

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.

26 Europeanisation of Norway 1992-2011

26.1 The domestic consequences of the agreements with the EU

The EEA, Schengen and the other agreements with the EU are the most extensive commitments Norway has ever entered into. They affect Norwegian society broadly and deeply in a completely different way than other international law agreements. Even though the agreements are entered into as a part of Norwegian foreign policy, and they regulate the relationship with the EU and other European countries, the most significant consequences are nevertheless domestic in character.

Most of this report has concerned itself with what the implications have been of association with the EU for Norwegian domestic policy during the period 1992-2011 – institutionally and materially. Institutionally, we have considered the agreement's significance for the Parliament (Storting), the government, courts, parties, the media, and organisations and so on. Materially, we have gone through the agreements' significance for the Norwegian economy, industry, employment, welfare, health, regional policy, energy, environment, climate, transport, research, education, food, agriculture, fisheries, alcohol, equality, consumer protection, border control, immigration, police cooperation, security and defence policy i.e.

In a number of areas the agreements have been very significant for Norway's development and in other areas less so. There are few areas of Norwegian society, however, that are not directly or indirectly affected.

Its influence reaches into every-day matters, such as EEA rules for Motor Ordinance Tests (MOTs) and daylight saving, to large structural issues such as the regulation of financial markets and the employment market. We experience its impact at all levels. All 17 Government departments work to a greater or lesser extent with EU/EEA issues, as do all 430 local authorities. EU/EEA-related questions take up a large part of their day. Of about 600 Norwegian laws, the Committee has identified at least 170 that today either entirely or partly contain EU legislative rules, from the Industry Concession Law of 1917 to el-certification of 2011. The same is true for about 1000 Norwegian ordinances which have an impact on nearly all areas of society.

In EU-policy research it is common to use the term *Europeanisation* to analyse the implications of integration processes for national development, or more precisely to describe national transformation as a reaction to regional integration in Europe.¹ The term is not so familiar in the Norway's Europe-debate. However, considering the high degree of integration with the EU that has developed between 1992 – 2011 it is obviously relevant. As revealed in Chapter 24, Norway has adopted roughly $\frac{3}{4}$ of EU legislation, as measured against EU states that participate in everything. EU rules are implemented no less effectively in Norway than in many EU States. A few sectors are less Europeanised in Norway than the EU, especially agriculture. It is also true that Norwegian political and administrative systems are not nearly as closely integrated in EU decision-making procedures as national administrations in Member States. But on the whole it seems clear that Norway has been heavily Europeanised during the period 1992-2011.

In the course of this assessment we have explained this Europeanisation sector by sector. In this chapter we pull together several threads, and will consider how integration with the EU during the period 1992-2011 has affected societal development in Norway. On three levels we will consider more closely the impact of the EU-agreements on Norway:

1. Interests and values
2. Balance of Power
3. Democracy

In contrast to other chapters there are no “concluding remarks” here. The entire chapter is in effect concluding remarks, as are chapters 27 and 28. Chapter 26 sums up and evaluates the impact on Norway of the EEA and the other agreements with the EU, while Chapter 27 sums up and evaluates the model of integration. And Chapter 28 provides a short assessment of the “way forward”. As part of this it will analyse whether this model of integration is robust or vulnerable and it will offer some recommendations for how it can be improved within the parameters of the current system.

The Committee has agreed to the chapters unanimously, but where there are differing views, this is identified in the relevant sub-chapters. This is particularly the case in parts of Chapter 26.2, and in 26.3.6. There are also divergent opinions in 26.4.6.

26.2 The Significance of the agreements with the EU for Norwegian interests and values

26.2.1 Introduction

The reason that Norway has entered into the EEA, Schengen and the other agreements with the EU is that the Storting and the Government believe that this will lead to positive, economic and social results. Through this integration with the European project Norway would be in a better position to develop industry, strengthen employment, secure welfare, protect the environment, fight cross border crime, secure foreign policy interests, etc. To what extent has this occurred? What is the outcome of integration with the EU for Norway, and how has this corresponded with or affected Norwegian interests and values.

There are many methodological challenges in assessing the impact on Norway of its agreements with the EU, and this has been a recurrent theme throughout this study. One difficulty is to isolate the effects of integration with the EU from other regional, national and global developments. Another challenge is that it is difficult to see how Norway’s relationship with the EU would have developed if without the EEA and the other agreements. These methodological challenges manifest themselves in the chapters describing developments in particular sectors, and also are relevant to the overall assessments presented in the following chapters. Notwithstanding these challenges, the central characteristics can be assessed from an academic perspective.

To be able to judge whether the agreements with the EU have been advantageous for Norway, one first has to ask the question - what is meant by “Norwegian interests and values”? There are few matters that are more discussed in political science than the proposition that there are neutral, observable national interests. This can be criticised from several perspectives, but the most common objection is that different groups in society have different interests and diverse ideas about what sort of policies should be followed. A related objection is that practically, politics is full of divergent interest – situations where one value or interest is opposed to another, and each policy decision involves a divergence from these. A democratic form of government consists of institutional procedures to resolve such tensions and conflicts, by letting the elected parliamentary majority decide what the national interests are, and mandating the government of the day to attend to them. In addressing “Norwegian interests and values” the Committee will therefore consider the interests whom the currently sitting parliamentary majority believes are important for Norway, and which the currently sitting government seeks to attend to. In terms of European policy this is normally quite easy to identify.

Following is an evaluation of the consequences that the agreements with the EU have had for four issues: economic development, the Norwegian welfare state, primary industries and natural resources, as well as internal and external security. Within each of these areas a relatively large majority in the Storting has agreed on what the basic national interest and values were. At the same time, it is clear that there are differences of interest across diverse societal groups, such as producers and consumers, and between different values and goals, such as exporting oil and managing climate change. Below, we focus on the main trends throughout the period, whilst acknowledging that these are generalisations.

26.2.2 Economic Developments

The EEA Agreement is first and foremost an agreement on economic, trade and employment issues. A central question is therefore how the agreement has contributed to economic development during the period 1992-2012. Examination of this in this study yields a rather clear and unambiguous answer. Norway’s participation in the EU’s Internal Market through the EEA Agreement has had a positive effect both on cross-border economic activity (trade, investment, labour migration), and on national economic regulation and industrial policy. Throughout its almost 20 years, the agreement has contributed to economic growth, increased employment and increased consumer purchasing power. Measured against the direct and indirect economic benefits of the EEA agreement, its costs are relatively limited.

The EEA Agreement has affected the Norwegian economy in two ways. Firstly, for the past two decades it has provided a framework for most cross-border activity in and out of Norway. This includes trade in goods and services, but just as importantly the right of establishment for companies, investment, and movement of workers. In all of these areas, Norway is an integrated part of the EU’s internal market, which means that most restrictions on economic cross-border activity are abolished, and that there are common rules and qualifications that facilitate trade. Secondly, EU/EEA law has been very important for the development of Norway’s internal political and legal framework, for employment and for national economic and industrial activity over the past 20 years. This includes requirements and standards for the

conduct of economic activity, and important parameters for industrial policy, such as the rules on competition, state aid and public procurement. In general, the EEA Agreement has contributed to a comprehensive modernisation of the Norwegian economy, and with that the promotion of competitiveness and high value-added economic activity.

During the almost 20 years that have passed since the EEA Agreement was signed, it has provided Norwegian industry stable and predictable access to the EU's Internal Market, which has both direct and indirect benefits. The framework of agreements has reduced uncertainty. Norway is a small and open economy, which more than most others is dependent on external trade. Without parallel, the most significant flows of foreign trade are with EU member states, which receive about 80 percent of Norwegian exports, and supply more than 60 percent of Norwegian imports. Even though trade with other parts of the world, such as China, has increased in recent years, it still comprises only a small share of Norway's total exports and imports.

A significant part of industrial activity in Norway is owned by foreign interests, which to a considerable extent come from the EU. Approximately 20 percent of the employees in Norwegian industry work today in companies that are owned by operators from the EU, and they represent nearly 25 percent of value-creation in the Norwegian economy. Conversely, about two thirds of Norwegian direct investment abroad goes to the EU, which means that a significant share of value-creation in Norwegian companies occurs through production in foreign companies. About half of the State's Pension Fund's investments overseas are placed in Europe.

The EEA Agreement has further contributed to securing access to an essential source of labour for Norwegian industry and the public sector. Immigration of workers has been particularly high after the eastern enlargement of the EU/EEA in 2004, and Norway is amongst the Western European countries that, in proportion to its size, have received the most workers from Eastern Europe. This has contributed to meeting the demand for labour, increased capacity and to some extent affected wage levels in a way that has largely increased the profitability and competitiveness of Norwegian industry. Total employment has increased and consequently has contributed to financing the welfare state.

The Norwegian economy has furthermore enjoyed the benefit of the general harmonisation of rules due to the EEA. Through the EEA Agreement Norway participates in the on-going work in the EU to harmonise requirements for products, services, qualifications etc. that serve to remove barriers to cross-border economic activity, both for producers and consumers. Harmonisation through the EEA also is beneficial in that one can incorporate comprehensive, detailed and complicated regulations of a technical nature from the EU, which are formulated through common procedures involving a large number of actors – and which for individual states would be difficult, expensive and inefficient to develop on their own.

The years from 1992 to 2011 represent a very positive period for the Norwegian economy, with strong development of GNP, employment and value creation. The EEA Agreement has contributed to this, together with several other factors, of which are the development of Norwegian oil and gas exports, high prices for raw materials, increased global trade,

technology development, and other changes that have been positive for the Norwegian economy. The structural change that occurred in the Norwegian economy during the 1980s and 1990s has also contributed to economic growth. This commenced before the EEA Agreement, but the agreement has influenced and accelerated the changes, and as a consequence created a stable and predictable framework for production, investment and trade.

At the same time, for certain areas it can be stated that the effects of participating in the Internal Market have not been as great for Norway as for the EU member states. Trade has increased more during the period 1992 to 2011 between the EU's member states than with the EFTA States; the level of foreign investment is lower in Norway than in EU states; and price levels for Norwegian consumers have not converged towards price levels in the EU to the same extent as Sweden or Germany, for example. Again, this can be attributed to a number of factors. But it can signify that even though Norway strictly speaking is fully integrated in the EU's Internal Market, there may be some uncertainty about what the EEA Agreement means. This can affect the flow of direct investment to Norway, for instance.

Generally, there has been a high degree of consensus between the EU and Norway on the basic views of markets and economy throughout the period. In particular areas, such as oil and gas, there are naturally opposing interests but also interdependencies. These will always exist between buyers and sellers in a market, and this is no great peculiarity in relation to other European countries, which also have their special export industries. In general, Norway and the EU both have emphasized the development of a market economy with a strong social dimension.

A key area in which the EEA Agreement has had an impact is economic policy. Through the agreement, Norway has adopted the EU's regulatory framework for state aid, public procurement and competition policy, which aim to create a level playing-field within the internal market. The rules oblige Norway to carry out a market-oriented policy, which limits the possibility for national restrictions. The goal is first and foremost to get the market to function as economically efficiently as possible, and so to create value and welfare. Secondly, the rules should promote integration in Europe by making it easier for companies to compete in other countries. Thirdly, they should secure the consumer interest, by stimulating increased competition and lower prices. In addition, the rules serve other objectives, such as saving public resources and fighting corruption.

Together, the EEA rules on the four freedoms, state aid, public procurement and competition contributed to a significant industrial policy change in Norway early in the 1990s, which later continued throughout the period. Nevertheless, the development of a market-liberal industrial policy regime had started in Norway long before 1992, and was equally the result of internal political processes as well as other international influences. Already before the EEA Agreement, Norwegian governments had taken a host of initiatives to abolish state aid provisions, open up closed sectors such as energy and telecommunications, and develop a modern competition policy. Integration with the EU through the EEA was part and parcel of the fundamental economic policy thinking of a broad majority twenty years ago, as it still is today. All Norwegian Governments during the period 1992 to 2011 have followed the same

basic economic policy within the framework of the EU/EEA cooperation, with some variation, but without any dramatic changes.

Adaptation to the EU through the EEA Agreement has in the main had positive consequences for Norwegian employment. Generally the years from 1994-2011 have been a good period, with increased employment, lower unemployment, strong real salary increases and improved employment conditions. The EEA Agreement is particularly associated with regulation of the employment market, and to the increased immigration of workers, which has been particularly significant since 2004. As with other areas, the EEA Agreement's effect cannot be isolated from other important developments during the period. Unemployment and employment is also influenced by national politics, and institutional and economic conditions.

At the beginning of the 1990s unemployment in Norway was over 6 percent, which was a tripling of levels in the 1980s. The entry into force of the EEA agreement occurred together with a halving of unemployment during the period 1993-2003, followed by stabilisation at a low level throughout the 2000s. Furthermore, the number of employees in Norway has in total increased by about half a million, or 25 percent, during the period 1994 to 2011.

The enlargement of the EU (and EEA) to include the new democracies in Central and Eastern Europe has contributed to the strengthening of employment in Norway. This has happened as a direct consequence of the EEA Agreement. With strong demand for labour and high wage levels, Norway is among the countries in Europe that in relative terms has had the highest worker immigration from the new EU countries since 2004. The Eastern European labour force is today an integrated and necessary part of the Norwegian economy. In recent years about 200,000 employees from the EU/EEA area, of which half are from the new member states, have contributed to the further development of the Norwegian economy. This equates to about 8 percent of the total labour force.

The integration of the Norwegian employment market into the single market has generally happened without negative consequences for wage and employment conditions in Norway. On the contrary, real wage developments in Norway during the period 1992-2011 have been very strong in comparison with its surroundings. Moreover, employment conditions and the working environment have improved. That said, worker immigration since 2004 has contributed to increased conflict levels in employment policy. Aside from the advantages for the Norwegian economy, Labour immigration has also led to pressure on wage levels and social rights in particular sectors, created new divisions on employment policy and led to political debates and conflicts which have raised questions about the limits of solidarity.

