

Official Norwegian Reports NOU 2012: 2

Outside and Inside

*Norway's agreements with the European Union***Introduction**

On 7 January 2010, the Norwegian Government appointed a broad-based independent committee to undertake a thorough, research-based review of the EEA Agreement.

The mandate of the Committee called for a comprehensive and thorough review of the political, legal, administrative, economic and other social consequences of the EEA Agreement. Moreover, the Committee was asked to review Norway's experience of the Schengen Agreement and other cooperation and association arrangements between Norway and the European Union.

The Committee's work was presented in an official report on 17 January 2012. The report will be subject to public consultation and will form part of the basis for a report (white paper) to the Norwegian parliament (Storting).

The 900-page report is extensive, and covers all aspects of Norway's relations with the EU. The complete report is available only in Norwegian. There are plans to translate additional excerpts of the report into English at a later stage.

The EEA Review Committee consisted of the following members:

- Fredrik Sejersted (Chair), Professor of Law, Head of the Centre for European Law, University of Oslo
- Liv Monica Bargem Stubholt (Deputy Chair), Investment Director, Aker ASA, Oslo
- Frank Aarebrot, Professor, Department of Comparative Politics, University of Bergen
- Lise Rye, Associate Professor, Department of History and Classical Studies, Norwegian University of Science and Technology (NTNU), Trondheim

- Dag Seierstad, expert on EU/EEA matters, Lillehammer
- Helene Sjursen, Research Professor, Centre for European Studies (ARENA), University of Oslo
- Fredrik Bøckman Finstad, lawyer at the law firm Thommessen AS, Oslo
- Kate Hansen Bundt, Secretary General of the Norwegian Atlantic Committee, Akershus
- Karen Helene Ulltveit-Moe, Professor, Department of Economics, University of Oslo
- Jonas Tallberg, Professor, Department of Political Science, Stockholm University, Sweden
- Jon Erik Dølvik, head of research at the research foundation Fafo, Oslo
- Peter Arbo, Associate Professor, Norwegian College of Fishery Science, Tromsø

The secretariat of the Committee was chaired by Ulf Sverdrup, Professor at the Norwegian School of Management (BI) and Senior Researcher at ARENA, University of Oslo.

3 Norway's Agreements with the EU

3.1. Norway's involvement in European Integration

Formally, Norway is not a member of the European Union. That said, Norway is heavily involved in EU integration, and has adopted much EU legislation. From a Brussels perspective, Norway is the third-country that has involved itself more than any other in the EU project. Seen this way, the country is simultaneously outside and inside the EU. As a matter of principle, this is a problematic and contradictory relationship that creates tensions and raises issues. In practice, the relationship continues to function largely effectively and without significant political conflict.

During the post-war period, Europe has radically changed because of EC/EU integration. The widening of the Union from 6 to 27 member states coupled with a deepening of the economic cooperation to a broad political union, has had great political, economic and social consequences. These are processes that have occurred especially rapidly in the last decades. Norway participates to a great extent, but not entirely. It does this through a particular form of association that resembles no other model of international cooperation, whether one looks historically or in other parts of the world.

The main pillar of Norway's relationship with the EU is the EEA Agreement, which was adopted in 1992 and entered into force in 1994. The EEA Agreement is the largest and most comprehensive international law agreement that Norway has ever entered into. And for the last 20 years it has had an impact on most areas of Norwegian society, directly and indirectly, perceptibly and less perceptibly. Hardly a single year has passed during the last 18 years without headlines in the media concerning small and large EEA issues, and the agreement forms part of daily life for many Norwegian citizens and companies.

The EEA Agreement is well known in Norwegian public debate. Less well understood, however, is that Norway's relationship with the EU is not solely regulated through the EEA agreement, but also through a range of other agreements. Since the mid-1990s Norway has continually sought to connect itself to many aspects of EU cooperation that are not covered by the EEA Agreement, through new agreements. The most important of these is the Schengen agreement of 1999, but there are other agreements on justice and home affairs, on security and defence policy, and on many other issues.

In total, according to the Foreign Ministry's Register of Agreements, Norway has entered into 74 agreements with the EU¹, but this comprises both large and small ones. If one is only concerned with the most important agreements, these are listed in box 3.1.

