facilitating cooperation with the EU, building contacts and providing updated information on emerging issues. A valuable network has been

established with the European External Action Service, the Commission and other actors such as the missions of the member states.

The Commission delegations in third countries have now been developed into EU diplomatic missions, with extended areas of responsibility and mandates. It is in Norway's interests to further develop contact and cooperation with EU delegations in third countries, both so that we can stand together on relevant issues and so as to maintain dialogue on the assessments and views of EU and Norwegian diplomatic missions in the countries in which we operate.

The Government intends to consider further how we can present our foreign policy and our positions effectively in different EU arenas. It is essential for our participation in these arenas that Norway sets clear priorities and communicates a message that is of interest to the EU. This can be done through briefings to various EU working groups, and to the European Parliament, in areas where Norway has particular expertise. We have for example provided briefings on the Middle East prior to the meetings of the Ad Hoc Liaison Committee (AHLC), which coordinates international assistance to Palestine and is chaired by Norway.

It is also possible for Norway to align itself with EU sanctions against third countries, and we have done so on many occasions. The Government intends to further examine the possibility of Norway participating more closely in the processes leading up to, during and after EU decisions on measures of this kind. It is important to ensure that sanctions are implemented in the most uniform and therefore the most effective way in cases where Norway chooses to align itself with EU measures.

The Government will continue to attach considerable importance to developing bilateral contacts with individual EU member states as well as with the EU itself, as governments still play a key role in developing the foreign policy positions of the member states. For this reason maintaining Norwegian diplomatic and consular missions in these countries will continue to be an important element of Norwegian foreign policy.

2.6 Summary of actions the Government intends to take

The Government considers it important that Norway makes full use of the opportunities and available options provided by the EEA Agreement and

Norway's other agreements with the EU to promote Norwegian interests as effectively as possible.

The Government will:

- Continue to develop an active European policy along the lines set out in Report No. 23 to the Storting (2005–2006) on the implementation of Norway's European policy.
- Work to ensure that the EEA Agreement continues to secure equal treatment and predictability for Norwegian companies and other actors operating in the internal market. The main principle underlying the EEA Agreement is to ensure the homogeneity of legislation. Generally speaking, Norway benefits from this, and Norway will work at the European level to promote the development of homogeneous legislation that is in line with Norway's interests.
- Play an active part in developing legislation for the internal market, ensure that Norwegian interests are formulated and promoted clearly and at an early stage, as well as safeguard our ability to influence the development of legislation in the EU at all stages of the legislative process, in accordance with the conditions established under the EEA Agreement.
- When new legislation is being considered by the EU, make sure that a preliminary assessment of its EEA relevance is carried out as early as possible. This is crucial if we are to be able to promote Norway's interests effectively. When assessing whether, and how, a legislative act should be incorporated into the EEA Agreement, the Government will also seek to avoid setting unwanted precedents.
- Seek modifications to new legislation that is being incorporated into the EEA Agreement in cases where Norway has important interests to safeguard or where there are special circumstances that warrant this. Any decision not to incorporate legislation into the EEA Agreement must be based on an assessment that takes into consideration both Norway's interests in the matter in question and the risk and potential consequences of a possible negative response on the part of the EU. The Government will consider entering a reservation in cases where particularly important Norwegian interests may be jeopardised by legal acts that are proposed for incorporation into the EEA Agreement.
- Develop good and pragmatic solutions to enhance Norway's links with and participation in the various EU agencies and supervisory bodies, on the basis of the framework and pro-

cedures set out in the Norwegian Constitution, in the two-pillar system of the EEA Agreement and in the Schengen Agreement.

- Defend Norway's views in cases brought before the EFTA Surveillance Authority (ESA) and the EFTA Court, and actively promote our views in cases brought before the EFTA Court and the European Court of Justice that are particularly relevant for the interpretation of the EEA Agreement in areas of importance to Norway.
- Make active use of the opportunities Norway has to make submissions to the European Court of Justice in cases referred by national courts in the EU member states that relate to the interpretation of the Schengen *acquis*, particularly cases dealing with matters of principle and those where the ruling could have a direct impact on Norway's implementation of the *acquis*.
- Build on the Schengen cooperation by actively participating in the development of new Schengen-related legislation.
- Safeguard and make use of the rights to participate granted to us under our association agreements in the field of justice and home affairs.
- Help to ensure that all Schengen member states are able to fulfil their obligations under the Schengen cooperation.
- Actively participate in efforts to combat transnational crime in Europe.
- Examine the possibility of establishing an understanding with the EU that would make it quicker and easier for Norway to participate in specific areas of the EU's cooperation in the fields of civil justice, criminal justice and police cooperation, in cases where this is of mutual interest.
- Further develop our close foreign and security policy cooperation with the EU in areas of strategic importance to Norway and fields where together we can make an effective contribution to international cooperation, for example in the High North, democracy building and human rights, climate change and the environment, international development assistance and efforts to promote peace and reconciliation.

3 Key priorities in Norway's European policy

Norway's interests in the context of its cooperation with the EU are complex and diverse. They are primarily related to areas where Norway is covered by EU policy and legislation, and to the further development of the internal market. Norway is also affected by EU policy in areas that lie outside the scope of its agreements with the EU, though more indirectly.

The Government will work to safeguard Norwegian interests in all aspects of Norway's relations with the EU. However, to achieve results, it is also important for Norway to concentrate its political efforts on priority areas. This chapter outlines some of the key policy areas that will be given particular attention in the time ahead.

A more comprehensive review of Norway's priorities and interests is given in the annual work programme for EU/EEA issues. The Government intends to develop the work programme into a more strategic instrument of Norway's European policy.

3.1 Norwegian companies and value creation in the internal market

Under the EEA Agreement, Norwegian companies, workers and consumers have access to the internal market on the same terms as citizens and companies in the other 29 EEA countries. This effectively increases the size of the Norwegian market from 5 million to 500 million people. Developments in the EU in this area are therefore highly significant for the Norwegian economy.

The Government will seek to influence the development of new EU/EEA legislation and implement legislation in such a way that Norwegian citizens and companies can more easily participate in the internal market. The development of common rules ensures predictability and equal conditions of competition for all actors operating in the internal market.

In the wake of the financial crisis, developing the internal market has moved higher up the political agenda once again. The internal market is seen as an important tool for stimulating new eco-

nomic growth at a time when Europe is feeling the effects of the global financial crisis. This is clearly reflected in the Europe 2020 strategy. In April 2011, the European Commission presented a Communication on the internal market, the Single Market Act I, which identified 12 levers to boost growth and strengthen confidence. Revitalising and deepening the internal market is considered particularly important for enhancing the growth potential of small and medium-sized enterprises (SMEs).

The Commission carried out an extensive consultation process in connection with the preparation of the Single Market Act I. Norway participated in this process, and as part of this work the Government conducted an open dialogue with representatives of Norwegian companies and organisations. The Government intends to continue this dialogue with stakeholders when developing and preparing Norway's input on the development of the internal market.

The European Commission presented a second Communication on the internal market, *Better Governance for the Single Market*, in June 2012. This Communication proposes a number of measures to improve governance of the internal market including measures to promote more effective implementation of internal market rules, to speed up procedures for dealing with breaches of EU law and to ensure smarter use of IT technology. The Commission also urges all the states to establish Single Market centres as national centres of expertise on the internal market. A European network of single market centres will also be established. The Government will consider whether to establish a centre of this kind in Norway.

In many areas it is more important to implement existing rules than to develop new legislation. For Norwegian companies and value creation in Norway, it is important that the rules are implemented at national level in a timely manner and in a way that ensures the good functioning of the internal market. A thorough knowledge of the rights and obligations of the various actors operating in the internal market is also vital if we are to make the most of the opportunities it offers. The

Government will work to ensure that the relevant actors are informed of their rights and of how to make effective use of them. In this way the positive effects of the EEA Agreement can be enhanced. Putting in place tools to address these needs is part of ensuring good governance of the internal market, as is establishing effective systems for cooperation between the authorities in the EEA states.

In autumn 2012 the Commission will propose further measures to strengthen the internal market, in the form of the Single Market Act II. The Government has expressed its support for these efforts, with particular emphasis on promoting good governance of the internal market and the systematic reduction of trade barriers, and on strengthening the social dimension and consumer rights and developing the digital internal market.