Formally speaking, there is no membership fee for the EEA Agreement, but Norway contributes financially to the EU and its member states. Contributions generally fall into five categories: contributions to economic and social cohesion in the EU through the EEA funds (Financial Mechanism), contributions for Norwegian participation in common European programmes (comprising research, education, innovation, regional cooperation etc.), funding for Norwegian participation in EU agencies, costs of management of EFTA and the EEA institutions, together with national administrative expenditures associated with the administration and follow up of Norway's agreements with the EU. In total this amounted to

about 5 billion kroner in 2010, and if one deducts the amount that comes back to Norway through programme participation, it amounts to a net 3.4 billion kroner per year.

Over time, the extent of Norway's contribution to the EU/EEA has increased considerably, especially after 2004. There are several reasons for this. The enlargement eastwards brought with it a need for large transfers in order to even out the economic and social disparities in Europe- After pressure from the EU, Norway accepted to contribute to this, in the form of a considerable increase in EEA funding. Furthermore, EU cooperation has grown over time, and Norway has actively wished to participate in the many new programmes and agencies that have been established. Norway's increasing wealth in comparison to the rest of Europe during the period has also resulted in cost increases, because most of the contributions to common EU projects are calculated on the basis of GDP per Capita. Compared to the contributions which the richest EU States make, Norway's contribution measured as a proportion of GDP per capita is however still low. But above all Norway's direct cooperation costs are small in comparison with the advantages obtained through the agreement. The economic benefits of cross-border trade, investment and worker migration, modernisation of Norwegian industry, increases in employment and advantages for Norwegian consumers exceed by a long way the financial costs of the agreement.

The Committee's minority, members Hansen Bundt, Dag Seierstad and Stubholt do not support this positive overall view of the EEA Agreement as presented in this section of the chapter.

The Committee's minority, Dag Seierstad, maintains that the presentation at the beginning of 26.2.2 is not in accordance with the far more conditional conclusions in Chapters 14, 15, and 16. This *member* is of the opinion that there is no academic justification to say that the EEA Agreement has definitely had a positive economic impact. The EEA Agreement has given the Norwegian economy stable and predictable access to the EU's Internal Market, but so did the trade agreement of 1973 for most of Norway's major export industries. It is not true that the development of common technical standards is attributable to the EU or membership in the EU or EEA. In Europe, cooperation to achieve common technical standards had taken place in common European standard-setting organisations such as CEN, CENELEC (electrical equipment) and ETSI (telecoms), established long before the EU and EEA's Internal Market came about. Norway has participated in all of these organisations on an equal basis with other European countries within and outside of the EU long before the EEA existed. There is no evidence to say that there is a slower pace of development of trade with the EU. Moreover, the level of foreign investment in the EU is associated with the fact that Norway is faced with some barriers that EU countries do not face. There are other factors of much greater significance affecting trade – namely what Norway must sell and what Norway must buy. Concerning investment - Norway is further away from markets where products are sold.

26.2.3 The Social Model

In the Norwegian Europe-Debate at the beginning of the 1990s a central question was how association with the EU would affect the Norwegian social model, and many claimed that this

would threaten the welfare state, the labour market model, regional policy, consumer protection, equality, environmental protection and other important values and interests.

After nearly 20 years of active Norwegian adaptation to the EU through the EEA and other agreements it can be stated that the Norwegian social model has come through the period 1992-2012 quite well. The erosion of common values and interests which many feared has not occurred. There is little evidence that this will happen any time soon, and if it did it would doubtfully happen as a consequence of the EU/EEA. The socio-economic advantages of cooperation with the EU have contributed to maintaining and developing central aspects of the social model. The publicly financed welfare state has benefited from the positive economic development, the social partners have enjoyed the ability to share profits from increased value creation and employment, and the work-force of the EU's new member-states has contributed to regions in Norway being able to develop key industries.

Adaptation to the EU through the EEA has in a number of areas imposed limits on the choice of measures Norwegian authorities can use to promote domestic values and interests. First and foremost it has become more difficult to favour national and local citizens and businesses at the cost of other EU/EEA countries. Moreover, EU/EEA law has taken the lead on a range of social policy issues. Generally however, latitude for central and local authorities in pursuing their policy objectives has been considerable, even if every now and again they have had to change or adjust the instruments they use to achieve these. Furthermore, the EEA Agreement has in several areas introduced more ambitious initiatives than existed earlier, such as in the areas of participation, patient rights, prohibitions of discrimination, and environmental impact assessments.

Welfare policy is an area that in the first instance is a matter of national competence within the EU, where member states themselves formulate their goals, regimes and rules. An important exception is the EU's social dimension which consists of common policies and legislation equality, working conditions, employee rights, social dialogue, and welfare rights for citizens from other EU/EEA countries, as well as health, environment and safety requirements for products and services. Another important exception is that national welfare systems must generally be formulated to be compatible with the Internal Market's founding principles, which primarily means that people from other EU/EEA countries cannot be discriminated against.

Norway's conformity with these principles of welfare policy through the EEA Agreement has not limited the pursuit of an ambitious national welfare policy, with continued focus on a comprehensive public welfare system, limited social disparity and high levels of gender equality in the workplace and the social system. In general the EU/EEA so far has not had a great impact on Norwegian welfare policy. To the extent that impact is discussed, it is first and foremost that the socio-economically positive aspects of the cooperation have contributed to maintaining and further developing the welfare state. Moreover, Norwegian citizens in certain areas have received increased welfare rights as a result of the EU/EEA law. On the other hand, increased worker immigration has led to the airing of debates on the formulation of some of the welfare state's provisions.

The main tenets of Norwegian employment policy have changed little as a consequence of adaptation to the EU through the EEA. The basic principles of collective bargaining, wage establishment, and party-cooperation have continued, as are the main principles of employment policy. With entry into the EEA, many assumed that employment law and workers' rights were stricter in Norway than the EU. But in several areas the EU's minimum standards have offered better rights to Norwegian employees, including equality, access to decision-making, and protection when there are changes in corporate ownership. Despite increased competition and turnover the Norwegian welfare model has weathered well during the nearly 20 years of the EEA. This, notwithstanding the generalisation of wage rate determinations and new control measures that have been implemented in a number of sectors in order to lessen pressure on wages and labour conditions following immigration from new lower cost EU member states. For social partners within the workplace, access to the EU's social dialogue has opened up new arenas for cooperation, coordination, and representation.

Health and social services are important elements of the welfare state that have traditionally been managed at the national level, but where EU activity in recent years has had increasing influence, both directly and indirectly. Through the EEA Agreement Norway plays its part in this. Health policy in the EU encompasses today questions relating to food safety, social security coordination, patient rights regarding cross-border health services, mutual recognition of health professionals and recognition and control of medicines. Further, there are a range of EU programs and several new EU agencies working on health and social policy matters. Norway participates to a large extent in this cooperation, even if the organisation of the health service in Norway (as in the EU) continues to be a national responsibility. Norwegian health authorities consider this cooperation to be positive, and there seems to be a high degree of compatibility between Norwegian health policy and the health policies that are being developed in the EU.

In the field of alcohol policy there was considerable concern in the 1990s in Norway and the Nordic region that integration with the EU through the EEA would undermine a traditionally restrictive alcohol policy. In this area there have also been a number of legal disputes, especially during the first years of the Agreement's existence, and in certain areas the EEA Agreement has forced through changes, such as the abolishment of the import and wholesale market and the ban against alcopops in shops. The heaviest and most important alcohol policy measures are nevertheless in general found to be in compatible with EU/EEA law, including the retail monopoly (Vinmonopolet), the general prohibition of advertising, and the high level of excise duties. The EEA Agreement offers a high degree of flexibility with regard to pursuing a restrictive national alcohol policy, and Norwegian authorities have to a substantial degree made use of this. To the extent that alcohol policy has changed in the last two decades, this can in some part be attributed to other national and social developments, including increased wealth and changes in drinking patterns.

Similarly, in the early 1990s there was concern whether EU/EEA law would negatively impact Norwegian equality and non-discrimination policy. The outcome has turned out to be otherwise. The EEA Agreement has generally not led to weaker rights in Norway, but rather has led to stricter rules. In most areas Norwegian regulation conformed to requirements for

equality in the EEA by a good margin, but in a number of areas integration has led to changes, which in general have strengthened the right to equality and non-discrimination. An example is the introduction of the reversed burden of proof requirement in cases concerning gender-discrimination, strengthening women's legal rights in the work place. Equal treatment of part-time employees and temporary workers has also strengthened many women's rights in a number of sectors. Another evident effect is that Norway has unilaterally conformed with the EU's general rules for non-discrimination, which in practice has led to strengthened protection against age discrimination. The most contentious questions in this area have concerned restrictions that the EU/EEA establishes against radical gender discrimination, over which there are different opinions from an equality perspective.

Norway has traditionally put emphasis on an ambitious regional policy. Via the EEA Agreement Norwegian regional policy has been influenced by EU rules governing the Internal Market, which has created both opportunities and limitations. Moreover, Norwegian regional authorities have participated actively in the Interreg-programmes, and many of them have also pursued an active European policy through their regional offices in Brussels. Norway has not participated in the part of the EU's regional policy that involves the structural funds, but has instead made its contribution to leveling out economic and social disparity in Europe through the EEA Grants.

The EEA Agreement's horizontal rules have turned out to have great impact on Norwegian regional policy during the period 1994-2011. The most visible and politically challenging aspect of this concerns the rules on state aid, which apply limits to public support for private enterprises in the regions and municipalities. The rules also limit the municipalities' own ability to support local industry through capital injections, subsidies, guaranties, the favourable sale of land and other possibilities to support local industry. This is an area where the EU's market-liberal policy has come into conflict with traditional funding for Norwegian local authorities, and throughout the years there have occurred several disputed issues. Foremost amongst which is the differentiated employer's tax. These tensions however do not concern regional policy goals themselves, with which Norway can continue. Even with the restrictions imposed by EU/EEA law, the latitude within the EEA Agreement regarding regional and local support continues to be considerable. The differentiated employer's tax also continues, and the total Norwegian level of support to the regions has not diminished during the period 1994-2011.

EEA rules stipulating when public procurements must be advertised for competitive tender are of great significance for Norwegian local authorities. Conformity with these rules must have had considerable benefits for central and local public administrations, leading to savings of public expenditure, better procurement procedures, and increased economic activity across municipal boundaries. Nevertheless, the rules are considered to be much too detailed, complicated, and time consuming, engendering criticism from smaller municipalities with limited administrative capacity. Some of the resistance can be attributed to the fact that Norway has established thresholds that are much lower than those required by the EEA Agreement.

From a broader perspective, the EEA Agreement and the EU's regional policy have clearly been beneficial for Norwegian regional policy. Norway's participation in the Internal Market has been positive for industry in the regions, and industries that are strong in these parts of the country have also enjoyed the benefits of free movement of workers since 2004. Furthermore, those who are active in Norwegian regional policy have been inspired by the regionalisation of Europe. Via the EEA, Norwegian regions have attained an international dimension and many local authorities have established offices in Brussels and participate in the EUs cooperative program (Interreg). Norwegian policy has also been inspired by the EUs more integrated perspective on regional development, having an increased emphasis on knowledge and innovation.

Environmental protection is another important area where there is a relatively high degree of political agreement in Norway on common values and interests, but where there were divided opinions early in the 1990s on what the consequences of integration with the EU through the EEA would be. Whilst some saw the EEA Agreement as an opportunity for Norwegian cooperation and influence on questions which demand cross-border solutions, others were worried that the agreement would constrain Norway's ability to pursue an ambitious environmental policy. Throughout the period 1992-2011 the environment has developed into one of the most important policy areas in the EU, attracting much political attention and prioritisation. Internally the EU has developed strict environmental regulations on a range of issues, and internationally it has over the last decade assumed a global leadership role on many environmental issues, and not least on climate policy.

For Norway this implies that much of the original unease over the possibility that EU/EEA law would limit Norwegian environmental policy has turned out to be unfounded. More likely, the implementation of increasingly strict EU environmental regulations through the EEA Agreement has led to a more ambitious environmental policy during the period 1992-2011 than the political majority in Norway likely would have been able to agree on if they had not been obliged to follow the EU. This is especially true for regulations on air quality, water quality, water management, waste regulation, and environmental impact assessments. In contrast, there are few examples of when EU/EEA law has limited environmental initiatives that a political majority in Norway has wished to implement.

In the EU, as in Norway, there has been a continuous need to strike a political balance between environmental considerations and other legitimate societal interests. The balance the EU has achieved seems in general to accord with Norwegian political priorities, even though there can be individual areas where alternately Norwegian and EU environmental policies proceed each other. Broad-based Norwegian support for implementation of the EU's environmental regulations and policies should also be viewed in light of the fact that this is an area which to a great extent relies on binding cross-border cooperation, and where most of the problems can be resolved more effectively in collaboration with each other, relative to what individual countries can achieve on its own.

Climate policy can be viewed in the EU as an offshoot of the overall environmental policy, which in later years has received increasing levels of attention. When the EEA Agreement

was established early in the 1990s there was no climate policy in the EU, and as the EU developed rules in the area there was no assumption that they would be considered EEA-relevant. This has occurred however, and today Norway has adopted the EU's climate regulations implemented them into Norwegian law.

Compared with the EU's general environmental policy, climate policy is an area of higher tension in Norwegian - EU relations. This is first and foremost because of a national Norwegian conflict of objectives, involving the desire to promote the oil and gas industry at the same time as tackling climate change. The EU has taken the lead in international negotiations with demands for more ambitious climate agreements, and has adopted a comprehensive climate policy internally. Norway shares these goals but has had a greater challenge in simply adopting the legislation. The fact that a very large proportion of Norwegian energy consumption already comes from renewable sources (hydro-power) also makes it harder for Norway to meet the EU's reduction targets than it is for states with a greater dependence on fossil fuels. Up until now however, the country has managed to exploit the considerable room for manoeuvre that exists within the EU's climate regulations so that they have not exacted demands that oppose the priorities of the political majority in Norway.

The Committee's minority, member Dag Seierstad, cannot share the positive overall picture of the EEA Agreement's impact that is presented in this sub-chapter, and points to his remarks in the chapters on the economic consequences (chapters 14 and 15), on employment (chapter 16), on regional policy (chapter 18) on environment and climate policy (chapter 19), on health and alcohol policy (chapter 20), and on the health effects of food policy (chapter 21).