Box 3.1 Norway's most important agreements with the EU

The EEA Agreement (1992) – participation in the EU's "Internal Market" etc.: A main section (129 articles, with protocols, annexes and declarations), together with 8000 legislative acts from the EU – a framework agreement that develops dynamically

Agreements on Cooperation for EU's justice policy:

- The Schengen Agreement (1999) – a main section and 270 legislative acts – a framework agreement that develops dynamically
- Agreement on Participation in the European Monitoring Centre for Drugs and Drug Addiction (2000)
- Agreement on Europol (2001) – police cooperation
- The Dublin Agreements (2001 -2003) – on how asylum-seekers will be treated (including a.o. Eurodac)
- Agreement on Mutual Assistance in Criminal Matters (2003)
- Agreement on Eurojust (2005) - cooperation on prosecution
- Agreement on the surrender procedure between Member States of the EU and Iceland and Norway (European Arrest Warrant) (2006)
- Cooperation Agreement with Cepol (2006) – police training
- The Lugano Convention (2007) – jurisdiction and the recognition and enforcement of judgments in civil and commercial matters
- The Prüm Treaty (2009) – Expanded police cooperation

Agreements on Cooperation in the Area of EU Foreign, Security and Defence Policy

- Agreement on participation in the European Union Satellite Centre (2001)
- Framework Agreement for the participation in crisis management operations led by the European Union (2004)
- Agreement on participation in EU Battle groups (Nordic Battle Group) (2005)
- Agreement on Participation in the European Defence Agency (EDA) (2006)

Other Important Agreements:

- Agreements on participation in EU programmes (partly under the auspices of the EEA, and partly in addition to it) – on research cooperation, education, regional cooperation (Interreg) etc., and on participation in EU agencies
- Agreements on Fisheries – on quotas, monitoring, harbor control, market access, etc.
- Agreements on Agriculture – on trade and market access etc.
- Agreements on the Financial Mechanisms (most recently for 2009 to 2014)

The agreements establish the framework for Norway's relationship with the EU having gradually developed over a period of about 20 years. Within this framework, there is daily cooperation on large and small issues. In order to understand Norway's relationship with the EU it is necessary to take a holistic view, and consider what the content is of this structure of agreements, how the individual components relate to each other, and how they are developing. This does not represent a static structure for association between the EU and Norway, but rather a relationship that is continually developing, carried forward via continual changes in the EU to which Norway generally adapts.

The accumulation of Norway's agreements could be described as a particularly "Norwegian" form of association with the EU, similar to a patchwork quilt, which has gradually grown as

new agreements have been added on to it, with no overall framework or plan. In fact, Norway's relationship with the EU consists of a multiplicity of diverse agreements and provisions that are not formally connected, and that have evolved over time without having been planned, and with no clearly formulated design for what it should end up like. Had one today, with a blank piece of paper, begun to design the relationship with the EU, it would probably have looked quite different. The structure of agreements is the result of historical events, and of many small and large steps that various Norwegian government administrations have taken to adapt to developments in the EU, and usually with support from a broad majority within the Storting (Norwegian Parliament).

These processes have from the Norwegian side been reactive, usually following initiatives taken by the EU. The EU has changed significantly in the last twenty years. And Norway has continually striven to adapt to these changes, within the EU and through supplementary agreements. This development has largely been one-directional – toward ever more comprehensive and obligatory cooperation between the EU and Norway. Pieces of cloth are still being sewn on to the continually expanding quilt, without which anybody on either side has formulated any clear vision of where it will all end. As such, this is not a planned, holistic or consistent model. Neither is it clear that the parties have intended it to be so.

In order to understand Norway's relationship with the EU, it can nevertheless be useful to regard the collective structure of agreements as a sort of "model".² Such a perspective compels one to look at the situation as a whole, which is necessary to understand what kind of relationship and form of association it is that Norway actually has with the EU – its scope, general and specific characteristics, dynamics, driving forces, challenges, conflicts of interest, etc. This is necessary in order to be able to discuss Norwegian European policy in an open and enlightened manner. It is also necessary to make comparisons with other countries, inside and outside the EU, and how they relate to the European integration process.

To the Committee it has been clear that it must have as its basis a holistic perspective with regard to Norway's relationship with the EU. According to the mandate, the committee should assess the EEA Agreement as well as all the other agreements and cooperation arrangements with the EU. The assessment should be "thorough and as broad as possible". It should assess the "political, legal, administrative, economic and other societal consequences" of the agreements with the EU, and it should do this with respect to "all areas of society".