Banking system and financial services

Rules regulating the banking system and financial services account for an increasing proportion of internal market legislation. This is largely due to the financial crisis. The EU recently adopted extensive new capital requirements for insurance companies and new securities legislation. The Commission has also proposed new capital requirements for banks and investment firms, a new directive on deposit guarantee schemes, a new EU framework for bank recovery and resolution, as well as a regulation on insider trading and market manipulation (market abuse). Most of these are considered to be EEA relevant.

In 2010–11, the EU established new supervisory authorities for the financial sector. The new European Systemic Risk Board is responsible for the macro-prudential oversight of the financial system, i.e. for monitoring systemic risk across the entire European financial market. Three new supervisory authorities are responsible for supervising financial activities at the micro level, i.e. for supervising individual institutions in the banking, insurance and pensions, and securities sectors. Norway's association with these new bodies has not yet been clarified, see Chapter 5.3.3. More recently, the EU also presented plans for a banking union involving joint regulation and supervision of major banks operating in several countries, as well as a joint deposit guarantee scheme for these banks.

Norway intends to contribute to the development of effective common international rules and framework conditions for the financial sector. This is important for reducing the risk of crisis and

economic collapse. However, the increasing harmonisation of legislation may reduce the options available to individual countries at national level. In the view of the Norwegian authorities it is crucial that legislation promotes the development of strong financial institutions to the greatest extent possible.

The EU's increasing use of supervisory authorities raises issues in relation to the EEA Agreement's two-pillar structure and the Norwegian Constitution's provisions on transfer of powers, as discussed in Chapter 5.3.3. It does not appear appropriate to develop corresponding powers relating to the financial sector in the EFTA institutions. As long as Norway is unable to participate fully in the work of the EU's new financial supervisory authorities, the extent to which Norwegian legal entities can be made subject to the decisions of these authorities is clearly limited. So far, contact with the EU has indicated that it will be difficult for the Norwegian authorities to gain more than limited observer status in the European supervisory bodies. The fact that the Norwegian authorities do not participate in the European financial supervisory bodies on the same footing as the EU member states, and in particular the other Scandinavian countries, may prove to be challenging. The establishment of the proposed banking union in the EU could lead to more problems of this kind. These issues are being discussed with the EU.

3.2 Key policy areas

3.2.1 Labour relations and social welfare

In the Government's view it is essential to ensure that the Norwegian model of labour relations is maintained. This involves continuing the tripartite cooperation between employers, trade unions and the state, and retaining the ability to enforce Norwegian rules on pay and working conditions effectively.

The main features of the Norwegian model of labour relations – legislation and agreements, wage determination, cooperation between the social partners and labour market policy – have been in place since 1994. In general, the period 1994–2012 has been one of positive development in terms of investment, employment, pay and working conditions, and the collective agreements. Cooperation between the social partners and the authorities has been strengthened. Working life in Norway is well organised; most people are in permanent employment and have written

contracts of employment. The proportion of people in temporary employment in Norway is lower than in many countries in Europe. The Norwegian social model, of which the tripartite cooperation is a cornerstone, is set to last.

Since the enlargement of the EU/EEA in 2004 and 2007, Norway has been one of the countries where labour immigration from other EEA countries has been highest in proportion to the population. This is partly due to the strong demand for labour and high wage levels in Norway. These labour immigrants have contributed greatly to growth in production and employment, not least in rural districts, and thus have also played a role in safeguarding the Norwegian welfare system.

At the same time this increase in labour immigration has made it more challenging to ensure decent work and combat social dumping in Norway. The Government has taken a number of steps to deal with these issues, including producing two action plans against social dumping. It has been possible to introduce far-reaching measures, such as employer joint and several liability under the system of general application of wage agreements, within the framework of the EEA Agreement. The measures have also strengthened efforts to improve conditions in certain branches, such as the cleaning industry, that had unresolved problems relating to unscrupulous practices long before 2004. Norway's efforts to combat social dumping are further discussed in a White Paper from the Ministry of Labour, *Joint responsibility for a good and decent working life* (Meld. St. 29 (2010–2011)), and in Chapter 16 of the report *Outside and Inside: Norway's agreements with the European Union* (NOU 2012: 2).

Given the continuing and sometimes large disparities in pay and working conditions between different EEA countries, labour migration and the associated risks of low-wage competition and circumvention of legislation must be expected to continue. In future, the level of labour immigration to Norway will depend in part on the development of the labour market in Norway and how this compares with the situation in other countries. This in turn will be affected by economic developments in Europe in the light of the financial and debt crisis. In times of economic decline, labour rights can come under pressure. The Government has worked to prevent this. Together with the social partners, the Government will maintain its efforts to combat social dumping and unscrupulous practices in Norway.

Through the EEA Agreement, Norway participates in efforts to strengthen the EU's social

Box 3.1 The Government's initiative to ensure decent work

The Government has introduced a number of initiatives, within the framework of EEA law, to ensure decent work in Norway. These include:

- Service centres for foreign workers in Oslo, Stavanger and Kirkenes
- ID cards in the building and construction industry
- The right of access to information for employee representatives
- The duty to provide information on regulations concerning general application of wage agreements and to ensure compliance with them.
- Requirements to observe Norwegian standards for working conditions in municipal contracts – ILO Convention no. 94
- Joint and several liability for employers under wage agreements that have been made generally applicable
- Regional safety representatives in the hotel, restaurant and cleaning industry
- An authorisation scheme for cleaning companies and ID cards for the cleaning industry

dimension, which is based on the establishment of common minimum rules for the working environment and workers' rights. In many areas these rules have also strengthened the rights of Norwegian workers.

In order to find a balance between conflicting considerations and interests in the labour and services markets, the EU has adopted legislation such as the Posting of Workers Directive (96/71/EC) and the Directive on Temporary Agency Work (2008/104/EC). In recent years the European Court of Justice has dealt with several cases that have had implications particularly for the free movement of services and freedom of establishment. Some of these judgments, often referred to as the Laval Quartet, have sparked controversy. They illustrate the way in which contentious issues in labour market policy in the EU and EEA are to a large extent decided through the judicial system. These decisions also have implications for Norway. National courts, the EFTA Surveillance Authority and the EFTA Court also set precedents in this area. There has been disagreement bet-

ween Norway and the Authority over certain provisions of the regulations on pay and working conditions in public contracts. Some aspects of the regulations concerning general application of wage agreements in the shipping and shipbuilding industry have also been subject to judicial review.

The Government will seek to ensure that new EU rules do not obstruct measures that Norway has introduced or plans to introduce, for example in connection with the action plans against social dumping. For Norway it is particularly important to safeguard pay and working conditions for workers who are involved in business establishment and the provision of services across national borders, and to protect collective rights, including the right to strike.

There is no reason to expect that the EU will introduce extensive new labour legislation. However, in March 2012 the Commission put forward a proposal for an Enforcement Directive to correct weaknesses and inadequacies in the way the Posting of Workers Directive is applied. The purpose is to increase monitoring and compliance and to combat unfair competition and social dumping. The Government is, in principle, in favour of improving the enforcement of posted workers' rights, but has certain concerns about the proposed directive.

A new Regulation, known as the Monti II Regulation, was proposed at the same time, with the aim of removing the uncertainty surrounding the exercise of the right to take collective action that has arisen following the European Court of Justice rulings. The draft Regulation gave equal status to the national right to strike and the freedom to provide services. The proposal met considerable resistance in many EU countries and in 2012 the Commission decided to withdraw the proposal. The Government's view is that it is inappropriate to introduce legislation that restricts the right to strike.

Participation in working life brings with it entitlement to many welfare benefits, both for individual employees and for their family members. These apply equally to foreign and Norwegian workers.

Under the EEA Agreement, the general rule is that social security benefits are to be paid irrespective of where the person who is a member of the social security scheme or his/her family members are resident. Entitlements under Norway's National Insurance Scheme are adapted to the high salary levels and cost of living in Norway, and the payments are therefore very generous

when used abroad. For people resident in Norway the benefits are generally designed to make it more attractive to work than to collect benefits. This incentive is undermined if the benefits are paid out in countries where the cost of living is lower. However, the recorded export of benefits amounts to only a small proportion of the total expenditure channelled through the Norwegian Labour and Welfare Administration. Nevertheless, with the rise in labour immigration to Norway and the increased mobility of people between Norway and other EEA countries, the proportion of benefits that are exported is growing. The possibility that benefits will be exported is assessed when the various schemes are developed. The Government is monitoring the situation closely to ensure that benefit schemes are not abused.