26.2.4 Primary Industries and Energy Resources

In the Norwegian European debate there are certain sectors and national interests which a majority have been concerned to keep outside a potential cooperation with the EU, and where national control has been viewed as especially important.

This is the case primarily for primary industries - fisheries and agriculture. This goes back a long way to Norway's first encounter with European integration during the 1950s, when Norway desired trade in industrial goods but not agricultural products, through to the prominence of fish and agriculture in the debates on membership in 1972 and 1994, and then on to the EEA agreement, which encompasses almost all sectors of the Internal Market, excepting free trade in fish and agriculture.

The reason that one wanted to exclude agriculture was primarily because Norwegian agriculture, due to climate and geography is not competitive with agriculture in many other European countries and requires special protection and support. The reason that Norway wanted to exclude fish is first and foremost to retain control of national fisheries. Fisheries and agriculture are traditional industries of cultural significance, essential to many regions and a having a central place in Norwegian national identity, even if a diminishing proportion of the population is employed in these industries.

Secondly, it has been considered important to retain national control over natural resources, which (fisheries aside) are energy resources - hydropower, oil and gas. Hydropower for the last hundred years has been a particularly important resource for the Norwegian economy and has in modern times had been a source of clean and renewable energy. Norway is the country in the world that gets most of its energy from hydropower. Furthermore, oil and then gas since the end of the 1960s have grown to become Norway's dominant industries and export products, which are of vital importance nationally. In contrast to agriculture and fisheries there is no special exemption for energy resources in the EEA agreement. When the EEA entered into force the EU still had not developed a common energy policy. But in Norwegian parliamentary documents from the time, there was great emphasis put on underlining that the agreement would not have any consequences for the governance of Norwegian national energy resources.

In contrast to what one envisaged in the early 1990s, integration with the EU through the EEA Agreement has influenced Norwegian energy policy, the fisheries sector and agriculture to a considerable extent, but in a manner that has had support from a majority in Parliament, and which in no serious way has challenged national interests. Agriculture and fish are affected through the rules on food safety and veterinary conditions, and have also benefited from labour immigration after 2004. Energy has developed into an important political and legal area in the EU, which is covered by the EEA agreement, but without having had negative consequences for Norwegian control of resources.

Many of the tensions and conflicts which exist in these areas today are not between Norway and the EU, but between diverse interests and values in Norwegian society. Norwegian hydropower policy has for a long time been at odds with environmental interests and there are strong tensions between the production of oil and gas, and climate policy. Norwegian fisheries policy continues to be dominated by pelagic fishery interests, although an increasing share of the industry relies on farmed fish that would have benefited from free access to the EU's Internal Market. Norwegian agricultural policy is today formulated on the basis of the producers' interest, while the result for the consumer is higher prices and less choice than in most other European countries. Developments in the EU within the areas of fish, agriculture and energy have also diminished the differences between Norway and the EU.

From 1992- 2011 energy has become an EEA policy issue in its own right that affects Norwegian energy policy. The general EU rules are developed and stipulated in a range of directives on the energy sector, on for example the award of concessions in the petroleum sector and market rules for the sale of gas and electricity. All of these rules have been deemed to be EEA relevant. Even if there is considerable room for manoeuvre at the national level, it is EU/EEA law that sets the parameters that directly or indirectly affect the Norwegian energy sector and energy policy. To certain extent integration with the EU has led to reforms that have liberalised parts of the Norwegian energy sector and made it more market orientated. The EU's liberalisation of the Energy market in Europe has however had limited impact, because Norway already had gone ahead with its Energy Law of 1990, and for most of the

period 1992-2011 it had been in a pioneer position with regard to the opening of the energy market.

The most sensitive question with regard to energy policy is administration of the actual resources and the way they are extracted. It is a fundamental principle in EU/EEA law that it will not affect Member States' rules on ownership. This means that the public ownership of oil and gas resources on the continental shelf, together with state and municipal ownership of the majority of hydro-power (about 90%) is not challenged by the EEA Agreement. On the other hand, ownership cannot be executed or regulated in a way that contravenes the EU/EEA's general principles. When this surfaced during the Right of Reversion case from 2000 to 2007 it surprised many. But even though the Norwegian authorities lost the case in the EFTA Court, within the boundaries of the EU/EEA rules one could solve this in a way that strengthened public ownership. Regarding oil and gas, the EU/EEA rules have not challenged public ownership, even though they partly determine the rules for concession policy and for further transport and sale.

Energy policy is an area where Norway has had a certain impact with regard to the EU, by conducting an active policy with clear goals and because of being an important supplier of gas to Europe. That said it is an area where Norwegian authorities have exploited the latitude that EU/EEA legislation provides. In this way, Norway has managed to preserve its interests, even if sometimes using different tools than previously. The result is that the national goals in Norwegian energy policy are generally pursued within the framework of the EEA.

The agreements with the EU have had consequences for agriculture and fisheries in Norway both through the decision in 1992 to leave out parts of these industries from the EEA agreement and through the EU/EEA rules which nevertheless have turned out to have consequence.

Even if there are many common characteristics for fisheries and agriculture as traditional primary industries the constellation of interests in European policy is nevertheless different. In the area of agriculture there are substantial imports to Norway from the EU and little in the other direction. Norwegian agricultural interests with respect to the EU are as a result generally defensive in nature, and related to the protection of the industry, limiting imports, and maintaining high subsidies in order to secure continued agriculture in Norway. In the fisheries sector Norway also has defensive interests in order to keep national control of resources and management policy. But here, Norway has, as a large exporter of fish to the EU, clearly offensive interests regarding market access.

Whilst the exception from the EEA Agreement obviously has been advantageous for Norwegian agriculture during the period 1992-2011, the consequences of the exceptions for Norwegian fisheries are not as obviously positive. Growth of the aquaculture sector has led to the development of a strong export orientated industry, which could have benefited from free market access to the EU's internal market. Instead, Norwegian salmon exports have had to tolerate 14 years of subsidy complaints and trade sanctions from the EU. Moreover, the

concern that the EU would have an impact on Norwegian resource management has diminished throughout the period 1992 to 2011 linked to the consolidation of the Law of the Sea regime, and also because the principle of relative stability of fisheries quotas has won out in EU fisheries policy. The distance between Norway and the EU's management of natural resources has shortened, even if there are still differences.

In a broader perspective it is clear that the exception in the EEA Agreement of agriculture sector has benefited Norwegian producers more than consumers. The protection from competition and structural reform is also expensive seen from a socio-economic perspective. On the other hand, a reform of Norwegian agricultural policy in order to reduce price levels would make it more difficult to achieve other key Norwegian policy objectives, such as decentralised habitation, living in rural areas, and small scale production.

Even if Norway does not participate in the EU's Common Agricultural and Fisheries Policies, these sectors are heavily influenced by the relationship with the EU. This occurs first and foremost through rules on food safety and veterinary conditions, which were incorporated into the EEA in 1998, and which after a period have developed to be a very comprehensive and important part of the relationship, that regulate in detail production in both sectors. The rules have contributed to increased food safety and strengthened the protection of animals. Furthermore, there are within the parameters of the EEA continual processes for entering into new agreements on the gradual liberalisation of trade. These have come some way, even though the EU is disappointed with progress on trade in agricultural products. Finally, the EEA's general rules governing the four freedoms have been important for both sectors. This applies in particular to the rules on free movement of workers which, especially after 2004, enabled the demand for labour to be met so as to contribute to lower price levels - with positive consequences for capacity and competitiveness.

The Committee's minority, Dag Seierstad, disagrees on a number of points in the presentation of this section, and refers to his remarks in Chapters 19 (energy) and 21 (food, agriculture and fish). For example, there is no research that shows that the EEA-rules have led to increased food safety.

26.2.5 Internal and External Security

Like all states, Norway aims to secure internal and external national security. The primary means to manage internal security is justice policy, under which is management of the police, courts, border controls, immigration etc. External security is managed through foreign, security and defence policy. These are areas that were not included in the EEA Agreement when it was established in 1990-91 and these are also areas where the EU in those times had only to limited extent developed cooperation. Since then the EU has gradually developed more comprehensive cooperation in these areas. Norwegian authorities have deemed it to be in Norway's interest to engage in these elements. On Norwegian initiative Norway and the EU have entered into a range of agreements and closer cooperation on border control; police cooperation; immigration; and foreign, security and defence policy.

Justice policy is in many respects the part of Norway's cooperation with the EU that has grown the fastest and most dynamically during the past 10-12 years. This is a process that in general has been pursued on Norwegian initiative. On the whole Norway appears to be a clear supporter of increased European cooperation on police matters, border control and immigration. The largest and most important agreement is Schengen from 1999, which connects Norway to the EU's rules on freedom of travel within the Schengen area and common external border-controls with third countries. In addition Norway has entered into a range of agreements on police cooperation, mutual assistance in criminal cases, a common European arrest warrant, mutual access to police databases, processing of asylum applications (Dublin) etc.

While justice policy continues to be a national competence for Norway as for other EU states, the agreements with the EU have nevertheless had great consequence for Norwegian law and policy. This applies especially to border control, where Norway through the Schengen Agreement has completely adopted the EU's rules. This is also true for police and prosecution cooperation in cases concerning cross-border crime. And finally, it applies to immigration policy, where the Dublin Agreement has great practical significance for the management of asylum seekers to Norway. Norway has implemented the EU's Return Directive on the Repatriation of Illegal Immigrants.

From an internal political perspective there has been broad political consensus on Norway's integration with the EU's justice policy. When the Schengen Agreement was negotiated during 1996-1999 there was an extensive debate, and the agreement was adopted against the votes of two of the coalition parties. The Dublin Agreement was also debated when it was adopted in 2001. But since then there has been little disagreement about that part of Norway's European policy, and since 2001 there has not been a single incidence of dissent in the Parliament, despite the fact that a number of issues have been processed involving further expansion of the cooperation. In recent years the government has expressed clear ambitions to connect more closely to the EU's justice policy, and this has practically received universal political support in the Parliament. One of the reasons for this seems to be that many understand that justice policy is a field where European cooperation is necessary in order to meet common challenges.

The EU's Foreign, Security and Defence policy cooperation has also gradually intensified and expanded in the period between 1992 and 2011. The EU's ambitions and initiatives in this area took Norway somewhat by surprise. Many saw the development of a common European foreign and security policy as a possible threat to other forms of cooperation, and not least to Europe and Norway's close security policy links to the USA through NATO. Norwegian authorities also saw that the possibilities for participation and influence in western foreign- and security-policy cooperation could be diminished.

Norway has throughout the entire period since 1992 sought agreements and dialogue with the EU on foreign and security policy. In the EEA Agreement a foreign policy dialogue was established that amongst other things makes it possible for Norway to associate itself with the EU's foreign policy declarations and sanctions towards third countries. At the beginning of

the 2000s Norway also was included, together with NATO countries that were not EU Member States and EU candidate countries, in a security policy dialogue with the EU. Following the establishment of the EEAS it is not clear whether this dialogue will continue. After some difficulties, Norway as the only third country has achieved an association with the European Defence Agency (EDA). Norway also has a framework agreement with the EU that enables contribution to the EU's crisis management operations, as well as contributing forces to the EU's task forces. These agreements are often described as inadequate by Norwegian government authorities. Norway is free to pursue its own foreign and security policy, but has no possibility to influence the EU's decision-processes in the matter.

The agreements with the EU have not changed Norway's fundamental foreign and security policy. But they have affected the conditions for the formulation of Norwegian policy. Norway supports officially the development of a common security and defence policy in the EU. It is emphasized that Norway and the EU are very close to each other regarding foreign policy, and that a more coordinated and powerful EU in the foreign policy arena in many contexts is positive for Norway. On the other hand, there are individual areas where Norway and the EU do not necessarily have coinciding foreign policy interests, such as on the Far North.

In justice policy, as in foreign, security and defence policy Norway's supplementary agreements with the EU are the manifestation of Norwegian national interests in an increasingly integrated Europe. Each individual agreement in this way can be viewed as a positive development for Norway, which the authorities perceive to be more beneficial than exclusion. On the other hand it can be asked whether a more comprehensive and consistent framework for Norway's association with the EU in these areas would have made it easier to safeguard Norwegian interests.

26.2.6 Conclusion

After almost two decades of close Norwegian association with the EU through the EEA, Schengen and other agreements the overall impression is clearly positive. The agreements with the EU have to a large extent preserved important Norwegian values and material interests. They have contributed to a dynamic socio-economic development, enabled further development of the Norwegian societal model, made possible continued control of natural resources and primary industries, and they have to some extent integrated Norway with the EU's cooperation on internal and external security.

There have been relatively few tensions and conflicts between Norway and the EU. This can partly be explained by the fact that Norway has conducted a determined interest-based integration-strategy with the EU. Since the EEA Agreement in 1992 and beyond Norwegian administrations have expanded and deepened the cooperation with the EU in order to promote Norwegian values and interests. This is however not the whole explanation. Cooperation with the EU has largely developed in ways that have been outside of Norway's control politically, with only limited opportunity to influence these developments; and not least concerning on-going developments within the framework of the EEA and Schengen - via new laws, policies and practices.

That the agreements have anyway promoted Norwegian interests and given cause to few conflicts is evidence therefore that Norway has values, political and economic interests and basic attitudes that in key areas accord with the basic principles of the EU and a majority of EU states. The open market-economy model in the EU/EEA, with a considerable social dimension and sufficient national latitude – enshrined in the EU treaty as the concept ‘social market economy’ – accords in many ways with developments in Norway. A broad political majority in Norway ascribes to this, especially since the 1980s. It is thus not coincidental that the EU generally views Norway as a like-minded partner.

The development of Norway’s agreements with the EU indicate that the contracting parties have developed mutual interests and common views regarding the need for binding common rules and initiatives to tackle cross-border challenges. Together with the common external challenges, integration in the Internal Market has contributed to a perception that EFTA and the EU states are more co-dependent today than they were in the 1990s.