This is a comprehensive mandate. Very many aspects of Norwegian politics and society are on closer inspection affected by the EU, more or less. The committee has assessed a range of them individually, as will be evident in the report. But it is not possible within the parameters of such an assessment to cover all specificities of Norway's relationship with the EU. On the other hand, the assessment can contribute to a more holistic description and analysis.

3.2 Main issues in the report

As the Committee interprets its mandate, there are in particular three aspects of Norway's agreements with the EU that should be described and analysed:

1. Scope and content
2. Development and motivating factors
3. Consequences for Norwegian politics and societal development

Scope and Content

To begin with, the Committee should describe the content of the EEA, Schengen and other agreements with the EU. Some of this may be familiar to many people. But much of it will not be. There are many aspects of the EEA Agreement that most people know little about. The same is true for Schengen, which apart from the fact that one is included in the same category as EU citizens at airports, is a somewhat cryptic description for most people. This is even more true for the other agreements that Norway has entered into with the EU along the way – and which are seldom discussed in public, and that are generally unknown except to those who deal with them on a daily basis.

Providing a comprehensive presentation of the content of Norway's existing agreements with the EU is in itself a contribution to the Norwegian debate about Europe and European policy.

Common to nearly all of Norway's agreements with the EU is that they build on EU rules. They do not establish specific material rules, as other international law agreements do. In this sense, they do not have any material content of their own. They are *association agreements*, which commit Norway to adopt already existing EU rules. It is thus inaccurate to talk about an independent body of "EEA law". The content of the EEA Agreement is EU law and anything else is procedures to ensure that the rules are applied in the same way in the EEA-EFTA States as in the EU. The EEA is a mechanism to make it possible to participate in parts of EU cooperation without formally being a member of the EU. The same applies to most of the other agreements that Norway has entered into with the EU.

In terms of content, Norway's agreements with the EU fall into three main groups, which correspond to a partition into the three pillars of the EU that existed prior to the Lisbon treaty. The EEA agreement connects the EFTA States to what used to be called the "first pillar", and comprises what is mainly the Internal Market, together with cooperation on a range of issues, including social policy, employment, environment etc. In what was previously the "second pillar" on justice and home affairs, Norway participates primarily via the Schengen Agreement, but also through a growing number of other agreements. In what was formerly the "third pillar", on foreign, security and defence policy, Norway's association is somewhat weaker, although also here in recent years a number of more formalised cooperation agreements have been established.

In the EU, the division into three pillars was abolished in 2009 in preference for a more unified approach (the Lisbon Treaty). Yet for Norway, this division is still fundamental in many ways. This has created a lack of structural clarity in the Norwegian model of association, which one can only assume will increase in the years to come.

Alongside the three groupings of agreements, there are also a number of agreements with the EU in other areas. Amongst these are agreements that regulate the fisheries sector

(administration, control, market access etc.) together with trade in agricultural products. The agreements on economic contribution to the EU (the EEA Financial Mechanism) could also be viewed as a separate category negotiated independently, even though formally linked to the EEA. The same applies to Norwegian participation in the Interreg- programmes on regional development, which are not part of the EEA agreement.

All in all, through the EEA, Schengen and the other agreements, Norway has connected itself to the EU in somewhat diverse ways. The association is *material*, to the extent that Norway adopts EU legislation and commits itself to conform with it in as if it were in the EU. Yet Norway does not participate *institutionally* in the EU, to the extent that it is not a member, and only to a very limited extent has the possibility to participate in and influence decision-making. Institutionally, Norway is connected through various provisions, which differ for the EEA, Schengen and other agreements – without any common framework. Uniquely within the EEA there is an entire institutional structure to ensure that the EFTA side adopts new EU legislation, and that it is appropriately monitored and implemented. This is intended to mirror the supervision of compliance within the EU.

In terms of international law, it is extremely rare that states connect themselves in this way to organisations of which they are not members, and that they then commit themselves to follow their rules. Norway has no other comparable arrangements, and as far as the Committee is aware, there are no other comparable arrangements, either in scope or nature, in international cooperation. So in terms of international law, the Norwegian model of association is exceptional.

This model will in the following pages be described in full detail. As the Committee interprets its mandate, it is naturally confined to the *agreements* that Norway has with the EU. Within these parameters, the ambition is to assess the entire structure of agreements – in its entirety and individually. Conversely, the committee will not look into the parts of the European integration project that Norway does not participate in. This includes the Economic and Monetary Union, and the EU's common policies for agriculture, fisheries and trade with third countries, development policy, well as parts of the Common Foreign and Security Policy in which Norway is not involved.