In 2009, the Government appointed the Welfare and Migration Committee, chaired by Professor Grete Brochman, to assess the elements in the Norwegian welfare model that influence and are influenced by increasing migration. The committee presented its recommendations in June 2011 in Official Norwegian Report NOU 2011: 7 *Welfare and Migration*. As part of the follow-up to the committee's recommendations, the Ministry of Labour has initiated an internal process with a view to carrying out a comprehensive review of current rules for membership of the Norwegian National Insurance Scheme and the export of benefits received under the scheme. This will involve an assessment of the existing rules for the various pension schemes, such as the retirement pension and the disability pension, as well as for temporary benefits, such as sickness benefits and unemployment benefits and other forms of cash payment under the National Insurance Scheme. The review will also look at rules for exporting benefits to other EEA countries, countries with which Norway has a social security agreement and countries with which it has no such agreement. The purpose of this work is to provide a basis for achieving the best possible understanding of the problems associated with increased mobility across national borders and the legal options open to Norway, and to identify areas where adjustments are needed.

The Government takes a broad approach in its efforts to promote Norwegian views and interests in the area of employment and social affairs vis-à-vis the EU. Norway participates in various working groups, expert groups and meetings within the EFTA/EEA, for example concerning the free movement of workers, health, safety and environment, and labour law. Norway is also involved in

relevant Nordic working groups and committees where topics relating to EU/EEA are discussed. Norway cooperates with its Nordic neighbours in areas where the Nordic countries have common interests. Like Norway, several EU countries have been sceptical to aspects of the Commission's work on labour legislation. Norway is therefore in a good position to continue to work together with like-minded countries to influence developments so that they take the desired direction.

Labour rights are also safeguarded through other international conventions by which Norway is bound, including several human rights conventions and labour conventions.

Cooperation on cross-border health threats and health preparedness

Safeguarding health and welfare and ensuring adequate emergency preparedness and response are important goals of international cooperation. Over the past few years our emergency preparedness and response systems have been put to the test in situations that have varied widely in nature and in scope. Major incidents such as the terrorist attack on the government offices in Oslo and the island of Utøya on 22 July 2011, the earthquake and tsunami in Japan in March 2011, the volcanic eruption in Iceland in 2010 and the 2009 flu pandemic have led to new demands for civil protection and emergency preparedness and response, and have demonstrated the need for cooperation at both national and international level.

Norway cooperates with the EU in the area of health security, in particular through the EU's Health Security Committee, the European Centre for Disease Prevention and Control and the European Food Safety Authority. The cooperation encompasses information exchange, prevention, monitoring and risk assessment, and the development of early warning and response mechanisms for dealing with incidents that may pose cross-border health threats. This cooperation is particularly important for ensuring that national measures and plans are adequately coordinated with those of our neighbouring countries and the rest of the world. It also enables us to learn from other countries' experiences and solutions.

Norway's cooperation with the EU in the field of security and emergency preparedness and response

Norway's cooperation with the EU in the area of civil protection is regulated primarily through the EEA Agreement. Norway has participated actively

in the Community Mechanism for Civil Protection, which coordinates the response to incidents both inside and outside Europe. The main function of the EU's Monitoring and Information Centre, a tool under the Mechanism, is to monitor potential and actual emergencies, receive and distribute requests for assistance and coordinate the member states' offers of assistance. The Norwegian Directorate for Civil Protection and Emergency Planning is responsible for following up the work of the mechanism on behalf of the Ministry of Justice and Public Security and is the national contact point for requests from both NATO and the Monitoring and Information Centre.

In recent years the Community Mechanism for Civil Protection has developed considerably, particularly in terms of its operational role. Initially an emergency preparedness and response mechanism for dealing with incidents within Europe, it has now become a relevant and much needed resource for responding to natural disasters outside Europe too. There is also focus on ensuring close coordination between civil protection and humanitarian aid efforts, as well as on areas such as critical infrastructure, environmental contamination, major accidents etc.

As part of the EU Action Plan on combating terrorism the EU has initiated a process to regulate and limit access to explosives and chemical, biological, radiological and nuclear materials. Norway has followed this process closely. The proposed measures fall within the scope of the EEA Agreement.

3.2.2 Energy

As a major net exporter of energy, Norway is in a unique position in the EEA, with interests, resources, needs and opportunities which may differ from those of other countries. The Government gives priority to managing Norway's interests in such a way that its energy resources benefit the entire Norwegian population.

The EU has expanded regulatory measures for energy and developed a more comprehensive energy policy over the years, particularly as a result of the desire to create a more integrated internal market. The EU has not, however, challenged the right of individual countries to control their own energy resources, and the member states continue to develop their own energy policies based on national interests. Under the EEA Agreement, Norway has implemented all the most significant EU energy legislation related to the internal market.

Under the Lisbon Treaty, the EU now has the authority to develop a more integrated energy policy, which has heightened ambitions of developing a common European energy policy. Resource management still remains a national responsibility. The 2007 climate and energy package established what are known as the 20–20–20 targets, (a 20 % reduction in EU greenhouse gas emissions, raising the share of EU energy consumption produced from renewable resources to 20 %, and a 20 % improvement in the EU's energy efficiency). Legislation intended to achieve these targets has also been introduced. In March 2011, as a follow-up to 20–20–20 targets, the EU adopted the Energy Efficiency Plan 2011 for the period up to 2020. The Energy Efficiency Plan is in principle not part of the EEA Agreement, but contains measures supported by EU legislation that may be EEA relevant. It is therefore in Norway's interests to follow the implementation of the Energy Efficiency Plan closely.

According to the Energy Roadmap 2050, which was under discussion in the Council in 2011–12, the primary objective for the EU's energy policy is to ensure a secure, sustainable and competitive energy supply. The long-term strategic choices the EU makes in the period up to 2050 will be important for Norway as a major supplier of oil and gas to the EU and part of the EU internal energy market. The roadmap focuses on the need to cut CO₂ emissions to 80–95% below 1990 levels by 2050, but also identifies security of supply and reduced import dependency as additional incentives for transforming the energy system. The EU's efforts to increase renewable energy production must be seen in this light. It is difficult to estimate how much renewable energy production will grow in the period up to 2050, but it seems clear it will increase. An increase in renewable energy production in the EU will make production more unpredictable and irregular, which will increase the need for flexibility in the rest of the power system. Hydropower and gas could be important in this context and may open up new opportunities for Norway.

More than 60 % of the gas and more than 80 % of the oil used by the EU is imported. Given the large volumes of energy imported by the EU, it will not be enough to develop a common internal energy market. Relations with countries outside the EU are also important for achieving the EU's primary energy policy objectives. In this context Norway is an important partner for the EU.

Norway is a major supplier of energy to the EU, in the form of natural gas, electricity and oil.

Some 20 % of the EU's natural gas consumption comes from Norway. Norway therefore plays an important role in ensuring security of supply in the EU. At the same time, as an export nation Norway is dependent on well-functioning and predictable markets for its energy products. EU policy affects the Norwegian energy sector both directly through EEA legislation and indirectly as a result of the impact it has on the gas and electricity markets. This is particularly important in the case of gas. In this context, indications from the EU that natural gas has a long-term place in the future European energy mix are very significant.

Norway has been an integral part of the EU's internal electricity market for a long time. The Norwegian electricity grid is physically connected to the other Nordic countries and the Netherlands through a number of power lines and cable links. Work is currently underway to establish two new cable links in the near future, first to Germany and then to the UK.

Through the EEA Agreement, Norway participates fully in the internal energy market. This has included close cooperation with the EU on energy efficiency, renewable energy and the development of new energy technologies within the framework of the EEA Agreement, for example through relevant EU programmes. Norway has a clear interest in participating in the development of EU legislation and in EU programmes. EU legislation in the area of energy is important for Norway, as energy is an area in which Norway has strong economic interests. Close follow-up is required throughout the entire legislative process, from the early decision-shaping phase to the work on EEA adaptations and implementation in Norway.

The EU aims to have a fully functioning energy market in place in 2014. Three internal energy market packages, the most recent of which was adopted in 2009, have resulted in market opening and increased integration of the energy markets in the EU. The Government will work actively to enable Norway to participate in the bodies and joint structures that are developed in Europe as far as possible on an equal footing with the EU member states, within the framework of the EEA Agreement. Norway participates as an observer in the EU's committee on cross-border trade and in the forums for national regulatory authorities and member states under the Commission – the Electricity Regulatory Forum (Florence Forum) and the Gas Regulatory Forum (Madrid Forum).