The EU has developed into something completely different today than when the EEA Agreement was negotiated in 1990-91, and it is largely a development that a broad majority of political parties and politicians have supported, including integration between Eastern and Western Europe, a strengthened social dimension, and increased weight on energy security, environment, climate, human rights, aid, research and development, regional policy, police cooperation, immigration cooperation and much more. An expression of the fact that integration in the EU, EEA and associated agreements has been in accordance with important Norwegian interests and values is that Norway has actively worked to integrate itself with EU projects in an increasing number of areas.

Of the larger conflicts that have occurred within Norway’s Europe-policy following the referendum, a number are matters of left-right politics. The political left has expressed resistance to new EU/EEA rules that they consider to be politically problematic, but that are supported by a political majority in the center and on the right. But there are also examples of the opposite – that EU/EEA law has strengthened traditional values of the left, such as workers’ rights in corporate takeovers, non-discrimination and the environment. On such matters there is less of a conflict between Norway and the EU, and more likely a conflict of views nationally in Norway on the merits of the prospective EU/EEA rules.

Occasionally during the period 1994-2011 there has been conflict between the EU/EEA rules and Norwegian values and interests which a broad (but not unified) political majority have wished to preserve. This is most commonly associated with maintaining longstanding restrictions, such as the strict alcohol policy, gambling rules, right of reversion, and the differentiated employment tax. In most of these cases the result has been that Norway has been able to keep its restrictions. The Gas Negotiation Committee (GFU) is a rare case where Norway had to give up a national provision that a broad political majority wished to retain. But here too Norway eventually found solutions which enabled the preservation of the national interest.

Other tensions between the EU and Norway must be viewed as part of the mutual nature of the agreements, where both parties must give and take, as with ordinary differences of interest

between a buyer and a seller. While Norway is a large exporter of oil, gas and fish, nearly all EU countries are net importers. As a producer and exporter Norway's economic and political interests are not always the same as EU interests that consume and import. For example, it is in the Norwegian interest to optimize the exploitation of energy resources, while it is in the EU's interest to seek low prices and guarantee supply. Such conflicts of interest are part of international trade and can be found between most states.

In conclusion, Norwegian integration with the EU through the EEA, Schengen and other agreements has occurred as part of a larger political and economic modernisation project in Norway. Even if many of the initiatives were introduced before the EEA Agreement, the agreement has contributed to accelerating changes in the Norwegian economy and industry, while regulation of employment and the welfare state has continued. Whilst there is little reason to believe that the development of the Norwegian economy, welfare and security would have been dramatically different without the agreements with the EU, there is much evidence to show that Norway's integration with the EU has contributed to a predictable framework for socio-economic development, the further development of the Norwegian social model, and the preservation of the country's internal and external security in a more open and integrated Europe.

Committee member Dag Seierstad does not agree that the main picture is clearly positive and that association with the EU has promoted the socio-economic development and the Norwegian social model, and points specifically to his remarks in the chapters on the economy and employment (Chapters 14, 15, and 16).

26.3 The Implications of the Agreements for the Balance of Powers

26.3.1 Introduction

European integration affects the balance of power not just amongst nation states and the EU, but also internally in the individual states. Research on "Europeanisation" shows clearly that deepened cooperation at the EU level over time influences the national political systems. This is true for the EU States, and also in certain instances for Norway. This has long been recognised and discussed in the Norwegian debate on Europe. In a report on the distribution of power in Norwegian society from 2003 the implications of the EEA Agreement was addressed in several contexts, amongst which was the perspective "the Diminishment of the Rule of the People".² The analysis was however disputed, and led to a debate about what "democracy" actually is, what the conditions for democracy in international cooperation are, and how integration with the EU actually affects this.

The EU affects national political systems in several different ways. It can be that the EU formally demands change in national rules and institutions so that they are more compatible with laws and guidelines within the EU. It could also be that cooperation in the EU contributes to redistribution of political resources and opportunities between different national actors. Finally it can concern informal adjustments at the national level to established ideas,

norms and practices in the EU concerning how political and economic systems can best be organised.

Experience from member states in the EU shows that a single initiative from the EU seldom has the same consequences in all EU countries. How national power structures are affected depends to a large extent on how the national political structures have been formed and how they function. The will and ability for political and institutional change can vary. Europeanisation therefore seldom leads to full harmonisation with the same consequences in each country, but rather to varying degrees of national adaptation within the framework of existing national political systems and traditions.

Association with the EU through the EEA, Schengen etc. throughout the period 1992-2011 has to a greater or lesser extent affected a range of basic principles in Norway. In the following pages we will look more closely at the implications for five central relationships:

1. Between the national and the European level
2. Between the legislative, executive and judiciary powers
3. Between politicians and the civil service
4. Between the national, regional and local levels
5. Between the social partners (employers and employees)

Along each of these axes one can differentiate between theory and practice concerning shifts in balance of power. A feature of Norwegian integration with the EU is that actual shifts in power are often much more extensive than formal ones. The distance between formality and practice is greater than in most other international agreements, and greater than for member states in the EU. Following, is an assessment of both formal and actual power structures, with emphasis on the latter.

26.3.2 The balance of powers between the national and supranational levels

The most obvious transfer of power resulting from Norwegian integration with the EU is that power is transferred from the national level to the supranational level, which in the case of Norway means to both the EU and the bodies that are established under the EEA in order to adopt policy and rules from the EU and control that they are applied and implemented correctly. It is this that comprises a binding international commitment.

This form of power transfer occurs openly in that the Government enters into agreements and the Parliament gives its consent to this. Seen from a national perspective one is speaking of delegation of authority to supra-national organs that can be withdrawn if the agreement is terminated. As long as the agreements continue, power is exercised at a supranational level with binding effect on national authorities.

Compared with other forms of international cooperation the EU is marked by the fact that the transfer of powers from member state to the Union level is very comprehensive, and secondly that it is much more binding. Already in the Treaty of Rome of 1957 the then member states ceded much more authority than was usual under international agreements, and since then through subsequent treaty revisions, legislation and practice there has been a massive further

transfer of power to EU bodies. This process has proceeded in fits and starts, but so far in one direction without any reversals (renationalisation). Issues that previously were handled nationally, and seen as domestic policy matters, are to an increasing degree handled through common processes at the EU level. For the member states there are today few if any societal issues that are not to some extent the subject of coordination or regulation in the EU. That said, there are large variations from issue to issue. Simply put, the distribution of powers between the EU and the member states can be put into three categories: exclusive EU competence, where only the EU has the right to take measures (for example competition); shared competence, where both the EU and member states have the right to take measures (e.g. Internal Market, environmental policy); and areas that completely belong to member states but where the EU contributes with coordination, support initiatives, programs, initiatives etc. (for example in the fields of employment, education and culture).

Participation in the EU is also much more binding than other international agreements, and it is this that defines the cooperation as supranational, in contrast to international. The term “supranational” has many aspects, but it is common to denote three main characteristics. Firstly, in the EU there are powerful supranational institutions, most of which have a high degree of independence from the member states – amongst which are the European Commission, the European Parliament and the EU Court, in addition to a number of others. Secondly, laws and other decisions in the EU are now adopted in most areas by qualified majority voting, and these are also binding for the states that voted against them. Thirdly, EU law has special status and force, having priority over national law, which can be invoked by citizens directly before national courts.

Norwegian integration with the EU from 1992-2011 involves a massive transfer of power from national to the supranational European level. The EEA Agreement is the largest and most binding agreement that Norway has ever entered into, and has subsequently been supplemented with a host of other association agreements with the EU. To some degree, the transfer is formally to EFTA and the EEA bodies, but the de facto transfer of power is essentially to the EU and the EU institutions. The three-way division between exclusive EU competence, shared competence and national competence with EU influence is in practice also a determinant of the scope of the Norwegian transfer of powers.

As is the case for EU states, the process with respect to Norway has so far gone in one direction, towards ever greater transfer of power, with no instances of reversion. As the EU has expanded its cooperation, Norway has followed suit through expansion of the EEA agreement or the entry into new agreements. And as the EU has enlarged itself geographically so too has the EEA, Schengen and the other Norwegian agreements. Increasingly, the legislation that Norway takes over from the EU is passed via qualified majority voting through procedures that are much more supranational than 20 years ago.

Compared with the EU states there are in particular three differences in the power transfer that has occurred from the national level to the EU level.

Firstly it is less comprehensive. Norway does not participate in all EU cooperation, just in parts of it. In important areas, Norway has not decided to follow the EU, including the single

currency, Euro- trade policy with third countries, and the Common Agricultural and Fisheries Policies. On the other hand, the adaptation to the EU is much more extensive than most people are aware of. Through the many agreements and other forms of cooperation Norway has complied with about $\frac{3}{4}$ of EU legislation, compared with the EU member states that participate in everything. Some of this is in the form of partial conformity, but nearly all of it is through binding agreements that transfer (delegate) power from the Norwegian authorities to the European level.

Secondly, Norwegian ceding of powers is not as binding as for the EU member states. The EEA and other agreements are not as “supranational” as EU membership and from a formal perspective Norway has more freedom.³ On the other hand the formal freedom is greater than the de facto one, and there are clearly supranational aspects also of the EEA Agreement, according to all of the criteria that are normally used to measure this. Included here are the established EEA and EFTA bodies with much greater competences and power than is usual in international agreements. Furthermore, EEA legislation has priority, and Norwegian courts are obliged to set Norwegian law aside in cases where there are conflicts. Concerning new legislation, Norway formally speaking has an opt out, but this is only intended as a safety valve for use in extraordinary circumstances. It would lead to the suspension of the affected part of the agreement. In practice, the threshold for opting out of new laws is so high that not one of the three EFTA countries has ever done this in 18 years, despite the fact that they have adopted more than 6000 new pieces of legislation. It can be argued that this is at least as supranational, and as much of a substantial transfer of the legislative authority, as is the case when one subordinates oneself to a system of qualified majority, where one from time to time must count on being out-voted.

A third and important difference is that Norwegian transfer of powers is not compensated for by representation and access to decision making at the European level. For EU states the transfer of power to the EU involves the replacement of national decision processes with collective decision-making procedures. They give something away but get something in return. The influence that the individual state achieves at the EU level counterbalances to a greater or lesser extent the loss of power at the national level. This is lacking in the Norwegian model of integration. The limited opportunities to influence decision making that Norway achieves through actively engaging in European Policy does not really compensate for its transfer of powers to the EU. As such, the net power-shift from national to supranational levels is viewed as being just as comprehensive for Norway as for the EU States.

26.3.3 The Balance of powers between the highest Norwegian State Bodies

Power-sharing between Norway’s highest Bodies of State has in many ways been influenced by the country’s agreements with the EU. Its main features are similar to those of EU states, differing slightly due to Norway’s particular form of association.

The EU’s general experience of transferring power between national executives, legislative and judiciary authorities can be summed up in two main points:

- Strengthening executive power at the expense of the legislature

- Strengthening of judiciary powers at the expense of the legislative and the executive.

Firstly it is generally observed that European integration strengthens the executive branch (the government) at the cost of the national parliament. It is the Government and its administration that first and foremost represent the state at the EU level, through the European Council, the Council of Ministers and a range of subordinate bodies. National Parliaments are not constructed to represent the state externally and neither can they nor should they do it. It can also be more difficult for the parliament (the opposition) to supervise and control how the government and the civil service handle EU issues, than is the case for traditional domestic policy making. Participation of national governments in EU processes requires flexibility and an ability to reach compromises, and this makes it difficult for national parliaments to give a binding mandate in advance or to control it afterwards. Consequently it becomes more difficult to hold cabinet ministers to account.

This weakening of national parliaments in relation to the executive comes in addition to the fact that their position is weakened by the transfer of legislative authority from the national to the supranational level. In the EU this is a long acknowledged problem, which one has tried to alleviate through initiatives that enable national parliaments to win back some of their lost powers. In most EU states, parliaments have established their own EU Committees, and in some of them (including the Nordic ones) these are committees with considerable authority to control the government's European policy. Many parliaments have also established procedures to engage earlier in in European decision making processes. . For some time there has been coordination between the national EU committees. Through the Lisbon Treaty a procedure was introduced that gives national parliaments the right to control whether Commission proposals respect the principle of subsidiarity, and they are also given a formal role with respect to future treaty revisions.

The impact of Norway's EU agreements on the relationship between the Parliament and the Government is similar to what occurs in EU member states, even if there are differences. In many ways the Storting confronts challenges of European integration that are just as strong as for national parliaments in other European countries, even though the possibility to oppose initiatives are more limited.⁴

Generally, the Parliament exercises its power in two areas – through legislation, budget decisions and instructions, and through control or supervision with respect to how the government exercises its powers. Both of these basic parliamentary functions are considerably weakened in areas covered by Norway's agreements with the EU. Within the parameters of the agreements the Storting is in practice no longer the legislator, but has to implement rules that are devised by the EU. Even if this is only true for a part of the Storting's legislative activity, it is a substantial part, and it is constantly increasing. When the Storting adopts legislation it must take care that national laws do not contravene EU/EEA legislation and if this happens the courts as a rule would have to give precedence support the latter. Moreover, it has turned out to be difficult for the Storting to conduct effective retrospective supervision of the government's Europe Policy, and throughout the period 1994-2011 the Supervisory Committee of the Storting has scarcely examined a single EU/EEA case.

Instead the Storting's role in European policy is mainly confined to agreeing to new commitments regarding the EU, and to being consulted on developments in the Government's European Policy. These are in themselves important functions, but they first and foremost serve to legitimise the government's policy, and not rather than the independent execution of its powers. All 287 propositions that the Government has presented during the period 1992-2011, according to the Constitution's Article 26 second paragraph, have been approved by Parliament and most of them (265) unanimously, with little debate.

The consultation provision that is established with the Storting's Europe Committee could at first glance remind one of the European Committees in the National Parliaments of the EU States. But on closer inspection this is a much weaker provision than, for example, in the parliaments of Denmark, Finland and Sweden. Meetings are less frequent, there are fewer issues, and the debates are much shorter. More importantly, the Norwegian European Committee is purely a consultative body, while the equivalent committees in the Nordic EU states are bodies with which the government must discuss and justify their EU policies

The Storting is nor in a position to enjoy the strengthened role of national parliaments that has occurred in recent years. The Storting is not a member of the EU Committees' cooperation body COSAC, even though it is invited to participate occasionally. The Parliament's delegation to EFTA/EEA handles certain functions, but the significance of this work is limited. Furthermore, the Parliament does not of course participate in the new procedures for the involvement of National Parliaments that were established by the Lisbon Treaty, even if it has managed to achieve practically the same levels of access to information. The Storting has over time attempted to strengthen its position in European policy, and there have been improvements in recent years, through amongst other things semi-annual reports and debates in the Parliament on EU/EEA matters, but the fundamental challenges are structural and difficult to do anything about.