Development and Motivating Factors

According to its mandate the Committee has been specifically requested to describe “the development of the EU and the EEA after entry into force of the EEA Agreement”. The Committee should, in other words, cover a period of time, and assess how Norway's relationship with the EU has developed within this period. The time span is roughly 20 years. The EEA Agreement was conceived in 1989, negotiated during 1990 and 1991, agreed to in 1992, and entered into force in 1994. The Committee will cover the development of the EEA, and subsequently other agreements, from the start and until today (Autumn 2011).

A developmental perspective is central to the assessment, and represents the main analytical approach of the report. The analysis of individual aspects of Norway's relationship with the EU will have as their point of departure the expectations that the parties had when the

agreements were negotiated. The report describes the main developments in the intervening period, ending in an assessment of their status in 2011. With regard to the EEA Agreement, the Parliamentary Proposition 100 from 1992 is the natural starting point.³ Regarding the Schengen Agreement, a Parliamentary Proposition from 1999 applies,⁴ and for the other agreements with the EU there are equivalent documents.

A developmental perspective implies going beyond mere description, into closer analysis and evaluation. What are the main characteristics? What are the dynamics and motivating factors? To what extent are developments in Norway's relationship with the EU determined by deliberate political choices, and to what extent are economic, legal, administrative, sociological, cultural and other factors relevant. There are no simple or clear-cut answers to these questions. But throughout this report they will be further operationalised and analysed.

Norway's association with the EU over the last 20 years has developed in several different ways, of which the following are the most important:

- Geographic enlargement of the EU and consequently Norway's agreements with the EU
- New agreements with the EU in new areas
- New agreements and legislation from the EU within the framework of existing agreements
- Development of existing agreements through interpretation and application
- Unilateral and voluntary Norwegian adaptation to the EU beyond formal agreements.

These five forms of development have all strongly manifested themselves during the period 1992 to 2011. They are to a certain extent related, but also independent of each other. In some phases the development goes along one particular path, and in other phases along another. But they have all pulled in the same direction – towards an ever closer and more comprehensive integration with the EU.

The first, and in many ways the most important, development between 1992 and 2011 is that the EU has become larger. This has broadened the geographic area of the Union, and its political and economic significance. This is particularly so with the enlargement of 2004, with 10 new states, which changed the EU from a western European to a broader European organisation. The EEA agreement was correspondingly enlarged, as was Schengen later on. The most important milestone in the development of the EEA, thus far is 2004, not least because of the ensuing inflow of migrant workers from Eastern Europe, which has had great consequences for the Norwegian economy and employment.

Enlargement of the EU/EEA has also changed the balance between the parties to the agreement. When the EEA Agreement was negotiated, there were 6 EFTA states and 12 EU states.⁵ In 2011 the balance is 3 and 27. This has affected the character of the agreement and the balance of power with respect to what was originally envisaged.

The second development is that the EEA Agreement since 1992 has been supplemented with a range of other agreements between Norway and the EU, within what were formerly the

EU's second and third pillars. The framework for cooperation established through the EEA Agreement has for several reasons not been deemed appropriate for Norwegian cooperation with the EU in other areas, and instead other solutions have been found.

The initiative to negotiate new agreements with the EU has mostly been taken by Norway. The negotiation context has been different from EEA, as has the institutional solutions. Any common objective for such agreements does not exist, nor is there any formal connection to the EEA. Still, the EEA Agreement provides a certain political framework for negotiations, which has made it easier for Norway to achieve its desire for association with the EU in areas outside the remit of the EEA.

Thirdly, Norway's relationship with the EU develops within the parameters of the existing agreements and the continuous incorporation of EU legislation. This is particularly true of Schengen and the EEA, both of which are framework agreements which are intended to develop dynamically. Formally, Norway (and the other EFTA states) must give their approval prior to new EU-legislation being incorporated into the agreements. Nevertheless, there is a fundamental preconception that this in most cases will happen, and there are established procedures to ensure effective and continuous adoption.