In the area of energy technology Norway participates in the EU's Seventh Framework Pro-

gramme for Research and Technological Development as well as in the European Community Steering Group on Strategic Energy Technologies and subsidiary groups under the Strategic Energy Technology Plan, which establishes guidelines for future EU research and technology cooperation. Norwegian participation in the new EU Framework Programme for Research and Innovation, Horizon 2020, which is due to be launched in 2014, will be a key priority in the future. Norway also participates in relevant initiatives and cooperates with the EU on carbon capture and storage.

Norway maintains close dialogue with the EU on energy issues. In 2002, as a complement to the EEA Agreement, a regular dialogue on energy policy with the EU's Commissioner for Energy was established. Over the course of 10 years this has been an important channel for raising issues of particular significance to Norway's relations with the EU. The dialogue is an important instrument and has enhanced understanding both of EU political processes relating to energy and of Norway's energy situation. The dialogue addresses issues relating to key topics such as energy infrastructure, energy development in the period up to 2050, natural gas, renewable energy and the internal market. The Government attaches great importance to cooperation with the EU in the area of energy and regards the energy dialogue as extremely important in this context.

3.2.3 The environment, climate change and food safety

The major environmental problems we are facing transcend national borders and make binding cooperation and common rules essential. Norway and the EU base their environmental policy on the same fundamental principles and an understanding that environmental considerations must also be an integral part of other areas of policy. As set out in the EEA Agreement, Norway and the EU share the same aims: to ensure a high level of protection concerning health, safety and the environment and to preserve, protect and improve the quality of the environment. Since the EEA Agreement was signed, it has therefore been a political aim to maintain close, binding cooperation with the EU on environmental policy, and much of the EU's legislation on environmental issues has been incorporated into the EEA Agreement. Norway therefore participates actively and extensively in the development of common EU environmental rules. This participation is also important in terms of developing knowledge and ensuring effective

implementation of relevant legislation in Norwegian law.

EU environmental legislation has developed considerably since the conclusion of the EEA Agreement. Nowadays the tendency is towards framework directives and cross-sectoral policy instruments and objectives. Like legislation in other policy areas, new environmental legislation must be independently assessed to determine its EEA relevance and the consequences for Norway if it is incorporated into the EEA Agreement. This is further discussed in Chapter 5.

Norway will continue to be a leading nation in environmental and climate policy and will work to secure ambitious and binding multilateral environmental agreements. Norway cooperates with the EU with a view to establishing ambitious climate targets at the international level and cost-effective, market-based instruments to reduce emissions in the EEA. The further development of the EU emissions trading system will be particularly important for Norway. With the extension of the system in 2013, it will apply to approximately 50 % of Norway's greenhouse gas emissions. A further tightening of the cap (reducing the total number of emission allowances) is being discussed by the EU and is supported by Norway. Norway will cooperate with the EU on establishing stricter standards for vehicles and encouraging the use of more environmentally friendly fuels to reduce emissions in the transport sector, as discussed in the most recent White Paper on Norwegian climate policy (Meld. St. 21 (2011–2012)). The EU's work on these issues is also important for reducing emissions in Norway.

In accordance with the precautionary principle, Norway attaches importance to the further development of EU chemicals legislation to ensure risk assessment of new substances, including nanomaterials and endocrine disruptors, as well as to ensure better consideration of the combined effects of chemicals (the cocktail effect). Norway also considers it important that legislation governing articles imported from outside the EEA is strengthened. Norway intends to play an active role in further developing the EU chemicals legislation, the REACH Regulation, both because it is part of the EEA Agreement and as such has a direct impact on Norwegian chemicals policy, and because it can be used to gain acceptance for Norway's proposals on raising the level of ambition in this area in Europe. In the current economic situation it is important to support REACH and promote its further development and improvement. This legislation is also helping to raise global standards,

since countries outside Europe are also adapting to it. The Norwegian authorities were actively engaged in lobbying efforts vis-à-vis the EU in connection with the development of the REACH Regulation during both the preparatory and the adoption phase of the legislative process. This work is now continuing in the implementation phase as the scope of the regulation is continually being expanded to encompass new substances.

In the area of waste management countries have considerable flexibility in implementing the rules as the EU's waste legislation only establishes minimum standards, allowing countries to introduce stricter rules in their national legislation. One example is the rules on take-back schemes for waste electrical and electronic equipment under the WEEE Directive, which have now been revised by the EU. Norway's experience and expertise in waste management has made it possible to exert an influence on the development of EU legislation, and the EU's new WEEE Directive is closer to Norwegian waste legislation. Norway has long had a high profile in this area and has taken a proactive approach throughout the entire process, both by providing written input at the political level and through meetings with senior EU officials.

Marine and inland water management in the EEA is a key area for Norway. Norway has a particular responsibility here in its capacity as steward of vast sea areas and of the environment and natural resources in the High North. Both the management plans for sea areas and the management plans drawn up under the Water Management Regulations are important tools for achieving a more integrated approach to the various types of environmental pressure. Norway has played a pioneering role in the development of integrated marine management plans, and the EU's Marine Strategy Framework Directive has been developed largely along the same lines as the plans for Norway's sea areas. In 2011 the Government decided that the Marine Strategy Framework Directive was not to be incorporated into the EEA Agreement on the grounds that it applies largely to areas outside the geographical scope of the EEA Agreement. A decision was also taken to further strengthen the already close cooperation with the EU on management of the marine environment. The implementation of the Water Framework Directive in the EEA, the implementation by the EU countries of the Marine Strategy Framework Directive and the ongoing reform of the EU's common fisheries policy are important in this context.

The EU is developing comprehensive strategies for climate and environmental policy through what are known as roadmaps and environmental action programmes. In 2012 the EU is due to establish a new strategy in the form of a seventh Environmental Action Programme, which will set out important guidelines for environmental and climate policy in the EEA for the next decade. The EU's Roadmap to a Resource Efficient Europe is a tool for promoting a green economy and the sustainable use of resources. The roadmap contains a number of initiatives and proposals for new legislation. Key themes include waste as a resource, the value of ecosystem services and green public procurement. Norway has wide experience of using environmental taxes and of integrating environmental considerations into all sectors of the economy.

High priority will be given to cross-sectoral efforts, as new environmental and climate legislation, such as maritime spatial planning and revised air pollution legislation, will primarily be cross-sectoral in nature. Norway will continue to cooperate with the other Nordic countries at all levels to build alliances and coordinate input into decision-making processes.

Food safety

Legislation relating to food safety accounts for by far the largest proportion of legislation under the EEA Agreement. Norway and the EU share many common interests and values in this area, including an interest in ensuring a high level of consumer protection and effective controls at all stages of the food production chain. Food safety legislation is constantly being further developed and revised. It is therefore essential to maintain a focus on this area. Priority will be given to ensuring active Norwegian participation and involvement in the development of EU policy and legislation. Norway will work to ensure that food is safe and wholesome, and will give priority to preventing food safety problems by taking an integrated approach to environmental considerations, intermediate inputs, animal health and human health. It is important that we use the options available to us under the EEA Agreement to ensure that Norway's food legislation is as flexible as it is in the other EEA countries. Caution must be exercised when new technologies are harnessed and the focus must be on production methods that are considered safe. We will continue to pursue a restrictive policy with regard to genetically modified organisms.



Figure 3.1 The Norwegian company Pharmaq has received funding under the EU's Eurostars Programme to develop new salmon vaccines, together with the Swedish company Isconova. The Eurostars Programme provides funding to research-performing small and medium-sized enterprises.

Photo: Kjetil Malkenes Hovland

3.2.4 Cooperation on research and education

An integrated policy for the internationalisation of research and education is essential for ensuring quality, increasing competitiveness and access to new knowledge, and for strengthening cooperation on societal challenges and in policy areas that are important for Norway. Participation in the EU framework programmes for research and technological development and EU programmes for education and training is crucial in this context. The EU's Seventh Framework Programme for Research (FP7) is the largest programme in which Norway participates under the EEA Agreement. It accounts for close to 70 % of Norway's total contribution to EU programme cooperation.

Norway has taken part in the EU framework programmes for research and in EU education and training programmes since the 1980s and 1990s respectively. Through the EEA Agreement, Norway participates on an equal footing with the EU member states. Norway has observer status

in most of the committees that administer the programmes and in other advisory bodies, and is regularly invited to participate at informal ministerial meetings.