With respect to the Storting, the position of the Norwegian Government is relatively strengthened because more and more societal issues are being europeanised, in a way that limits parliamentary involvement and control more than it does in purely national matters.

The other manifest trend in the transfer of powers between the highest bodies of state in EU countries is that the judiciary is strengthened in relation to the executive and the legislature. The background for this is the strong position of law in the EU. EU cooperation is driven forward through legally binding measures, as "integration through law", and this is controlled by the EU courts in cooperation with national courts. Similar to constitutional courts in the USA or Germany the EU Courts have a key role in the political system in the EU, with wide authority and broad independence. Furthermore a special and effective system for cooperation between EU courts and national courts has been established. Issues that concern EU law and affect private legal subjects will arise in the normal way for national courts in the member states that decide them. But along the way the national court has the possibility (if not the obligation) to request a legal opinion from the EU court, that then can become fundamental in the case.

This establishes a link between the EU courts and the national courts, and implies that they are drawn into the control of compliance with EU law, with the right and the duty to put aside national laws and administrative measures in the event of a conflict. Thus, their position is strengthened in relation to the national parliament and the government. The impact has been greatest in the countries where there has been no tradition for such judiciary control, amongst which are Denmark, Finland and Sweden. In these countries EU membership has led to a considerable strengthening of the national courts' constitutional position. On the other hand, it is not always the case that the national courts themselves have welcomed a more political role. In many countries the supreme courts have considered it their obligation to defend national sovereignty and judicial autonomy with respect to the EU Court.

The impact of the EEA Agreement on the role of Norwegian courts is in general similar to that of the EU States. The EEA Agreement is legally binding in the same way as EU legislation, and should be enforced by Norwegian courts in the same way, with an obligation to give EU/EEA legislation priority over Norwegian legislation should a conflict occur. This means that the courts have acquired a new and comprehensive basis for controlling and if necessary setting aside the Storting's legislation and the Government's regulation and measures if there is a conflict. Based on its constitution, Norway has to a greater extent than other Nordic countries had a statutory tradition regarding judicial control of the Storting's legislation, so the change is in principle not so evident as for example in Sweden. But the basis for this judicial control is considerably expanded. This is an important part of the EEA's «judicialisation».

Even though Norwegian courts have an increased opportunity to set the Storting's legislation aside they have so far used this prudently Most EU/EEA legal issues before Norwegian courts during 1994-2011 have concerned government measures and actions, and not the Parliament's legislation. There are only a few cases where the courts have had to test compliance of Norwegian laws with the EEA Agreement, and in most of these the Supreme Court has concluded that Norwegian law do comply with the EEA obligations. In a few cases Norwegian regulations have been deemed to be in contravention and set aside, but the specific paragraphs were not deemed to be particularly important.⁵

The EEA Agreement also establishes a procedure for cooperation between Norwegian courts and the EFTA Court that is generally similar to the EU's, but with two differences. Any Norwegian court that receives an EU/EEA related question can ask the EFTA Court for a legal opinion. Formally speaking, this is "advisory" and not binding, but this means little in practice, as it will in any case have great weight. More importantly the Supreme Court, in contrast to the highest courts in the EU states, has a right to consult the EFTA Court but has no obligation to do so. Between 1994-2011 Norwegian Courts in general and the Supreme Court in particular, have been relatively reserved in acquiring opinions from the EFTA Court, in contrast to the practice of courts in the EU states. There could be several reasons for this.

Integration with the EU over the past two decades has strengthened the position of Norwegian courts in relation to the Parliament and the Government. The roughly 260 EU/EEA cases that have been heard before Norwegian courts during the period 1994 and 2010 illustrate both the

breadth and the depth of this effect, covering small every day cases to important conflicts of principle. That said, the Courts, with the Supreme Court in the lead, have handled this new situation with caution. This conforms with longstanding tradition in relations between the highest Powers of State in Norway.

26.3.4 The balance of power between politicians and the civil service

The relationship between politicians and the civil service has to been influenced by Norway's agreements with the EU. In part, the experience is the same for Norway as for the EU member states, but on a number of decisive points the picture looks different, because of the Norwegian model of integration.

Research on Europeanisation points to two general consequences of European integration for policy and administration in the EU member states, which to a certain extent are contradictory.

The first effect of EU membership is a tendency toward the centralisation of power to a high political level, to the Prime Minister or President and to a small number of important departments. There are many reasons for this. Firstly cooperation in the EU creates a strong need for national political coordination. Many EU issues have an impact across different policy sectors. At the same time, negotiations in the EU require that the member states formulate a national position. This often necessitates coordination at a high political level. In many countries this has led to the establishment of a special ministry for European affairs, but ultimately national positions need to be coordinated and sanctioned by the President's or the Prime Minister's office.

Another important reason is the increasingly important role of the European Council, the EU's heads of state and government. This means that prime ministers and presidents are directly involved in EU negotiations. Subsequently leading to a strengthening of the president's and prime minister's office that is evident in many member states. It is sometimes described as the "presidentialisation" of parliamentary democracies.

The other trend in the EU paradoxically enough is a *fragmentation* or 'sectorisation' of the State apparatus, through increased power for individual ministries, and a strengthening of the position of the civil service in relation to the politicians. Amongst the ministries, it is especially the foreign ministry that has lost ground, both because the heads of government are more directly involved in EU issues, and because changes in the relationship between foreign policy and domestic policy mean that an increasing number of EU issues are handled directly by other departments or agencies. The department that is most often viewed as a winner in this development is the finance department, whose significance has grown as a consequence of its strong position in the EU Council of Ministers for Economic and Financial Affairs (ECOFIN), and in recent years also because of economic problems in the EU.

Another aspect of this fragmentation is that the civil service at lower levels in departments and external agencies has strengthened its position in relation to the central political and administrative leadership. Those concerned are often deeply involved in the decision making processes in the EU, through meetings in working groups and committees of the Commission

and Council. They have therefore often unique competence, and work at a speed that is determined by EU procedures. Moreover, important parts of their work can be informal, conducted through European administrative networks. This means in practice that they acquire an important and independent position that can be difficult to manage from the centre. Much of the work on EU issues at a lower level tends to go “under the political radar” – which means that the issues are not viewed as politically important, even if later on they can have great consequences.

The Norwegian experience, after nearly two decades of the EEA Agreement, is markedly different concerning the centralisation of power. This trend has been considerably weaker in Norway than in the EU states. Nevertheless, one can observe similarities regarding fragmentation of the administration. On the whole, there has been a relative strengthening of the civil service in relation to its political leadership, which can be described as a power shift between the political and administrative level and a de-politicisation of EU/EEA issues.

The reason why there has not been the same tendency to centralisation of European policy in Norway as in the EU states, is that Norwegian politicians do not participate in the political decision-making processes of the EU. Norway is not represented in the Council of Ministers or the European Council, therefore requiring no single national position. This means that the need for national coordination is much less acute than in the EU states. National coordination is of course also desirable in Norwegian European policy, but it is not a daily requirement as in the same way that it is in the EU. To the extent that coordination happens it does so at the administrative level, and studies reveal that this does not necessarily lead to real coordination whereby agencies share positions in order to achieve a common position. Comparative studies reveal also that the Norwegian civil service coordinates EU/EEA work to a lesser degree than the Danish, Swedish and Finnish administrations. The Prime Minister’s Office (SMK) has not adopted a leading role in European policy. Instead, the Foreign Ministry has kept responsibility for the coordination of EU/EEA issues, which is increasingly unusual in EU states, and can be viewed as an indication that European policy in Norway, in contrast to EU states, is still viewed as foreign policy.⁶

On the other hand one sees the same tendency towards fragmentation in the Norwegian administration that one sees in many EU states. Even if the Norwegian administration is less directly involved in EU affairs than counterparts in the EU states, the EEA and the other EU agreements influence the daily work of large parts of the Norwegian administration. In total, 17 departments deal with EU/EEA matters. The same is true for a good number of external agencies (directorates, supervisory bodies, etc.) as well as local authorities. As for the EU, much of the on-going work with EU/EEA issues occurs at a relatively low level in the administration, and the individual civil servant has in practice much opportunity to determine what later become presented as Norwegian positions. Quite large parts of the Norwegian civil service, both in the ministries and the agencies, participate in committee work in the EU, especially in the preparatory phases under the Commission. Most of the on-going work on EU/EEA issues takes place at expert level as purely technical questions, even if the consequences may be significant in economic and political terms. This is also due to the

Norwegian model of integration which renders the political leadership few incentives to engage actively, leading to a de-politicisation.

While some parts of the civil service are very comfortable with the increased liberty which the EU integration gives them, it seems to be generally true for the administration that it would welcome clearer political instructions on European policy, and it finds the absence of this frustrating and de-motivating.

In contrast to the situation in many EU states it appears that Europeanisation so far has not led to any great shifts in power between the different parts of the central administration. Those departments that are central to EU/EEA issues are to a great extent those that were also important before, including the Ministry of Finance, the Foreign Ministry, the Justice Ministry, the Ministry of Trade and Industry, and the Petroleum and Energy Ministry. Because the Prime Minister's Office has not adopted an active role in European policy, it is consequently formulated by a small number of key ministries.

26.3.5 The balance of power between the State and local authorities.

Even if the EU does not participate directly in the EU's regional policy the EEA and the other agreements have consequences for the vertical sharing of powers in Norway between States, counties and municipalities. Important aspects of Norwegian regional policy have been europeanised during the period from 1992 to 2011, in ways that are similar to developments in the EU states⁷.

European integration is generally viewed to have strengthened regional t in Europe, and in academic circles the EU is frequently described as a multi-level system of governance, with reference to the distribution of power between the supranational, national and regional levels. When political pressure for stronger regions was at its strongest in Europe during the 1980s and at the beginning of the 1990s, this was often described as "the Europe of regions". The strengthening of the regional and local level can be attributed to several conditions and manifests itself in a number of ways.

Firstly, regions are represented in the EU's political system through the Committee of the Regions. Here the regions are given the possibility to participate formally in the formulation of EU policy, even if the committee only has a consultative role with respect to the Commission, the Council and the Parliament. Secondly, EU regional funds are key for the stimulation of regional development and an important contributing factor to the mobilisation of the regions in the EU as a political actor. The EU regional funds make up about one third of the EU's budget, and for the regions that qualify for contributions they offer both an important source of finance and an incentive for political participation. Thirdly, nearly all larger regions today have their own EU offices in Brussels that safeguard their interests, lobby the EU institutions and the member states and provide information to those responsible for the regions back home. Through such offices the regions can themselves conduct an active EU European Policy more or less independently of national authorities. Fourthly, the emphasis on the regions' interests in Brussels has contributed to a strengthening of their position at the national level. In regions that already had a certain autonomy, this has increased, and for regions that did not have this, new opportunities have opened up.

The impact of the EEA and the other EU agreements on Norwegian regional policy follows in general the same pattern as in the EU states, but they have not to the same extent led to the strengthening of the regions - as political entities. To a degree this is due to fact that Norwegian regions, counties and municipalities already had a relatively strong position, and were stronger for example than in Denmark, Finland and Sweden, where the extent of centralisation has been stronger. It is furthermore due to the fact that Norwegian regions do not have the same opportunities to participate in decision making processes in the EU. Nor do Norwegian regions have access to EU regional funds. To a greater extent than in EU countries, the interests of Norwegian regions in relation with the EU are represented by the national government. Norwegian regions have tried to compensate for this by establishing their own offices in Brussels for lobbying and information gathering, in line with the trend generally in Europe. Most of these were established between 2001 and 2005 and are a direct result of the EEA Agreement. Furthermore, Norway has since 1994 participated in the EU's comprehensive regional policy programmes through participation in the Interreg programme. Norwegian participation is formally outside of the EEA Agreement, and is not part of any general association agreement.. Each year considerable sums of money are dedicated to Interreg participation, which has become an important arena for many Norwegian regional actors over the years.

Compared with EU member states, the effects of the EU on the relationship between state, county and municipality in Norway are generally indirect rather than direct. The EU as a political arena offers certain incentives and opportunities for political mobilisation, engagement and inspiration, but a lack of participation in important bodies and lack of access to financial provisions at EU level means that the direct impact is small and the pressure for increased regional-policy autonomy is weaker.

26.3.6 The balance of power between the Social Partners

Through the EEA the Norwegian workforce is integrated into the internal market - which includes the common labour market of the EU/EEA - and comprises practically all EU rules that directly or indirectly regulate business and workers at the national level. This can affect the balance of power between employers, employees and their organisations in several ways.⁸ Even if it is difficult to isolate the consequences of integration with the EU for the relationship between social partners in the period 1992-2011 from other important developments, it is nevertheless possible to identify some principal trends.

Norway's participation in the internal market has primarily affected the balance of power between business and labour by removing barriers for cross-border investment, establishing the conditions for competition and restructuring, and has ensured the free movement of workers and services. Secondly, important aspects of the relationship between employers and employees are regulated now by the EU/EEA. In addition to the EU's directive on minimum workers' rights, the EU's rules on the free movement of services establish the requirements that the Norwegian authorities and actors can place on wage and working conditions for workers that are posted to Norway from abroad. National collective agreements are therefore to an increasing extent supplemented with legislation and harmonisation of wage-rate

conditions, which secure all employees in the relevant sectors the right to a statutory minimum wage.