If Norway were to refuse to adopt new legislation, that would according to the EEA agreement probably lead to the relevant part of the agreement being taken out of force, and under Schengen it could lead to the entire agreement collapsing. So far, since its ratification, the EEA agreement has been expanded to encompass well over 6000 new legislative acts, without any EFTA state having formerly used its Right of Reservation.⁶ Many of the new legislative acts are technical rules for the implementation of already existing commitments, whereas some involve new substantive commitments

In addition to adopting new EU legal acts, within the framework of the EEA Agreement Norway has also adopted a number of new agreements, including on participation in EU programmes and new EU agencies. Another example is the "veterinary agreement" from 1998, in which the entire regulatory framework for food safety and veterinary rules was incorporated into the EEA Agreement. There is no binding commitment for Norway to enter into such sub-agreements, and they usually come about as a result of Norwegian initiatives.

Fourthly, the agreements develop as a consequence of their practical application, through the expanding influence of the existing rules, and through their application to new areas. A central factor here is jurisprudence by the ECJ and the administrative practice of the European Commission. These are both directly significant for the interpretation of the EEA Agreement in particular. In addition, there are the practices of the EFTA Court and the EFTA Surveillance Authority, combined with the development of national legal and administrative practices. This dynamic evolution is less noticeable than new legislation, but can often be as important with regard to the scope of the commitments.

Fifthly, Norway's relationship with the EU develops through non-binding processes – in the form of unilateral and voluntary adaptation to EU policies. This happens in various ways. Many of the processes in the EU do not result in legislation, but in recommendations and

suggestions of which Member States can decide whether or not they will follow, such as in the areas of health, education, culture, regional development and so on. Norwegian government bodies eagerly connect into the processes in these areas and are ready to follow the recommendations. Another example is the EU's "open method of coordination" in areas such as employment, pensions, social inclusion etc. This does not fit in under any of Norway's agreements with the EU, but Norway often attempts to apply these initiatives within the context of Norwegian employment policy. A third example is that Norwegian courts often make reference to EU law, beyond any legal commitment of Norway to do so – as a way of determining how one might apply Norwegian law. A fourth example is that Norwegian legislators sometimes declare their intention to implement EU rules and regulations without there being any binding obligation to do so.

This assessment will have a close look on each of these five forms of dynamic development of Norway's relationship with the EU. Among other particularities that characterise the agreements, there are three of which are especially noteworthy:

- Homogenous development
- Time-indefinite development
- Asymmetrical development

A key to understanding Norway's agreements with the EU is that they should function homogeneously. This means homogeneously with the EU. This is stipulated in the preamble to the EEA Agreement. It means that not only should Norway adopt the EU's rules, but it should also interpret, apply and conform with them in the same way as the EU states. This is somewhat controversial given that Norway is not a member of the EU, and its association with it through agreements is supposed to be less binding than full membership. In practice however, experience shows that respect to the homogeneity principle carries much weight, and that within the parameters of the agreements it has only been very exceptionally and on marginal issues, that deviation from this principle has been considered.

Another important aspect of the EEA Agreement and the other agreements with the EU is that they are *indefinite*. They are valid until they are terminated, and they associate Norway with the EU through steady development, with a commitment to continuous conformity in order to achieve homogeneity. In this way the agreements could be viewed as "open-ended". This means that the agreements, by definition, will extend beyond their original content. For each year that passes, the distance will grow between what the content of the EEA agreement was in 1992 and what it is today. This is a part of its construction. It is important to underline this element, because the EEA Agreement is often criticised for having developed beyond what was foreseen in 1992. This it has clearly done, but it is an inherent part of its design. Had the agreement not developed dynamically, it would have contradicted the Parliament's preconditions when it was entered into.

A third fundamental characteristic of the EU agreements is their asymmetry. There is not an equal level of burden between the parties, and the agreements are more important for Norway than for the EU. This has always been an unequal relationship. As already mentioned, the

balance of the parties in the EEA Agreement has changed from originally 6:12 to today 3:27 – and of the 3 remaining EFTA states, one is quite small and the other two are very small. As a proportion of population, the ratio is 1:100 – with roughly 5 million EFTA citizens on the one side and 500 million EU citizens on the other. While trade with the EU is about 75% of Norwegian foreign trade, Norway represents 4.5% of the EU's. Even though the EU is interested in close cooperation with Norway, Norway's interests are more existential. This affects the character of the EEA and the other agreements, functionally and dynamically.

Consequences for Norwegian Political and Social Development

Last but not least the Committee, according to its mandate, should concentrate on the consequences of the EU agreements in Norway. The mandate stipulates that there should be a broad and thorough evaluation of “political, legal, administrative, economic and other social consequences (including welfare and regional policy) of the EEA Agreement”. Furthermore, the mandate specifies issues that should be especially closely examined: democracy, industry and employment, environment, management of natural resources, and regional policy. In other words, the consequences of the agreements for Norway in political and social terms

Given the the mandate, it is natural to view this as the central task. Large parts of this report are therefore about the implications of the agreements with the EU for different parts of Norwegian society.