The need for a common research effort in priority policy areas has led to a strengthening of research cooperation across national borders in Europe. Under Article 179 of the Lisbon Treaty, the EU countries have undertaken to work towards the achievement of a European Research Area (ERA). The ERA is described as an open space for research within the internal market in which there is free movement of knowledge – the “fifth freedom”. The ERA is discussed in more detail in Box 6.2.

The EU research programmes have served as important instruments for promoting concrete steps towards the development of the ERA, which is also a key element of the Commission's green paper on a new strategic framework for EU research and innovation funding, Horizon 2020, to be launched in 2014. Participation in the ERA is therefore closely linked to participation in EU research programmes.

Box 3.2 About the ERA

The Commission launched the idea of a European Research Area in 2000. The aim was to create a space for the free movement of knowledge, by strengthening cooperation and the integration of research policies in Europe. The development of the ERA therefore involves establishing a framework for integrating research policy at the European level and identifying ways in which Europe can address common priorities and challenges through joint programmes. Concrete examples of this are the joint programming initiative to meet the challenges regarding European seas and oceans (JPI Oceans) and cooperation on the establishment of an integrated pan-European infrastructure for state-of-the-art research on technologies enabling CO₂ capture, transport and storage (CCS). In 2007–08 the idea of the ERA was further defined and five areas for further development and cooperation were identified: joint programming initiatives; policies to safeguard working conditions and career development opportunities for mobile researchers; common European research infrastructures; policies to promote access to and transfer of scientific knowledge; and international research cooperation with countries outside Europe. Under the Lisbon Treaty, the EU countries are committed to working towards the realisation of the ERA. Norway participates in the ERA, both in specific programmes and in advisory committees and cooperation bodies. This participation enables us to encourage initiatives in areas that are politically important to Norway (for example on marine and maritime issues and in areas such as climate change, energy, health and food).

Horizon 2020 will focus on three priority areas: excellent science, competitive industries and better society. The programme will provide the basis for innovation and policy development in a number of sectors, with a view to meeting common societal challenges relating to the environment and climate change, energy, health and food security, transport and civil protection.

Norway's contribution to the programme budget is calculated on the basis of the ratio between

Norway's GDP and the combined GDP of all the EU countries. For the period 2014–20 the Commission has proposed a budget of approximately EUR 88 billion. It has been challenging for Norway to obtain as much in project funding from the EU as it contributes to the programme budget, despite the fact that Norwegian research groups have a high profile in Europe and contribute to policy development in the EU in fields such as the environment, climate, polar issues, and the marine and maritime sector. Health research groups are also increasingly focusing their efforts on EU research initiatives, and Norway plays an active role in several joint programming initiatives on health policy issues. However, project funding received from the EU is only one of the benefits Norway gains by participating in EU research cooperation. Norwegian research groups are able to build valuable networks and gain access to all the knowledge generated in the projects in which they participate. Continued Norwegian participation in EU research programmes must be assessed from a societal, business, budgetary and broader foreign policy perspective. Horizon 2020 will be discussed further in the forthcoming White Paper on research policy.

The EU's growth strategy, Europe 2020, provides the political framework for the next period of education and research programmes.

The proposed new EU programme for education, training, youth and sport, Erasmus for All, is broader in scope than the current education programmes. The main motivation for developing the Erasmus for All programme is to strengthen the links between the development of education and training policy and education programmes at the EU level, from early childhood to adult education. The programme will also promote a knowledge-based economy in the EU – for example by creating a solid foundation for innovation. There will be a new focus on strengthening partnerships between the education sector and employers. The programme will promote innovation, entrepreneurship, growth and employment, as well as democracy-building, active citizenship and multicultural understanding in Europe. In addition it will have a greater and more visible international dimension and will promote cooperation beyond Europe's borders.

The Government intends to follow the processes in the EU closely and will revert to the Storting about Norway's participation in Erasmus for All and Horizon 2020 once the programmes have been adopted by the EU.

The Government will also follow the development of the ERA and work to ensure close cooperation in priority policy areas.

3.2.5 Rural and regional policy

The objectives of the Government's rural and regional policy are to ensure equal living conditions, to maintain settlement patterns, and to promote value creation, employment and welfare throughout the country.

The population of Norway is relatively small, and settlement is dispersed. Overall, Norway has a high rate of population growth, high levels of employment, low levels of unemployment and a high standard of living. The positive population growth in many municipalities in recent years can largely be explained by immigration.

However, some regions of Norway face considerable challenges. These relate primarily to population decline (an aging population and outward migration) and a lack of job opportunities. Domestic net migration towards the central regions of Norway is in part due to the greater number of jobs that are attractive to young people to be found in these areas. However, these challenges must be said to be moderate in comparison with those faced by the other Nordic countries and the rest of Europe.

A characteristic feature of interactions between urban and rural areas in Norway is that natural resources and production tend to be located in less central regions, whereas the head offices of companies serving national and international markets are located in the larger cities, as is most of the public administration. The Norwegian export sector is largely located in the coastal counties of Norway. The Norwegian economy, based as it is on raw materials and exports, is dependent on the existence of good, stable international framework conditions for foreign trade. International framework conditions are therefore very important for Norway's rural and regional policy.

Economic growth in Norway in recent years is largely due to improvement in its terms of trade, in other words between export prices for products such as oil and fish on the one hand and consumer goods that Norway imports on the other. Market access and the economic situation in our trading partner countries are two key factors that affect the overall Norwegian economy. Because of the structure of the Norwegian economy, these factors are also highly significant for Norway's rural and regional policy.

The links between regional development in Norway and developments in the rest of Europe have become increasingly clear in recent years. Parts of the Norwegian public and private sectors are experiencing a shortage of labour. Labour immigration therefore has a positive impact on business development and the provision of public services. Following the enlargement of the EU to include the countries of Central and Eastern Europe, there has been considerable labour immigration to Norway from the EU. Many of these labour migrants come from the Baltic countries and Poland, as well as from Sweden. It will be important in the future to follow the further development of this labour immigration and to assess the consequences for local communities and companies in Norway of a possible return migration.

One of the objectives of Norway's rural and regional policy is, as mentioned above, to maintain the main features of present settlement patterns. To achieve this goal, the Government is seeking to promote local and regional growth in areas where economic growth is relatively low, distances to markets are long, the economy is poorly diversified and the population is stagnant or declining.

The challenges Norway's regions are facing differ somewhat from those seen in EU regions. In Norway wealth is relatively evenly distributed, but low population density and long distances between communities and economic centres pose problems for companies in peripheral regions. It is in Norway's interests to continue to be able to pursue a vigorous policy to meet the challenges Norway's regions are facing. Key instruments of rural and regional policy, covered by the EEA Agreement, are regional investment aid and the differentiated employers' national insurance contribution scheme. It is important for Norway to continue to be able to use schemes such as these to support business development and thereby population growth in sparsely populated areas. Positive economic and social development in the EU is also very important for Norway's rural and regional policy in terms of providing a solid basis for Norwegian exports.

The Government will monitor EU processes that may have implications for the range of options available to Norway in pursuing an active and targeted rural and regional policy. EU competition legislation is very important in this context, in particular legislation on state aid and regional aid. Public procurement legislation is of crucial importance for Norway's municipalities

Box 3.3 Differentiated employers' national insurance contributions

The Norwegian scheme for differentiated employers' national insurance contributions is an important instrument of regional policy. Under the scheme, the country is divided into different geographical zones with varying rates of national insurance contributions. Employers in more peripheral areas pay lower national insurance contributions than employers in central areas. State aid schemes that existed when the EEA Agreement came into force in 1994 had to be submitted to the EFTA Surveillance Authority for approval. Norway did not consider the scheme for differentiated employers' national insurance contributions to be state aid, and so did not submit it for approval. The Authority disagreed with this assessment and opened an investigation procedure in 1995. In 1997 the Authority concluded that aspects of the Norwegian scheme must be regarded as state aid and required Norway to amend the scheme. In 1999 the Norwegian authorities brought the case before the EFTA Court. Norway lost the case, but the Court ruled that the scheme involving different zones and rates could be continued, if amended in accordance with the deci-

sion of the Authority. In 2002, following a similar case in the EU, the Authority required Norway to make further amendments to the scheme. With broad backing from all the political parties, Norway received support from Iceland and Liechtenstein to invoke an exemption clause in the Surveillance and Court Agreement and continue parts of the scheme, i.e. the zero rate in Finnmark and Troms. The Authority's decision was thereby set aside. In 2004 the Commission carried out a further revision of the guidelines for regional aid. Norway cooperated closely with Sweden and Finland to achieve the desired adjustments to the guidelines. In 2005 the Commission adopted new regional aid guidelines that allowed for aid to be provided to regions with low population density to prevent outward migration. As a result Norway was able to reinstate the system of regionally differentiated employers' contributions of 2007. There has been broad political agreement about the scheme in Norway and the Norwegian authorities will give priority to ensuring that the current scheme can be continued after the next revision of the guidelines for regional aid in 2013.

and counties in their role as purchasers of goods and services, and compliance with the legislation requires significant resources and expertise. In connection with the ongoing revision by the EU of the existing public procurement directives, a review of Norwegian legislation will also be carried out. A committee will be appointed to review the specifically Norwegian aspects of public procurement legislation, including an assessment of the national threshold value and the need for national rules of procedure over and above those arising from Norway's international obligations. Experience of the legislation in the municipal sector and in Norwegian companies will be important in this work.