These are trends that play out in both directions, sometimes strengthening the employer interest and other times the employee interest. Generally, increased competition and the free movement of capital, services and labour will strengthen the employers' market and negotiating position. For many professions, especially in national markets, that is counteracted by reduced unemployment and a tight employment market. Furthermore, the EU's labour laws in a number of areas have strengthened the employees' situation, in areas such as corporate takeovers, part-time work, and information and consultation in multinational companies. At the national immigration since 2004 has also sparked off a range of initiatives that are aimed at counteracting pressure on wage and employment conditions, inhibiting discrimination, and supporting the framework of agreements and the rights of employees. While a number of professions have been more exposed to low-cost competition, labour-market competition has contributed to strengthening competitiveness, increased employment and strengthened the negotiation position for other groups. In several sectors access to foreign labour has contributed to the further development of employment opportunities in regions that otherwise would have been exposed to rationalisation and the moving abroad of production, and thus it has strengthened both employer and employee positions.

Labour migration consequently has had contradictory effects on the balance of power between employers and employees, but it has probably reinforced the differences in negotiating power between groups of workers with different levels of competence.

The social partners in Norway have since 1992 stood together in defence of the EEA Agreement and viewed it as a necessary framework for the safeguarding of the interests of both industry and employees. The two decades of the EEA Agreement have generally been characterised by constructive cooperation, stable organisation grades and further development of the collective agreement framework and tri-partite cooperation with the authorities. The social partners participate actively in their European organisations and are secured participation in the "social dialogue" through the EEA. They have also better access to the relevant decision-making processes in the EU than the Norwegian authorities have. In this way the special Norwegian model of integration contributes to the strengthening of the corporative channel at the expense of the democratic channel in the EU/EEA context.

Labour migration since 2004 has led to a revitalisation and re-politicisation of the debate about the workplace, with an increased awareness and debate both on concrete issues and more basic concepts such as justice and solidarity, as well as on the relationship between political regulation and wage agreements as balancing mechanisms in the employment market. Following demands from employee representatives this has led to innovation in the Norwegian regulation model, such as harmonisation and responsibility for solidarity.

As a whole, on this basis it is difficult to find evidence to say that one side in the workplace has gotten the upper hand regarding power and influence at the expense of the other during the last 18 years of the EEA Agreement. While employers have increased their position in a

number of sectors, the picture has partially been the opposite in the central tripartite cooperation and in a number of other sectors. In line with long traditions in Norwegian industrial relations, the development has been contentious and dynamic, and has continued, to a great extent, to be conditioned by national political and other factors

The Committee's minority, member Dag Seierstad, disagrees that the EEA Agreements labour-law regulations as a whole have strengthened workers' rights and refers to his comments in Chapter 16.

26.4 The Consequences of the Agreements with the EU for Norwegian Democracy

26.4.1 The Agreements with the EU - democratically acceptable?

The most common criticism against the EEA and the other agreements with the EU is that they suffer from a democratic deficit because they involve Norway allowing itself to be governed by an organisation (EU) of which it is not a member and whose decision-making it does not take part in.. However, there is no consensus about this. In Norwegian "Europe-debate" there are those who believe that the EEA Agreement is a democratic catastrophe, those who believe that it is firmly well anchored in democracy, and those who think that it has some democratic weaknesses, but that these are possible to live with. The Norwegian debate on the democratic strengths and weaknesses of the EEA Agreement can be seen as a variant of the more general debate about democracy and international cooperation. During the entire post-war period, the ever increasing contact and interdependence between states has led to more comprehensive, intensive and binding cooperation through international agreements and organisations. Areas which previously were governed by democratic processes at the national level are to an increasing extent either completely or partially transferred to international or supra-national decision processes. The conditions for realizing traditional democratic ideals within the parameters of international cooperation are limited; even through many problems only can be resolved at the international level.

In the academic debate on democracy and international cooperation there are roughly speaking three principal positions. One view is that international cooperation per definition is democratically problematic because it is impossible at the international level to compensate completely for the democratic loss at the national level that such binding cooperation entails. States should therefore be restrictive in delegating power to international organisations. Another view is that it is doubtful that it can be said that there is any democratic deficit at the international level. Democratic control of international agreements and organisations is executed through the participating national democratically elected governments. A third view is that international cooperation certainly suffers from democratic deficit, but there are good possibilities to mitigate this through reforms at the international and the national level.

During the EEA debate in Norway in 1991-1992 one could see the start of a debate on democracy, but this played a larger role during the EU debate of 1993-94. Respect for national sovereignty, the rule of the people and democracy were profiled by the no-side as

important arguments against Norwegian EU membership. By the Yes-side, it was emphasised that the EU was cooperation amongst democratic states and that Norway must participate in order to be included in tackling important challenges that only could be resolved through common and binding cooperation.

Since 1994 the debate over the EEA and Norwegian democracy has continued. During long periods it has stayed at a low level, only to flare up occasionally before settling down again. The lines of argumentation have been relatively constant for the past 18 years, even if there has been some development. Somewhat simplified, one can place arguments in the debate on democracy and the EEA into two categories.

On the one side there are arguments that advocate that Norway's model of integration does not pose any democratic problems:

- The agreements with the EU are voluntarily entered into according to democratic procedures involving the Storting's consent and can be terminated at any time. The EEA Agreement is constitutionally firmly anchored in the Constitution's § 93 and adopted with a $\frac{3}{4}$ majority.
- The Agreements associate Norway with the EU, an assembly of 27 democracies, and that in the last two decades the EU has gone through a significant democratisation process.
- Norway's current association with the EU has during the years been re-confirmed in new decisions, in the form of parliamentary consent and through numerous legislative decisions. During 1992-2011 the Parliament has taken 287 consent decisions according to §26/2 on new commitments with respect to the EU, of which 265 unanimously.

The EEA Agreement gives the Norwegian authorities the right to opt out of new legislation from the EU.

- The Agreements function as a political compromise that is acceptable for all parties that that has established the basis for political coalitions and government platforms.
- There is an open and free debate in Norway on the relationship withj the EU, and in recent years public information on European policy has improved. Opinion polls have continually shown that a large majority in the population is positive towards the EEA Agreement.
- The Agreements give citizens and companies new rights with respect to the national authorities and have strengthened the rule of law and legal certainty.
- The agreements' eventual democratic deficiencies must be weighed up against the fact that Norway is confronted with challenges and problems that can only be solved through binding supranational cooperation.

- Through an active Europe-policy Norway can exercise a certain influence on the EU's decision making processes or it can get special exemptions and opt-outs.

On the other side there are those that argue that Norway's agreements with the EU are democratically problematic.

- Norway lacks representation and access to decision-making in the EU, at the same time as having committed itself to adopting large parts of EU legislation. Formal sovereignty is an illusion.
- The possibility to influence EU decision processes from the outside through lobbying and in other ways is severely restricted. Resources for such lobbying are very unequally distributed amongst different groups in society.
- The EEA Agreement has turned out to be much more comprehensive and binding than originally assumed, and it may be questioned how much longer the Parliament's assent of 1992 can provide political legitimacy.
- The Parliament's position is weakened in all areas affected by EEA integration, and there is little possibility for parliamentary scrutiny. The procedures for consultation serve primarily to legitimize the Government's European policy.
- There are limited possibilities for real parliamentary and political accountability of the Government and civil service with respect to EU/EEA matters.
- Norway's model of integration with the EU is democratically misleading, in that it gives the impression of greater national sovereignty than is really the case.
- This form of integration with the EU depoliticizes and is technocratic, through a combination of exclusion and political compromise - resulting in few incentives for political engagement. Instead, power is transferred to the civil service.
- This model of integration inhibits public debate both about European policy generally and important individual issues. There is generally less debate about the EEA and Schengen matters than on national matters of equivalent or less consequence.
- Important aspects of Norway's association with the EU are practically unknown to the Norwegian public, such as large parts of justice policy, the security and foreign policy cooperation, the significance of EU/EEA rules for food safety and veterinary conditions, regional policy cooperation and much else. A large majority believes probably that they are much less integrated in the EU than is actually the case.

Even though one can in this way argue both that the EEA, Schengen and the other agreements with the EU are democratic and undemocratic; the view of the Committee is that agreements suffer from obvious democratic weaknesses.

The main impression is of a form of association with the EU that in its construction and effects is democratically problematic, but that simultaneously has considerable support among the political parties and the population at large.

Using concepts taken from academic research on democracy, one can say that the agreements with the EU suffer from a lack of *normative legitimacy* and openness – while having social legitimacy in that they have support from a majority of the population and their elected representatives.

The basic democratic problem with the whole construction is a lack of Norwegian representation and access to decision-making processes that also impact Norway and Norwegian citizens and companies. The fact that the Parliament voluntarily has chosen to delegate considerable parts of its legislative authority to the EU is not sufficient to mitigate the basic democratic problems. Neither does the formal requirement that the government and the Parliament give their consent to new commitments. In practice, Norway has committed itself to adopting new policies and laws from the EU within the framework of the agreement structures without any real possibility to influence these. This is a sort of out-sourcing to the EU institutions - that after almost 20 years has turned out to be qualitatively and quantitatively very far-reaching.

Whilst Norway's agreements with the EU have obvious democratic weaknesses, they have traditionally had considerable support from the Norwegian population. Furthermore, Norwegians are generally positive to nearly all aspects of the actual content in the EEA and other agreements, whether it concerns free movement of goods, services and persons, binding environmental regulations, police cooperation, border control, crisis operations or other. On several matters Norwegians actually appear to be more positive to central aspects of the European cooperation than is true for EU citizens.

The agreements' legitimacy in Norwegian opinion has been supported by a broad consensus amongst the political parties. While the question of Norwegian EU membership was controversial and difficult to manage for the parties, the EEA, Schengen and the other agreements have turned out to be disputed to a surprisingly limited extent. They function as conflict-smothering compromises. Even though no parties, with the exception of KrF (Christian Democrats) and Venstre (Liberals), have the EEA as their first choice, all of the other parties in the Parliament implicitly or explicitly have the current form of association as their second choice. This is the least common denominator on which EU supporters and opponents have managed to agree. Even the two parties that are in principle against the EEA and Schengen have, without too manifestly great a problem, managed to enter into government and govern on the basis of them. As a political compromise the current form of association has contributed to the enablement of stable and competent governments, despite the disparate views on the EU within the coalitions.

Generally, Norway's continual integration with the EU during the period 1994-2011 represents a consistent and continuous process, independent of changing governments. If one were identify a particular development, it would have to be that adaptation has accelerated recently.

Democracy is a constructed concept, that is much discussed in theory, and that to a certain extent is given different content in different schools of democracy. Following, the consequences of the agreements with the EU are analysed more closely from the perspective of four central characteristics of a well-functioning democracy on which there is a relatively high degree of agreement:

1. Representation and participation
2. Supervision and accountability
3. Open and informed societal debate
4. Rule of law and individual rights

These characteristics represent ideals in the theory of democracy. It is important to be aware that the perfect democracy does not exist. Each democratic form of government, even when it is functioning at its best, necessarily must contain compromises – both between the individual elements in the democratic concept and between democracy and other objectives and values. Such as the need for effective governance or cooperation with other states and organisations. Nevertheless, the four characteristics provide an objective analytical framework for evaluating how association with the EU affects Norwegian democracy.

26.4.2 Representation and participation

The most fundamental of democratic principles is that those people that are affected by a decision also should be represented in the decision-making process, directly or indirectly. The normal form of government is the representative democracy, where the people chose their representatives to take decisions on their behalf. But direct political participation can also occur – through referendums or popular actions, campaigns or similar.

In contrast to this, the Norwegian association agreements with the EU can be categorised by a fundamental asymmetry between those who are represented in the real decision processes and those who are affected by them. Decisions are taken in the EU, but apply in reality also for the populations in the three EFTA/EEA States. There is no formal possibility to contribute to formulation of the agenda. Norway has no voting rights and neither does it participate in the decision phases in the EU.⁹ The agreements' construction involve that the Norwegian people and their representatives do not participate in the formulation and passing of the rules which they later on must adopt and conform to themselves. Given that the agreements with the EU comprise a large number of societal areas that previously were governed by Norwegian domestic politics this involves a departure from fundamental democratic principles of representation and participation.

This is a democratic problem that has grown over time since the EEA Agreement was entered into in 1992. The development of new laws and policy in the EU in the areas that are covered by the EEA, Schengen etc. has been formidable during the period 1992-2011, and these are continually adopted by Norway. Moreover, there have been changes in the EU that mean that parts of the EU system where Norway has the possibility to participate at the civil servant level (committees subordinate to the Commission) have in relative terms lost power, whilst

the institutions to which Norway has poor access (the Council of Ministers, the European Council, and the European Parliament) have acquired more power.

This democratic deficit with regard to the Norwegian model of integration is structural, and cannot be addressed within the framework of the current model. However this can be mitigated somewhat if democratically mandated representatives can achieve influence over EU rules that are adopted. This could conceivably happen in three ways. Firstly, via the special Norwegian exemptions, adaptations or opt-outs with respect to EU rules. Secondly, through Norwegian participation in EU expert groups and committees. Thirdly, through Norwegian public and private lobbying activity towards the EU institutions and the member states.

Under the EEA Agreement Norway has the opportunity to influence the promulgation of EU-rules that are covered by the Agreement. The basic principle is dynamic homogeneity, which means that Norway will adopt all of the new legislation from the EU without changes. But there is a certain opportunity for divergence. Through the processes in the EEA and EFTA the Norwegian authorities can seek special adaptations or exemptions from EU rules. Moreover, Norway and the other EFTA States must vote on all the new laws that are taken into the agreement. Formally speaking, the Norwegian authorities can refuse to do this, and so is not bound to do so. This is what is called the “right of reservation” [opt out], or sometimes the “right of veto”.

In practice the latitude that these possibilities offer has turned out to be extremely limited. When new laws are adopted by the EU and incorporated into the EEA Agreement this is done through a process within the EFTA Secretariat and in the EEA Joint Committee and its subcommittees. Here, purely technical adjustments occur, which entail that references are changed from “EU” to “EEA” etc. But it is very difficult to get the EU to accept substantial adjustments or exceptions that break with the principle of homogeneity, and it has become more difficult over the years. Iceland and Liechtenstein have, it is true to say, gotten a number of exceptions with respect to the fact that they are so small that a number of the EU rules simply are not relevant for them, in addition to exceptions based on Liechtenstein’s relationship to Switzerland. But for Norway, being a state of a more normal size, there is no claim to this. Through the entire period of 1992-2011 Norway has only gotten 55 material exemptions, amongst more than 6000 new pieces of legislation, and most of these were agreed many years ago. In practice, the possibility of opt-outs is not compensation for the democratic deficiencies of the EEA Agreement.