In many areas this is quite straightforward to assess. It is not so difficult, for example, to assess the legal consequences of the agreements with the EU – which legal areas are affected, how many Norwegian laws have been changed, how often EU/EEA laws are mentioned in Norwegian courts, etc. It is also possible to describe a number of obvious administrative consequences of the agreement– how the Norwegian government administration has organised its work with EU/EEA matters, which expert groups, committees and other networks in the EU does the government administration have access to, how many civil servants work with this, etc.

Other consequences are much more difficult to assess. In order to evaluate the democratic consequences of the EU-agreements, it is not sufficient to describe how they are dealt with politically, the role of Parliament, party positions, etc. One also has to look at the broader trends in Norwegian democracy over the past 20 years and to analyse what role European policy has played in this. What does it mean, for example, that all governments since 1994 have governed on the basis of a form of association with the EU (EEA etc.) which very few parties have as their first choice? Is there a sufficient political transparency and debate about the relationship with the EU? How does the Norwegian political system deal with the fact that more and more decisions that are important for Norway are decided in Brussels? Is the EEA Agreement a democratic catastrophe, as some allege, or a wise political compromise, as others believe?

A central element of the assessment is to look at the consequences the agreements for the distribution of power in Norway. Here there are several different levels. The first is the distribution of power between the national and the supranational level – where much power is

transferred through the agreements to the institutions of the EU, EEA, EFTA amongst others – and what leeway for negotiation remains for the Norwegian authorities. Another level the impact the distribution of powers between the highest bodies of State, (Parliament, the Government and the Courts). A third is the relationship between the political and administrative level and whether the EU/EEA has led to de-politicisation and technocratisation. A fourth is the relationship between central and local authorities, and a fifth is the relationship between employers and employees (labour and capital).

Along these axes, the agreements have affected power structures internally in Norway – in many ways similarly to many EU states, but also with variations which can be ascribed to the particularities of the Norwegian model of association.

It is particularly challenging, methodologically, to describe the implications of EU adaptation for the development of the economy, industry, welfare, employment, energy, environment, transport, regional policy, justice, defence and security, i.e. Each of these developments over the last 20 years are the result of a long list of factors – domestic and foreign. The EEA and the other agreements with the EU is one factor among many. Sometimes its significance can be assessed quite precisely. Other times it is methodologically difficult, with any degree of precision, to assess the impact of EU-adaptation and what the outcome would have been if Norway had chosen a different form of association.

Norway's adaptation to the EU primarily takes the form of legislative rules, which are implemented in Norwegian law and establish parameters for Norwegian politics and government administration. The effects of this on Norwegian law and politics are often quite easily delineated. Nevertheless, it is often much more difficult to assess what the real effects of EU adaptation are. It is easier to show the influence of EU/EEA law on Norwegian industrial and regional policy, than to show what implications the adaptation has actually had on regional and industrial development over the past twenty years.

Throughout this report the Committee seeks to handle the methodological challenges as they arise. The general approach will be to firstly sketch the main characteristics of the development in a given sector over the past twenty years, and then to analyse what implications the EEA or other agreements with the EU have had (or not had), in relation to other factors. Where this is unclear or disputed, it is important to be open about this. Even though the implications of EU adaptation cannot be exactly determined, it will most often be possible to determine in which direction they are pulling, and how this affects other national or international developments.

According to its mandate the Committee will assess different types of consequences, which demand expertise within many disciplines – political science, economics, law, sociology, history, i.e. Each of these disciplines have their own methodological approach. It has been neither possible nor desirable to carry out the assessment within one single discipline, or one specific methodological approach. The committee represents a broad range of disciplines, and the report is clearly cross-disciplinary - with the inherent weaknesses and strengths that this involves.