Norway has gained acceptance for continued support for business development in the form of regional investment aid and differentiated employers' national insurance contributions in areas of low population density and population decline. EU legislation is revised periodically. The Government will seek to participate in formal and informal arenas to discuss and obtain information on developments in this field.

The Government will also make use of Nordic arenas for discussion and will seek to cooperate with countries that are facing similar challenges as regards rural and regional policy. Experience has shown that cooperation at Nordic level is important for making views heard and for obtaining information in the EU.

The Government will also promote training and development in rural districts and regions through participation in regional development programmes together with EU member states. Through the INTERREG programmes, which support interregional cooperation across Europe, Norwegian participants have gained new inspiration and ideas for solutions to concrete issues, in areas ranging from business development to environmental problems. This cooperation has also enabled the Norwegian municipal sector, the research and consultancy community, private companies and public institutions to expand their networks, acquire knowledge on different approaches to regional development and achieve better results than they could have done working alone.

3.2.6 Market access for Norwegian seafood

Norway and the EU are partners in the management of living marine resources, and are mutually dependent on one another as regards the management of common stocks. Norway is the EU's most important supplier of seafood and the EU is Norway's most important market for the export of seafood. Some 60 % by value of Norwegian seafood exports go to the EU, and Norway is the country that supplies the largest share of seafood imports to the EU (20 %). Norway alone has a total annual catch of approximately 2.5 million tonnes, whereas the total annual catch for all the 27 EU member states combined is no more than around 5 million tonnes (figures for 2011 from Eurostat).

Norway is one of the world's leading fisheries nations, and Norwegian fisheries and aquaculture management are highly respected in EU institutions. Norway is therefore an important partner for the EU when it comes to addressing common challenges and promoting common interests within marine resource management. Norway's cooperation with the EU in this area is based on a common approach to some of the major issues relating to the sustainable management of living marine resources. It is in the interests of both parties to maintain and further develop this cooperation.

Market access for Norwegian seafood in the EU is not satisfactory and over time a complex system of over 50 bilateral tariff quotas has developed, while at the same time the EU has retained customs duties on important fish species. The EU has introduced restrictions on the import of Norwegian fish on several occasions. The Norwegian authorities will continue to work to improve market access for Norwegian seafood in the EU.

3.3 The Nordic countries and Europe

There are many examples of how Nordic cooperation has contributed to wider European cooperation and put its imprint on policy developments in Europe. This is particularly evident in areas such as social and health issues, gender equality, the working environment, environmental protection, electricity supply and transparency and access to information.

The Government gives priority to strengthening the contacts and information exchange on the EU and European issues that takes place under the Nordic cooperation in a wide range of areas. The Government is seeking to maintain close Nor-

dic cooperation on important European issues and will make active use of bilateral ties and networks. Norway has enjoyed particularly fruitful cooperation with the EU Presidency when it has been held by a Nordic country, most recently by Denmark in the first half of 2012. It is important that issues that are to be dealt with in the EU and EEA and that have relevance for all the Nordic countries are discussed in a Nordic context at an early stage. Nordic cooperation enables Norway to follow legislative developments in the EU more closely than would otherwise be possible. Much of this cooperation focuses on what the Nordic countries can contribute to the development of EU legislation in terms of input and expert documentation, as well as on supporting work on global conventions. At the same time it is also important to be informed at an early stage of cases where the Nordic countries do not have common interests.

Norway chose the welfare state in a Nordic perspective as the main focus area for its presidency of the Nordic Council of Ministers in 2012. This theme was chosen against the backdrop of the current situation in Europe, including the continuing impact of the financial crisis, the debt crisis and the economic, social and political challenges the EU and a number of EU member states are facing. The economic situation in Europe and its consequences have also affected the Nordic countries. The Nordic countries can bring experience and examples of political solutions reached across national borders to the EU cooperation as concrete contributions to policy development in Europe. Thus, policy development in the Nordic countries and Europe are closely intertwined in a process where dialogue and exchange of experience are crucial.

In the Government's view, the Nordic countries are well placed to become a pioneer region within Europe, particularly in the field of green growth, i.e. economic growth and development within safe ecological limits. During its Presidency of the Nordic Council of Ministers the Government will also focus on the links between education, research and innovation, green growth and sustainable health and welfare systems.

In certain areas the Nordic countries should seek to develop models of cooperation and solutions that can later be implemented in the EU and the EEA. The Nordic countries deregulated their electricity markets long before the other European countries, for example, and have established the Nordic electricity exchange Nord Pool Spot. Institutionalised Nordic cooperation under the

Nordic Council of Ministers has also proved effective in various areas. It is perhaps particularly beneficial for small countries to develop meeting places such as these to establish close contact and learn more about each other and about other groups. This could also have a positive impact on our cooperation with the EU and EEA.

Border barriers and mobility

The removal of border barriers between the Nordic countries is a key area of cooperation under the Nordic Council of Ministers. The free movement of labour, goods and services is essential for the development of a well-functioning internal market. One of the priorities of the Norwegian presidency in 2012 is the removal of existing border barriers and the prevention of new ones. Efforts are underway to draw up an overview of existing border barriers and ensure that new barriers are not created as a result of new EU legislation.

The Nordic countries, the international community and Europe

Due to the close Nordic cooperation in international forums and processes, our Nordic neighbours are also close partners in an EU context. Close Nordic cooperation on international and security policy issues, for example in the UN, is an important supplement to the cooperation that takes place between Norway and the EU within the framework of the EU Common Foreign and Security Policy. The further development of cooperation between NATO and its partner countries, including in Afghanistan, Libya and towards Syria and other Arab Spring countries, offers opportunities for a Nordic approach to European cooperation. The involvement of the Nordic countries in peace and reconciliation efforts, for example in Myanmar, is another important contribution to European foreign and security policy cooperation.

The Nordic countries have particular advantages in that they have developed stable democratic institutions and promoted human rights, in particular women's rights, over the course of many years. Many countries are therefore seeking to learn from their experience. The Nordic countries have a common message, share the same values and employ similar policy instruments, and as a result reinforce each other's positions.

The Government will present a White Paper on Nordic cooperation in autumn 2012.

3.4 Summary of actions the Government intends to take

The Government will:

- Promote the development of a well-functioning internal market that ensures good framework conditions for Norwegian companies, value creation and welfare. In this work emphasis is placed on maintaining close dialogue with stakeholders in Norway.
- Make use of the opportunities and available options provided by the EEA Agreement when implementing EEA legislation in Norway, so as to promote the development of a well-functioning internal market and safeguard the Norwegian model of labour relations, the needs of Norwegian companies and Norwegian value creation.
- Ensure that the Norwegian model of labour relations is maintained. This involves continuing the tripartite cooperation between employers, the trade union movement and the state, safeguarding pay and working conditions in connection with the establishment of companies and the provision of services across national borders, and protecting collective rights, including the right to strike.
- Cooperate with the EU in the areas of health security and civil protection.
- Promote the development of well-functioning and predictable energy markets in Europe and safeguard Norwegian interests in connection with the development of EU policy and legislation, particularly that relating to natural gas, electricity, oil and renewable energy. The Government attaches importance to continuing Norway's energy dialogue with the EU.
- Continue its close, binding cooperation with the EU on environmental policy. This involves safeguarding Norway's environmental interests and promoting a sound environmental policy in Europe.
- Seek to ensure that the EU's new programmes for 2014–20 are developed in line with Norway's views and priorities, particularly in the fields of education and research. Norwegian participation in the EU's new framework programme for research and innovation (Horizon 2020) must be assessed not only in terms of its research and innovation dimension, but also from a societal, business, budgetary and broader foreign policy perspective.
- Continue to pursue an active regional policy within the framework of the EEA Agreement. It is particularly important that support for busi-

ness development in the form of regional investment aid and differentiated employers' national insurance contributions can continue to be provided to areas of low population density and population decline.