And neither is the right of reservation. In the 18 years that have passed since the EEA Agreement entered into force none of the three EFTA states have voted against a single of the 6000 new EU legislative acts that have been incorporated into the agreement. If a Norwegian political party wishes to do this, it would normally be put on the agenda for hearings in the Storting’s European Affairs Committee. A review of all of the hearings from 1994-2011 reveals that in 18 years there were only 17 cases where use of the right of reservation was tabled, but never with sufficient support to pass through.¹⁰ Even if the existence of the right of reservation is viewed to be important for political and constitutional reasons, and even if the

EFTA States at any point in time are free to use it, it has never been viewed as a routine measure for use by the EFTA States to reject laws that they do not like. Any veto would be a breach of the basic principle of homogeneity. Moreover, the EEA Agreement is constructed so that EFTA States cannot simply deselect parts of the Agreement in which they would otherwise participate. Use of the right of reservation will according to the procedure, lead to the relevant part of the agreement (defined as the effected part) being taken out of force, unless the EU decides otherwise. It seems that in the EU the attitude to the right of reservation has if anything become more restrictive throughout the years.

Under the Schengen Agreement, there is no right of reservation, just a Guillotine clause. Here too, Norway formally must vote for the adoption of new legislation from the EU, and up until now this has happened 158 times since the agreement entered into force in 2000. But were Norway to vote against a new legislative act, the entire agreement would collapse. Under the Schengen Agreement there is no special possibility for exemptions and adaptations.

Another possible compensation for the lack of Norwegian democratic representation in the EU's political decision processes is the facility, under the EEA Agreement, to send Norwegian civil servants to expert groups and committees in the EU system. This facility is relatively comprehensive, and Norwegian experts have the opportunity to participate in several hundred such bodies.¹¹ These are however largely speaking committees under the authority of the Commission, and in general these committees work on the early stages of the decision processes, as well as to a certain extent the comitology committees that are mandated to implement regulations and provide implementing guidelines. Norway has no representatives at higher levels in the Commission's decision processes, and has under the EEA Agreement no access to the important committees of the Council. In the main, this Norwegian representation functions as a means to gather information, with the invitation to participate as National Experts but with limited opportunity for influence. Under the Schengen Agreement Norway's possibilities for participation are better, and here Norwegian representatives have access to committees under the authority of the Council, at all levels, in addition to the Norwegian Minister of Justice herself meeting in the Council. However, Norwegian representatives do not have any voting rights regarding the measures that are taken with consequence for the EU, and they must be content with consenting to these after the fact.

In scope and character Norwegian authorities' participation in committees is relatively limited, and is not at the same level and scope as participation from the national administrations in the EU states. Added to this is the fact that the representation is only at the administrative level. Norway has no formal access to political decision-levels in the EU institutions (except for Schengen).¹² The lack of Norwegian political participation and influence also means that the Norwegian political leadership has few incentives to follow up the work, and generally there appears to be a general trend that the Norwegian civil servants who represent Norway in the EU committees seldom receive clear political signals and instructions. In general terms, Norwegian representation in the EU is very weak compensation for the lack of democratic participation.

A third possibility for Norwegian actors is to conduct informal lobbying towards the EU institutions and member states.¹³ The absence of formal decision-making powers combined with informal possibilities has led some to describe Norway as a “lobby-nation” in Europe. Informal Norwegian lobbying toward the EU occurs to a considerable extent both from public sector actors (departments, external agencies, the EU delegation, regional offices, etc) and from Norwegian organisations, companies and other actors. From a democratic perspective however it is only the public lobbying activity that could be viewed to compensate for lacking representation. Private Norwegian lobbyists could more readily be viewed as democratically distortive, because they can take care of the interests of the strongest private-sector actors that are not democratically representative or necessarily behaving in the interests of any Norwegian interests or values.¹⁴

It is difficult to measure the scope of the combined Norwegian influencing and lobbying capacity towards the EU, and there is also a large grey zone between traditional diplomacy and less traditional influence. Generally it is probably the Norwegian authorities that have the best opportunity for influencing processes in the EU, if they are skillful, work hard and concentrate on the few areas of Norwegian interest in the EU where it is possible to have an impact. But such activity is necessarily limited to relatively very few individual issues, often regarding more high-level general policy formulation. In addition, most of the Norwegian authorities’ more informal activity towards Brussels is characterised by intelligence gathering rather than real decision-shaping and influencing. This cannot measure up against the informal networks that exist between politicians and civil servants of the EU states, and to which Norwegian actors only have limited access.

From a democratic perspective it is therefore clear that official lobbying can to only a very limited extent mitigate the democratic deficiencies of the Norwegian model of integration. Moreover, such activity in itself is problematic. Firstly, lobbying is less open and transparent than ordinary participation in decision processes. Secondly, Norwegian authorities’ efforts to influence the EU’s institutions and member states can be viewed as diminishment of the autonomy of the EU’s autonomous decision-making processes and the right of EU states and citizens to take their own decisions without interference from non-member states. That said, it should be understood that the EU is a very open arena where input and suggestions from a wide set of stakeholders is often sought.

26.4.3 Supervision and Accountability

Another trait of a well-functioning democracy is the possibility to hold those who exercise power accountable for their decisions and actions. Such accountability can happen in several ways, formally and informally. In Norway the Government is formally held accountable through Parliamentary supervision, which is conducted through the Scrutiny and Constitutional Affairs Committee, the Office of the Auditor General and in other ways.¹⁵ Also, there is the more informal, but in practice extremely important scrutiny and accountability that happens through the free and critical media and a critical and open public debate. In order for accountability to function, there is a requirement for transparency and openness about who executes power and how that happens.

Real political accountability is a general challenge in international relations and in foreign policy. This applies also to the EU and the Member States' participation in it. Nevertheless, procedures and practices for accountability at the supranational level have developed over time, amongst which is the Parliament's supervision of the Commission, and institutions such as the European Ombudsman, the Court of Auditors, etc. Furthermore, the EU is in reality a relatively open and transparent political system, with oversight and accountability. The weakest link in the control chain internally in the EU system is the national governments' participation in the Council and the European Council. Here, supervision must necessarily happen at the national level. But over time in many EU countries – and not least the Nordic states – procedures and practices have developed for relatively extensive parliamentary and other control mechanisms for how governments and individual ministers represent their nations in Brussels.

Within the parameters of the EEA, Schengen etc. the mechanisms for democratic supervision and accountability are generally weaker in Norway than the EU. There are several reasons for this.

Firstly, neither the Norwegian authorities, media nor the public have any possibility to supervise and hold accountable those in the EU who formulate and adopt the laws and policies that later become binding for Norway. Here, the fundamental chain of accountability is missing. The Norwegian authorities cannot be held responsible for laws and policies that are formulated in the EU in the areas that are covered by the EEA, Schengen and the other agreements. As Norway does not have representatives in the European Parliament, neither can accountability be demanded in European elections every five years."

Secondly, the opportunity for supervision and accountability of Norwegian authorities is generally weaker with respect to European policy than it is for Norwegian domestic policy. This is because, amongst other things, Norwegian politicians do not participate in decision-making procedures of the EU, and the limited Norwegian participation that does occur takes more the form of informal input and influence. This is more difficult to gain insight into and assess. Moreover, the Norwegian political compromise on European policy limits the opposition's interest in holding the government accountable on EU issues.

In practice, this is evidenced amongst other things by the fact that the Storting's Scrutiny and Constitutional Affairs Committee since 1994 hardly had a single case in which there was an assessment of a Norwegian minister's management of an EU/EEA issue. Furthermore, parliamentary supervisory bodies such as the Auditor General and the Parliamentary Ombudsman play no particular role in EU/EEA matters, despite the fact that much of it falls under their area of competence.

The Storting's most important role in European policy, as shown in Chapter 11, is the consultative function, via the European Committee, the half yearly assessments of EU/EEA issues etc. This consultation however does not so much function as a mechanism for supervision and accountability, but rather as an opportunity for the Storting (opposition) to keep itself informed on an on-going basis, and to give political clearance and cover for the Government's Europe-policy. This in itself is a legitimate and important function. But the fact

that the Opposition is informed and consulted makes it also co-responsible, in a way that seems to pulverize accountability rather than make it accountable. This is a phenomenon that is familiar from traditional foreign and security policy research, but that is more problematic with respect to European policy that is both domestic and foreign policy.¹⁶ In domestic policy the opposition has generally been careful about being constrained in this way, but this is not the case regarding the many EU/EEA issues that politically and from a parliamentary perspective follow more the logic governing foreign policy than domestic policy.

The opportunity for media and a critical public to follow and scrutinize the European policy of Norwegian administrations is somewhat less than for domestic policy issues. Firstly, there is on the whole less transparency regarding EU/EEA issues, and it is often more difficult to get a hold of documents, even if this has improved during the period from 1992-2011. Secondly, it is difficult to hold Norwegian politicians accountable on European policy matters when they do not participate in the actual decision-making processes, but only afterwards implement rules and policies that are formulated by the EU.

In addition to this, the institutional system in the EEA/EFTA lacks several of the control mechanisms that exist in the EU system. This is true for the EFTA Secretariat, EFTA's Surveillance Authority and other EFTA bodies, as well as the committee structure in the EEA. This is first and foremost a consequence of their not being political decision-making bodies to the same extent that the Council and the Commission are. They are primarily organisations tasked with adopting and implementing EU legislation. Added to this is the fact that EFTA/EEA bodies are less open and transparent than the institutions in the EU. In the EFTA system there has, for many years, been disagreement about rules concerning public access to information and access to documents, where in particular Norway's two partners, Iceland and Liechtenstein have been negatively disposed to reforms that would increase openness. The situation has improved in recent years, but there is still some way to go before achieving parity with the EU. Further, there have been problems with the auditing of individual EFTA institutions, with criticism from EFTA's Board of Auditors, of the EFTA Court amongst others.

The challenge with respect to supervision and accountability, concerns, revolves around a structural weakness with the Norwegian model of integration with the EU. At the same time however, a number of these problems could be improved through institutional reform and tightening of practices within existing procedures – if there is political will and capability to do this.

26.4.4 An Open and Informed Societal Debate

Another key condition for real democracy is the existence of “an open and enlightened discussion” as stated in the last paragraph of §100 of the Constitution. Through an open and informed societal debate, with the free exchange of arguments, citizens have the possibility to make up their minds about important societal questions and can form a basis for making political decisions. This is furthered too when political parties are active in the debate; via organisations and participation in civil society; via a free and independent media, and through

openness of and insight into official decision making processes, and formal and real freedom of expression of the citizens.

In this area there clearly are democratic deficiencies with respect to the Norwegian European debate as it has functioned since the mid-1990s and right through to today. While the great debates about the EEA and Norwegian EU membership during the period 1990-1994 were characterised by comprehensive, engaged and informed societal debate, the same cannot be said of Europe-policy and the continuing model of integration with the EU from the end of 1994 and up until today.¹⁷

The lack of an open informed public debate on the EU question is not an exclusively Norwegian problem, and is evident in many countries in Europe. The challenge all the same is especially acute for Norway for two reasons. This is primarily because of special characteristics of Norway's association with the EU. Secondly, it is due to the deep and prolonged political split over the underlying EU question.

The model of integration is central to understanding the deficiencies of the Norwegian public debate over Europe. In the EU states where the informed societal debate works relatively well, typically in the three Nordic member states, the EU is an important part of this. The National governments and parliaments participate on an on-going basis in the EU processes and take initiatives and formulate policy, and this is reflected in the public exchange of words. Moreover, the European debate intensifies during specific occasions, such as elections to the European parliament every fifth year, and in connection with a member state assuming the rotating Presidency in the Council, and when the EU considers an important question regarding enlargement or the deepening of the cooperation or the resolution of common crises.

All of this is lacking in Norway. The Norwegian association with the EU revolves to a lesser degree around political initiatives and choices and to a greater extent around administrative and technical integration, which quite naturally fails to inspire societal debate in the same way. This integration also does not happen in real time – at the same time as the issues are decided in the EU, but more likely some years afterwards when they are ready to be implemented into the EEA. There are also no regular opportunities that properly put European policy on the agenda. The great events in the EU are generally experienced as foreign policy material, even when they in reality involve Norwegian interests profoundly and directly. Enlargement of the EU in 2004 was, for example, not discussed as an issue that applied to Norway, even though it simultaneously led to the enlargement of the EEA, and possibly was the most important event in Norwegian European policy since 1994. Subsequent enlargements of Schengen were only covered in short articles in a few newspapers despite the fact that this has had great consequences for Norwegian border control and immigration policy. The list is long.

The few specific issues that dominate the European debate in Norway are likely to be whether to use the Right of Reservation or disagreements between the Norwegian authorities and ESA. These are exceptions that are not representative of the main tendencies in the Norwegian EU relationship. Some of them are also not particularly important when measured in societal

terms, but they anyway receive a disproportionately large amount of attention – whilst the truly important EU/EEA issues fly under the radar.

The political split over the EU question between the parties, and within many of them, is another contributing reason for the lack of open discussion on European issues. Since many in the parties appear to worry that debate about on-going European issues can reawaken the underlying EU argument, they are toned down. As all of the government coalitions since 1994 have included both yes- and no-parties, suicide-clauses and self-restraint rules were formed that weaken the possibilities for a politically open debate. Because the form of association is in itself a compromise it does not represent a subject for political conflict and consequently neither for political engagement and interest. The parties often have more to lose than to gain from discussing Norway's agreements with the EU, and so consequently do so only in small measure. This is accepted by the voters, who also are not so very absorbed by continual integration with the EU. They neither punish nor reward the parties for their positions and activities.

In the absence of actively political parties, much of the ongoing EU debate in Norway is influenced by the organisations that are for and against EU membership, the Europe Movement and No to EU. They both contribute to keeping the EU debate alive, to stimulating critical comment, and to maintaining an important societal function. However, these are organisations that are primarily concerned with either a “yes” or “no” to EU membership, and were established to fight for and against it. This sets the tone of their argumentation and activity, and polarizes their contribution to the debate over Europe. They revert frequently to the yes/no debate, rather than discussing Norway's existing form of association and the policies that can and should be pursued within its framework.