According to the mandate, the Committee should concentrate on the consequences of the EEA and other agreements in Norway. The mandate is thus distinctly national in scope. However, these are agreements that have many other parties. The EEA Agreement has today 30 member states (the 27 EU states, plus Norway, Iceland and Liechtenstein). The Schengen Agreement has 26 participants (22 EU states, plus Norway, Iceland and Liechtenstein and Switzerland). In order to understand the agreements it is important to understand how they function in Norway, but also how they are evaluated by the other states – not least in the EU. Recently, the EU Council has made interesting assessments of the EU-EFTA relations and the EEA and has expressed its interest in a more comprehensive assessment of the working of the various agreements.⁷

The perspective from the outside can often be quite different from the domestic Norwegian perspective and represent interesting contrasts. While many in Norway, for example, discuss the agreement in terms of a sort of “tenant farmer or crofter’s agreement”, it is seen by many in the EU as privileged relationship, where Norway enjoys the advantages of EU membership without being a member. And while many people here at home feel that the EU forces its rules on Norway, the experience in Brussels is rather that the Norwegian authorities are eager to participate, and that the EU to a large extent is accommodating (if sometimes grudgingly) in allowing Norway to do this. This is not necessarily a question of who is correct or incorrect – but of different ways of viewing the relationship, all of which are interesting.

It is also interesting to consider how other states see the EEA i.a. This applies, firstly to the two other EFTA states, which are in the same boat as Norway – Iceland and Liechtenstein. Here, one could ask the same questions as stipulated in the mandate – what their experiences are with the EEA Agreement, Schengen, and so on – and what consequences the agreements have had in national political and social terms. This is done in the following pages, and even though the answer to a great extent fit with the Norwegian experience, there are also interesting nuances, which reflect the EFTA states’ different positions and interests with respect to the EU.

Furthermore, it is interesting to see how the EEA has been evaluated by the states that originally took part in the negotiations, but which subsequently took a different path. This applies to Switzerland, which was a central player in the negotiations, but that after a referendum rejected the EEA and instead chose a “bilateral model”, with a long series of individual agreements with the EU. This also applies to Finland, Sweden and Austria, which after having negotiated the EEA Agreement, and participated in it for one year, entered into the EU in 1995. All of these countries have had EEA debates, and have views on the agreement which do not necessarily correspond with the Norwegian view. The same can be said for other third countries, outside of the EU, which previously have considered or are currently considering the EEA as a viable alternative for their association with the EU. The committee has also been asked to gather assessments from “the South”, and has thus also looked at how the EEA i.a. is viewed by other non-member states along the EU’s southern and eastern borders. This external perspective is considered specifically in Chapter 13, but also in certain other places throughout the report.

3.3 The EU and other forms of European Cooperation

The Assessment concerns Norway's relationship with the EU – through the EEA and other agreements. At the same time, we use the expressions “European policy”, “Europeanisation”, etc. The most important reason is that this has established itself as the prevailing terminology, not just in the EU, but also to a great extent in Norway. Here, “European policy” has come to signify the relationship with the EU. A typical example is the government's White Paper of 2006, “On the Implementation of the European Policy”, which only concerned itself with EU issues.⁸ The Parliament's advisory body for EU/EEA matters is called the “Europe Committee”, etc.

The Committee does this in full awareness of the fact that the EU is different from “Europe”. Europe describes a continent, and the Council of Europe, in which every European state participates, has 47 members.⁹ There are also other common European organisations and processes aside from the EU. The adjective “European” is used in many contexts which do not necessarily have anything to do with the EU.

That said, it is natural for several reasons to refer to the EU as “European” cooperation, not just because it is the prevailing terminology.

Firstly, the EU 27 today covers geographically a large part of Europe, and nearly all of the traditional central European states. The 20 states that are members of the Council of Europe, but not in the EU, are the four EFTA states (Norway, Iceland, Liechtenstein and Switzerland), three micro-states (Andorra, Monaco, San Marino), and the states farthest to the East and South East – Russia, Ukraine, Moldova, Turkey, and most of the Balkans (Serbia, Croatia, Bosnia Herzegovina, Montenegro, Macedonia, Albania) and the three states in the Caucasus (Armenia, Azerbaijan and Georgia). Many of these have applied for EU membership and several are in the process of applying or negotiations.

From a geographic perspective, the big change occurred with the enlargement of the EU in 2004, which turned the EU from a western European organisation to an all-European organisation.

Secondly, an increasing number of common “European” processes and interests are today principally channeled through the EU. This is especially the case with regard to common political, economic, administrative and legal processes, but also to an increasing degree, social and cultural cooperation. The EU has gradually become a more central arena for European cooperation, with the competence, capacity, institutions and resources to drive this forward.