- Work to secure improved market access for Norwegian seafood in the EU market and further develop cooperation on joint management of the marine environment and living marine resources.
- Promote the development of a sound European regulatory framework for the financial sector

as well as strong financial institutions, and thereby reduce the risk of crisis and economic collapse.

- Seek to maintain close Nordic cooperation on important European issues. The Government considers it important that issues to be dealt with in the EU and EEA and that have relevance for all the Nordic countries are discussed in a Nordic context at an early stage.
- Further develop the annual work programme for EU/EEA issues so that it becomes a strategic instrument in Norway's European policy.

4 Key instruments of Norway's European policy

The Government pursues a proactive European policy based on the objectives set out in the Government's policy platform and Report No. 23 (2005–2006) to the Storting on the implementation of European policy. The Government considers it important that Norwegian positions are formulated as far as possible on the basis of open and inclusive consultative processes. This will ensure that Norwegian positions are better informed and will help to enhance political awareness of matters under discussion in the EU. Strengthening knowledge of the EU/EEA in the public administration and ensuring more systematic dialogue with relevant stakeholders will be key policy instruments. The Government is also seeking to strengthen the democratic basis for the development of Norway's European policy by increasing the level of interest in and debate on the EU and the EEA in Norway. Ensuring access to better information and promoting knowledge about Norway's agreements with the EU in Norwegian society is of key importance in this context.

4.1 Information and knowledge

The Government's aim is to pursue an open European policy that encourages debate and dialogue. Our relations with our European partners, which are governed by the EEA Agreement and Norway's other agreements with the EU, affect most sectors of Norwegian society.

The Government will work to promote the highest level of transparency in EU/EEA processes. Priority will be given to ensuring access to information on important EU/EEA processes. The EEA database on the Government's European portal ("Europaportalen") will be further developed, and a database for justice and home affairs matters will be established.

The web-based information channels are crucial to the Government's efforts in this area. Updating and improving the European portal has been a key part of the Government's work to make information on the EEA and Norway's relations with the EU more accessible, and the portal

will be further developed in the future. The updated portal was launched in July 2012. The aim has been to make the new European portal a comprehensive source of information on Norway's cooperation with the EU. This means that relevant EU/EEA information both from the ministries and from the Norwegian Mission to the EU in Brussels is now gathered on one website.

The European portal has also been made more user-friendly. It contains a combination of background information and information on current issues and is aimed at different target groups, such as the public administration, interest organisations, Norwegian companies, school pupils and students.

Sound information is essential but not in itself sufficient to secure awareness of and political debate on key EU/EEA issues. The Government will work to ensure that information is communicated in such a way that it stimulates broad debate, which is important for safeguarding effective democratic processes.

The European portal will have a separate webpage for new Commission initiatives. The Commission sends information about new initiatives to the EEA/EFTA bodies, and the Government will make this information available to the public via the portal. The aim is to ensure that relevant stakeholders in Norway have access to information about new EU initiatives at the earliest possible stage.

The public debate concerning the referendums on EU membership in 1972 and 1994 showed a great deal of popular interest in issues relating to Norway's cooperation with the EU. People were generally well-informed and there was broad participation in the debate.

The Government considers it important in terms of safeguarding Norwegian interests that Norwegian citizens have an adequate knowledge of Norway's cooperation and agreements with the EU.

A new generation has grown up since the second referendum in 1994. In a survey of knowledge of the EU and Norway's agreements with the EU among the Norwegian population, which was car-



Figure 4.1 An upgraded European portal was launched in summer 2012. The new portal is a comprehensive source of information on Norway's cooperation with the EU.

ried out by the Sentio Research Group in May 2011 in connection with the preparation of Official Norwegian Report NOU 2012:2 *Outside and Inside: Norway's agreements with the European Union*, young people in particular reported that their knowledge of these areas was poor. Both the official report itself and a large number of comments received in connection with its preparation indicate a need to increase efforts to enhance young people's knowledge of Norway's agreements with the EU. Knowledge of the EU/EEA is one of the subject areas included in the current national curriculum for social studies and in the learning objectives set for years 7, 10 and the first year of upper secondary school. The Government will support the work carried out by schools to ensure that these learning objectives are achieved. It is important for young people to have access to up-to-date and neutral information. The Government will therefore facilitate the develop-

ment of information material that can be used to support teaching in schools.

Norwegian research on European issues

Since the 1990s Norwegian researchers have gained international recognition for their in-depth research on European integration and its consequences. Norwegian research on European issues has helped to promote public debate in Norway, enhance education at various levels and strengthen the knowledge base for Norway's European policy. Given the importance of developments in the EU and of European integration for Norway in a wide range of areas, the Government will continue to promote the development of a strong community of researchers on European issues in Norway. It is vital that the results of research projects are made available to the general public.

4.2 Transparency and inclusion

One of the Government's clear aims is to secure the involvement of Norwegian stakeholders in the authorities' work on EU/EEA matters at an early stage. The Government considers it important to obtain information about how new EU initiatives affect private individuals, organisations, companies and the local and regional public administration. The Government also emphasises the importance of ensuring that, through their participation in European umbrella organisations, relevant stakeholders have access to information and opportunities to exert an influence, both of which are important when promoting common interests.

The Government has taken several steps to increase the level of stakeholder involvement in work on EU/EEA matters. These include establishing a number of dialogue forums where European policy issues are discussed. These efforts will be further strengthened in the future.

The EU decision-making process is rapid, and the Commission's proposals are often amended during discussions in the Council and the European Parliament. Ensuring that stakeholders in Norwegian society have the opportunity to put forward their assessments and views well before the EU takes a decision that may have implications for Norway is one of the Government's clear objectives. It is also important to obtain technical and legal expertise from outside the public administration, including from relevant stakeholders, on the issue of how EEA legislation should be implemented into Norwegian law in specific fields.

4.3 EU/EEA expertise in the public administration

Work on EU/EEA-related matters requires knowledge of EU policy and legislation in the various fields. It also requires knowledge about institutions and decision-making processes in the EU and EEA. Expertise in EU/EEA law is also crucial, as are language skills, knowledge of meeting practices and the ability to build networks. Moreover, a high level of EU/EEA expertise is essential if Norway is to be able to participate actively at an early stage of the EU legislative process. It is also crucial if Norway is to be able to make use of the options available at the national level when implementing EEA legislation. In-depth knowledge of the EU/EEA is needed not only in the central government administration and its subordinate agencies, which are responsible for following

up cooperation with the EU on an ongoing basis, but also in the local and regional administration, which has considerable responsibility for applying the legislation in practice, in accordance with our EEA obligations. It is also important that stakeholders in the private sector and in society as a whole are well informed about the EU/EEA. This will enhance Norway's ability to identify and promote its interests effectively.

Training courses

A great deal of expertise on the EU/EEA has been developed in the public administration, but there is scope for improvement. A survey carried out by the Agency for Public Management and eGovernment in 2008 indicated that knowledge is particularly good among employees who have worked on EU/EEA-related matters for a long time. However, this knowledge is to some extent held by individual employees, which makes government agencies vulnerable to employee turnover. The survey showed that knowledge of the EU/EEA is generally poor among employees who are not directly involved in work in this area, including at management level. EU/EEA issues affect most areas of society and are a cross-cutting element of almost all activity within the public administration. It is therefore vital that all civil servants have some general knowledge of the EU and EEA. Training courses in this area should be further developed within already existing structures. The Government will work to ensure that basic knowledge of EU/EEA issues is integrated into training courses provided at all levels of the public administration. Information on EU/EEA matters will be part of the general training provided to all new employees and to new managers in the public administration.

Civil servants in ministries and government agencies who work with EU/EEA legal issues must have a thorough knowledge of EU/EEA law so that Norway can make good use of the options available at the national level when implementing EU/EEA legislation. At present no systematic training in EU/EEA law is provided to lawyers and other employees responsible for dealing with EEA legislation. The Government therefore intends to strengthen and systematise the training provided. This can be done by including a module on EU/EEA law in the programme on Norway's cooperation with the EU offered by the Agency for Public Management and eGovernment. The Agency plans to carry out an evaluation of this programme in autumn 2012, which will give an

indication of whether it is successfully meeting the needs of the users and will provide a basis for its further development.

Making good use of existing expertise

In addition to improving the training provided to employees, it is important to make the best possible use of existing resources. Priority will therefore be given to ensuring that expertise that has been developed through work on EU/EEA matters is put to good use. Much of the EU/EEA expertise to be found in the Norwegian public administration has been developed through participation in expert groups and committees under the Commission. In addition, participation in EU agencies and administrative networks, and in the context of the Schengen cooperation in the Mixed Committee under the Council, has become important in terms of providing opportunities for learning and developing expertise. Sound expertise and the continuity of Norwegian participation are essential if Norway is to be able to exert an influence in these forums. To ensure the transfer of knowledge, new employees should be involved in this work, for example by participating in meetings together with more experienced employees.

National experts

Under the EEA Agreement, Norway has the opportunity to second national experts to the Commission, and also to EU agencies that are under the Commission's administrative authority. However, we have no such agreement with the other EU institutions. Nevertheless, in the period 2006–09 a national expert from the Ministry of Trade and Industry was seconded to the secretariat of the European Parliament's Committee on the Internal Market and Consumer Protection. This provided an important channel into the European Parliament for both the Norwegian public administration and other Norwegian stakeholders. Due to the success of this secondment, the Government is seeking to continue this arrangement.

It is important to ensure that the ministries take full advantage of the opportunities we have to second national experts to the Commission. The Government will give priority to ensuring that seconded national experts from the Norwegian public administration are as far as possible given policy-oriented tasks while working at the Commission. This means that we have to be able to provide highly qualified candidates who can offer rel-

evant expertise. Experience shows that in many areas, such as food safety, Norwegian national experts are given responsibility for key policy areas on the basis of their qualifications and as a result of their well-developed networks in the EU system and a proactive recruitment policy by the relevant Norwegian authorities.

The Agency for Public Management and eGovernment recently conducted a survey on the public administration's use of seconded national experts to the Commission, which showed that better use could be made of the scheme. The Government will work to ensure that all ministries develop a strategic approach to recruitment, choice of place of service, contact during the period of secondment and the use of acquired expertise following return to Norway. The Government will also work to make it possible for local and regional authorities to second experts and other personnel to the Commission.

4.4 Close coordination of EU/EEA-related work in the public administration

The increase in cross-sectoral initiatives and legislation in the EU has led to a need for closer coordination in the public administration. The Government is seeking to improve coordination between the ministries, based on the current division of responsibilities between members of the Government. The political and constitutional responsibility for the various fields lies with the relevant minister. The Ministry of Foreign Affairs is responsible for ensuring that Norway fulfils its obligations under the EEA Agreement and its other agreements with the EU, and also for ensuring that Norway has an integrated European policy by coordinating Norway's views and communicating a coherent position to the EU and our EFTA partners. The Ministry of Finance's responsibility for coordinating the budget and implementing economic policy also encompasses EU/EEA matters.

Coordination will be strengthened on the basis of existing structures, including separate coordinating committees for EEA and Schengen matters and a well-developed system of EEA special committees. In priority areas where there is a particular need for coordination, the Government will be able to appoint working groups on a more ad hoc basis within this framework. Efforts will also be made to involve relevant stakeholders more closely and systematically in the public administration's work on EU and EEA matters.

The Norwegian Mission to the EU in Brussels has a key role to play in communicating Norway's views to EU institutions. The mission's staff are recruited from all parts of the government administration. The mission's role includes following political developments in the EU in the various fields, analysing these developments and keeping relevant ministries informed on an ongoing basis.

Firm commitment and active involvement at the political level in the ministries is essential to enable Norway to put forward its views at an early stage. In connection with this, it is important to ensure close coordination between relevant ministries and their subordinate agencies, since the latter often represent the Norwegian authorities in expert groups and committees. Defining clear national positions requires an understanding of the fundamental issues involved in each case. It is therefore an important task to identify and communicate the politically important aspects of a new case as early as possible. This does not require the creation of new structures, but rather that there are effective procedures for transferring relevant information from the public administration to the political level.

Municipalities and counties are responsible for following up much of EEA legislation once it has been incorporated into Norwegian law. The Government will therefore work to promote a more systematic dialogue between the various levels of the public administration, as part of its efforts to develop Norwegian positions and promote Norway's views, and in connection with the implementation of new EEA legislation.

Increasing the involvement of the research community and other external actors

A number of Norwegian research groups, stakeholders, municipalities and counties participate actively in efforts relating to the EU through various European organisations. A common feature of these actors is that they have important expertise and often also access to networks and information that the Norwegian authorities lack. It is therefore crucial to coordinate the work of relevant authorities and external actors more systematically than is the case today. The Government will seek to increase the level of involvement of the research community and relevant stakeholders in the development of Norway's policy towards the EU in priority areas. The plan is to hold annual consultations on important European policy issues based on the model of the six-monthly consultations with the Storting.

The Government is also seeking to strengthen its contact with stakeholders in its ongoing work on EU/EEA matters. Most of the EEA special committees have appointed reference groups consisting of representatives of relevant interest groups and local authorities. The Government will encourage the special committees to involve the reference groups to a greater extent and at an early stage in the work of developing Norway's positions on EU/EEA matters.

The possibility of offering secondments or internships at the Norwegian Mission to the EU in Brussels for representatives of Norwegian organisations will also be considered.

4.5 Mutual responsibility for managing the EEA Agreement

EU institutions and member states have repeatedly expressed their satisfaction with the EEA Agreement and other agreements between the EU and Norway. Through the EEA Agreement the EU enjoys orderly and predictable relations with Norway, a key trade partner and important supplier of energy, seafood, capital, maritime transport services, environmentally sound solutions and so on. Both the EU and Norway have a clear interest in maintaining these good relations. The EU generally appears to have great confidence that the EFTA Surveillance Authority and the EFTA Court function as intended and are able to ensure compliance with the provisions of the EEA Agreement.

In 2011, responsibility for managing the EEA Agreement was transferred from the Commission to the European External Action Service (EEAS), the EU's new diplomatic corps. The assumption is that by concentrating responsibility for the EU's external relations in the EEAS, the EU will be in a better position to develop a coherent foreign policy. This could strengthen the basis for a broad dialogue between the EU and Norway. There are also indications that the EU's relations with third countries are becoming more streamlined. Participation in EU expert groups and committees is based on the rights conferred by the EEA Agreement. It is important for Norway that this is continued, in line with the intentions and principles of the EEA cooperation. It is important to emphasise that it is in the interest of both parties that the EEA Agreement functions as well as possible, and both parties are responsible for ensuring that it does so. This means that it is essential that the EU also has a thorough knowledge of the EEA and

that work related to the EEA Agreement is given the necessary attention.

Day-to-day work relating to the EEA Agreement involves extensive contact between Norwegian officials and the Commission and relevant expert bodies. This is crucial for the EEA cooperation in the various fields and helps the EU to maintain its knowledge of key EEA matters. The Norwegian Mission to the EU, the Norwegian embassies and relevant ministries play an important role in providing information to EU institutions and the member states. In addition, the Ministry of Foreign Affairs holds regular meetings and conferences on Norwegian European policy at which representatives of the EU participate. The Government will continue to give priority to these contact-building and information activities.

4.6 Summary of actions the Government intends to take

The Government will:

- Support the work carried out by schools to ensure that established learning objectives are achieved, and facilitate the development of information material that can be used to support teaching in schools.
- Promote the development of a strong community of researchers on European issues in Norway.
- Work to strengthen knowledge about the EEA at all levels of the public administration by providing relevant training and making better use of existing expertise.
- Work to ensure that all ministries take full advantage of the opportunities we have to second national experts to the Commission. In the Government's view, local and regional authorities should also be given the opportunity to second experts and other personnel to the Commission.
- Work to ensure the secondment of national experts to the European Parliament.
- Continue to promote close coordination and efficiency in the public administration's work on EU and EEA matters.
- Strengthen dialogue with stakeholders and local authorities in ongoing work on important EU and EEA matters.
- Involve the research community and stakeholders in efforts to assess important European policy issues.
- Make sure that the business sector is provided with adequate information about the EEA Agreement and Norway's other agreements with the EU.