Materially, the first big change of pace occurred with the Maastricht treaty of 1992, which extended the EU from being a primarily economic form of cooperation to also encompassing a common area for justice and common foreign and security policy. In the twenty years that have passed since then, this development has strengthened, particularly with the Lisbon Treaty of 2009, so that today the EU represents a broad political union for cooperation on a broad range of issues. As part of this process the EU has to a great extent either completely or partly taken over tasks that previously were under the auspices of other more traditional

international organisations. This often happens when the EU establishes new bodies, with the result that previous bodies are either closed down or lose their relevance.¹⁰ For a European state that is not a member of the EU this can be a challenge, and not least for Norway that has consistently and consciously tried to compensate for this through special association agreements to new EU agencies.

With this background, the EU represents the central arena for common European interests (to the extent that they exist) as well as the most important of the common European processes. From a development perspective (1992 – 2012), the EU is both geographically and substantially much more of a common “European” organisation than when the EEA was entered into in 1992. And the agreements with the EU establish a framework for Norway’s association to what are today common European integration processes.

In some situations the term “Europeanisation” will be used. This is a common term of reference in EU policy research, which is utilized for analyzing the significance of integration processes for national development, or to be precise, “to describe national changes as a reaction to regional integration in Europe”.¹¹

¹ There are 128 agreements listed in MFA’s Treaty Register, but that includes 54 agreements with the EU on the conditions for the distribution of funds within the Financial Mechanism (EEA Funds). If one subtracts these, there are 74 agreements which are listed in Annex 1 of this white paper. This includes everything, from important treaties to smaller supplementary protocols and exchanges of diplomatic notes with binding effect under civil law.

² In general this is a common model for the three EFTA States Norway, Iceland and Liechtenstein, which participate together in the EEA and Schengen. Norway has however entered into a number of purely bilateral agreements with the EU, and participates in some areas to a greater extent than Iceland and Liechtenstein. Consequently, one can discuss a particular Norwegian Model.

³ See St.prp, no. 100 (1991-1992) of 15 May 1992. The proposition was processed in the Parliament during the period May-October 1992, see Inst. S. nr. 248 (1991-92) and adopted with $\frac{3}{4}$ majority according to the Constitutional Law § 93 on 16 October 1992. The proposition itself is 495 pages, with an accompanying 13 volumes of annexes which contain the material EU/EEA rules.

⁴ See St.prp no. 50 (1998-99) of 26 March 1999 and Opinion S. no. 147. Norwegian association to Schengen was also processed in an earlier round in 1996, see Parliamentary Proposition nr. 42 (1996-97) and Opinion. S. no. 229. The Association Agreement entered into force in 2000.

⁵ Liechtenstein became a member of EFTA in 1991 and a member of the EEA in 1995. It is therefore most correct to say that there were 6 EFTA countries that negotiated.

⁶ In the spring of 2011 the Norwegian government notified the EU that it was considering using its Right of Reservation on the EU’s Third Postal Directive. At time of writing, the formal process to do this under Article 102 still has not been initiated. For more detail see Chapter 6, Development of the Agreements with the EU 1992-2011 and Chapter 20.3 Communication.

⁷ Council conclusions on EU relations with EFTA countries of 14. December 2010. See Chapter 13.

⁸ See the White Paper (St.meld. nr 23 (2000-2006) “Om gjennomføringen av europapolitikken”. In 2000 the Bondevik Government delivered the White Paper (St. meld nr. 12 (2000-2001) Om Norge og Europa ved inngangen til et nytt århundre, which also looked at other European processes. But this report is also primarily about relations with the EU.

⁹ All the European States are members of the Council of Europe, with the exception of Belarus (dictatorship) and the Vatican (theocracy). The question of whether all member states in the Council of Europe are “European”, is in itself a disputed question, especially as concerns Turkey, Georgia, Armenia and Azerbaijan.

¹⁰ The most important European organisations apart from the EU today are the Council of Europe (with its subordinate bodies) and the Organisation for Security and Cooperation in Europe (OSCE). But also in their areas the EU has increasing activity and influence. In addition, there is NATO, if one wishes to count that as a

European organisation. Furthermore, there are regional organisations, of which there have been more and more in the past years, some within the structure of the EU, and others independent of it.

¹¹ See Tallberg, J. et al, *Europeiseringen av Europa. Demokratirådets report 2010*, SNS Forlag, p.16, and Johan P. Olsen (2002) *The Many Faces of Europeanisation*, *Journal of Common Market Studies*, vol. 40, no. 5, pp. 921-952.