The media has an important democratic task and responsibility to inform people about issues of societal consequence and to stimulate debate. On European policy one could discuss how well the Norwegian media has actually lived up to this ideal, since 1994. The media during this period have to some extent covered the EEA Agreement, and to a lesser extent the Schengen and the other agreements. A number of specific issues have received much attention. Some media channels are better than others. But in general Norway's on-going association with the EU has only been covered to a limited degree from the end of 1994 up until today. By contrast, the coverage of the EU as a foreign policy matter has received much more coverage than the matter of how the EU affects Norway. Over time, reporting on the EEA and the other EU agreements has decreased, whilst their significance for society has steadily increased.

A consequence of this weak political discourse and media coverage is that there is a relatively low level of knowledge in the public about the Norwegian agreements with the EU and the extent to which Norway has actually conformed with the EU policies and rules. Citizens know more about the EU than the EEA, and very little about how the agreement actually functions, or that Norway is connected to the EU in a range of other areas, including police cooperation, border control, immigration, regional policy and security and defence policy. Viewed as a whole, the deficiencies are so obvious that one could question whether there has been any

functioning democratic public awareness about Norway's real relationship with the EU during large parts of the period from 1994 to 2011. From a democratic perspective that is deeply unsatisfactory.

26.4.5 The Rule of Law and Individual Rights

A fourth and final trait of a well-functioning democracy is that the authorities are not placed above the law, but themselves must follow the rules that are made, and that citizens are secured fundamental rights which they can claim, if necessary, before independent courts, both with respect to each other and the authorities. This is the core of what is referred to as the "rule of law". To the extent that "democracy" and "rule of law" are two separate concepts, or that rule of law must be viewed as an important part of a well-functioning democracy is theoretically disputed. Regardless of that, the two concepts belong together, and in an expanded concept of democracy it is usual to include principles of the rule of law. Another issue is that tensions occur between the objective of popular rule and the limitations on this that are consequences of individual rights and court supervision.

Generally, integration with the EU has expanded the Norway's legal commitments, strengthened the supervision of the courts, and given Norwegian citizens and companies important new rights. These rights can be upheld before the courts. If this is included in the concept of democracy one could say that the adaptation to the EU has had a positive effect on Norwegian democracy.

The EU is a rules-based political community, where the law has a central role, the courts are given great powers, new political initiatives must be legally anchored, political disputes are settled through judicial argument, common progress is measured through new legislation and court decisions enjoy great authority and legitimacy. This is how it has been since the beginning in the 1950s, and it is the reason why the EU is often described as a *community of laws*, especially compared with other international organisations where size and balance of powers means much more. Through the EEA, Schengen and the other agreements, Norway has connected itself with this community of laws, and not just taken over the most important parts of EU law, but also committed itself to give the rules the same status and rank in Norwegian law as they have in the EU states.

For the Nordic parliamentary democracies, the adoption of EU law through EU membership or the EEA the past two decades has strengthened the significance of legal commitments, and adjusted the relationship between the law and politics in a way that is readily described as "judicialization", and which by some is seen as positive and by others as negative.¹⁸

Through the EEA Agreement Norwegian citizens and companies are given a range of important new rights, especially in the economic and social area. The basic rules in the EU/EEA on the four freedoms and the competition rules are often referred to as "European economic constitution", and have in common with other constitutional rules that they regulate central conditions in society, are generally formulated, have remained unchained over a long period, are developed through legal precedence, and have priority over other rules. To a greater extent than previously the right of private actors to conduct economic activity is protected, and that includes also the right not to be negatively discriminated against and to be

able to compete on an equal basis as others. Furthermore, EU/EEA legislation also secures individual rights far beyond the economic ones, including in areas such as employment law, the working environment, consumer protection, social protection, environmental rights, and non-discrimination etc.

When EU/EEA legislation is implemented in Norwegian law it can be upheld by private entities against national authorities before the Norwegian courts. This means that it can be applied to supporting claims against the authorities or as a basis for finding administrative decisions to be non-compliant. Furthermore, EU/EEA legislation also takes precedence over Norwegian law. This means that it is also applied as a basis for setting aside the Parliament's legislation if it is in contravention to EU/EEA rules. In principle, the EEA Agreement is an important extension of the old statutory principle regarding the courts' right to challenge the Storting's legislation. To the extent that it has only happened to a limited extent, can be attributed to the cautious approach of the Norwegian courts. But first and foremost it is because Norwegian legislators have implemented EU/EEA legislation in a thorough and systematic way, so that conflict seldom occurs.

Implementation of EU law through the EEA Agreement from 1992 to 2011 has occurred at the same time that other international treaties have had increased impact on Norwegian law. First and foremost is the European Human Rights Convention (ECHR), which over the past 20 years has been increasingly invoked before Norwegian courts. As a whole, this can be viewed as a radical internationalisation and Europeanisation of Norwegian law that fundamentally changes the legal system's character. From a unified national legal system Norway has transitioned to a two part system that is federal in character, where national law still applies but is subordinated increasingly to a supranational legal structure. This common European law comprises both traditional human rights, economic and social rights, as well as a long list of more detailed rights, relating particularly to non-discrimination and border crossing.

The strengthening of citizen's rights and the courts' position can be considered a positive democratic aspect of integration with the EU, improving opportunities and legal certainty of private actors. However changes in the relationship between law and politics can also be viewed as a democratically problematical. The strengthening of the rule of law means that the capacity to act for the representative institutions is limited. This could be viewed as a form of tension between diverse democratic and legitimate values, which continually needed to be tested and weighed up against each other.

26.4.6 Summary

Viewed as a whole there are considerable democratic deficiencies in the Norwegian model of integration to the EU, with consequences for Norwegian politics. Through the EEA, Schengen and the other agreements Norway has committed itself to adopting policies and rules from an organisation of which it is not a member and does not have voting rights. The conditions for Norwegian political representation and participation are very limited, and the same is true of the possibility to supervise and make accountable the organisations and people that form policies and rules that are binding for Norway. This model of integration contributes to an

obvious paucity of national debate about the European strategy. Political parties are cautious about problematising EU/EEA issues; media coverage of the on-going integration with the EU is weak, and there is little knowledge and debate amongst the Norwegian public concerning the extent of Norway's integration with the EU. This integration has strengthened the individual's legal rights and the courts' position, but limits the powers of national democratically elected bodies.

The democratic consequences of Norway's agreements with the EU present three paradoxes:

1. Agreements which have the goal of securing Norwegian values and interests are in their construction and impact deeply problematical for Norwegian democracy.
2. Agreements that are democratically deficient nevertheless have parliamentary endorsement and public support.
3. Whilst the EU's democratic deficit has diminished, Norway's democratic deficit with respect to its EU agreements has increased.

And finally, are the democratic flaws in Norway's EU agreements structural, and to what degree they can be reduced or compensated for by initiatives within the framework of the present form of association.

The answer is that in general they are structural. The democratic deficiencies are not so much an unexpected side effect, but rather an integral part of their structure. Norway has chosen a form of integration with the EU in which it wishes to participate in the Internal Market and other important parts of the European integration process, but simultaneously does not wish to be a member of the EU. The price of this is a lack of democratic representation and participation, and it has also turned out to have a negative impact on accountability and informed societal debate.

Political Norway was clearly aware of these costs when they entered into the EEA in 1992, but chose to go ahead anyway. Firstly, this was the compromise upon which they could agree. Secondly, a broad majority felt that the material advantages of the agreement more than compensated for the principal weaknesses. The choice was made by a parliamentary majority with a qualified majority according to §93 and therefore it is constitutionally and democratically legitimized. An absolute majority can in principle at any time terminate the EEA and the other agreements. But as long as they are in force, Norwegian democratic latitude is limited in the areas covered by the agreements.

Within these parameters some of the democratic deficiencies can be mitigated if there is Norwegian political will to do so. Some initiatives are already implemented. The Government's White Paper "On Implementation of the European Policy" was primarily an attempt to find better procedures for political management of EU/EEA issues, and contained a range of proposals that have mostly been implemented, and have had some effect.¹⁹ Moreover, the Parliament has revised its procedures on EU/EEA issues, and improved them on several points, amongst which is the introduction of efficient half-yearly assessments.

It is hard to envisage other institutional measures within the framework of the agreements that would easily mitigate the democratic weaknesses in any substantial way. The potential for improvements is more likely to be achieved through increased political engagement in on-going European policy, combined with a will to optimise use of existing procedures. At the Storting, the supervisory function might also be applied to EU/EEA issues. In the Government one could imagine engagement at more senior-levels and comprehensive political coordination of European policy with clearer instructions and signals to the civil service, both generally and on individual issues. In the political parties one could envisage that they once again take responsibility to lead on European policy instead of suppressing discussion of the matter. Furthermore, the media has a responsibility to cover on-going integration with the EU in a way that reflects its significance to the society. Here there continues to be great potential.

To the limited extent that democratic flaws in Norway's EU integration-model can be mitigated, it is in short mainly *at the national level* that this can be achieved – through increased awareness, debate and accountability regarding the Europe-policy that is on-going. This will involve more noise and increased levels of conflict – which could affect other interests. It is however an open question as to whether political actors have the will and ability to do this.

EEA, Schengen and the other agreements are often described as a national political compromise between supporters and opponents of Norwegian EU membership. But the agreements can also be viewed as a compromise between Norwegian democracy on the one side, and other important national values and interests on the other. Through the agreements Norway receives the benefits of European integration without participating in the EU. The balance shows there is surplus on the benefit side but a deficit with regard to access to decision-making. This is a price that both the majority of Norwegian politicians and a large majority of the Norwegian public have been willing to pay, and over the years they have apparently managed to cope quite well with it.

The Committee's members Sejersted, Arbo, Bøckman Finstad, Dølvik, Hansen Bundt, Rye, Tallberg, Ulltveit-Moe and Aarebrot will in conclusion underline that within the parameters of the political exclusion the EEA, Schengen and the other agreements with the EU have for nearly 20 years safeguarded Norwegian interests rather well. There are clearly democratic weaknesses in how the agreements function. But on the other side they are democratically firmly legitimized. The democratic deficiencies are a structural weakness of the current Norwegian model of integration, which is the price Norway pays for participating in important European integration processes without being a member of the EU. For these members it is difficult to see how Norway, within the framework of today's model would be able to continue to benefit from the cooperation with the EU in the many areas that a political majority in the Parliament desire; or in a way that is democratically fundamentally better. According to the views of these members it is therefore difficult to proceed further with this critique of democracy without addressing the question of realistic alternatives to today's form of association with the EU. This is a question which the Committee was not requested to assess. Another issue is whether the democratic deficiencies of today's integration-model to can be mitigated through a clearer political legitimisation of Norway's European policy. This

could provide the basis for greater political engagement, openness and a broader debate on European policy that is more orientated towards reality, and the building of a common understanding of what sort of relationship Norway has today with the EU.

Committees members Stubhold, Arbo, Dag Seierstad and Sjursen point out that despite the fact that the EEA Agreement has constitutional and formal legitimacy through a large number of Parliamentary measures, the form of association involves great democratic weaknesses. There are many economic and political advantages to Norway's current form of association with the EU. The disadvantage is that the EEA Agreement's structure means that Norwegian policy is gradually emptied of content in the areas that are covered by the agreement. Norway has in important areas through the EEA Agreement outsourced Norwegian legislating to the EU. Moreover latitude for action is increasingly constricted as more EU/EEA rules come to be. Many adopted rules cannot be changed again without risking a rupture in the EEA Agreement. According to *these members'* view Norwegian politics is consequently becoming in many areas more passive and less interesting. Today the situation is such that much Norwegian policy and legislation neither originates from internal political processes in Norway, nor is anchored upon public discourse. This is also the case in (many) situations where legislation, taken on its own merits, has good content. This can lead to alienation with respect to the policies and rules that it pertains to. There is a real risk that this can contribute to less engagement and participation in politics, ultimately weakening democracy.

¹ See Olson, J.P. (2002) The Many Faces of Europeanisation, *Journal of Common Market Studies*, vol. 40, no. 5, pp. 921-952, and Tallberg, J. et al, *The Europeanisation of Sweden*. Demokratirådets rapport 2010, SNS Forlag, p.16,

² See NOU 2003:19, *Makt og demokrati*, Chapter 13.1

³ Earlier one could discuss whether there also was a difference in that the EEA and the other Norwegian agreements can be terminated by any party (with 12 months notice), while the EU Treaties do not contain any explicit provision for exiting. In the Lisbon Treaty there is now a provision for leaving, ref TEU article 50.

⁴ For more detail see Chapter 11 on the Parliament's position regarding European politics.

⁵ See Chapter 5 10.6.3. and for more detail Haukeland Fredriksen, H (2011) *EU/EØS-rett i norske domstoler*, Europautredningen, report no. 3, p. 23-24.

⁶ An important exception is Schengen and other agreements on Norwegian integration with the EU's justice policy, which is managed by the Justice Department. See also Chapter 8 on the coordination of EU/EEA issues.

⁷ See Chapter 18

⁸ See chapter 16 The Labour Market and the Workplace (16.7.2).

⁹ Within Schengen there are areas with more participation in the decision phase.

¹⁰ See Chapter 6.4.6. Spring 2011 the three coalition parties warned that they wish to use the right of reservation against the EU's Third Postal Directive. But at the time of writing this (December 2011) the process of reservation according to EEA Article 102 still has not been initiated, and it remains to be seen how the issue will develop.

¹¹ See Chapter 9.3.1.

¹² Another modification is that one to a certain extent has managed to achieve having Norwegian cabinet ministers invited to some of the *Informal Ministerials* in the EU. As shown in Chapter 9.3.3, however, the extent to which Norwegian ministers follow up varies.

¹³ See Chapter 9.4.4.

¹⁴ As shown in Chapter 9 there is a relatively comprehensive non-state Norwegian lobby activity toward the EU, see also Eliassen, K.A. and Paneva P. (2011) *Norwegian Non-Governmental Actors in Brussels 1980 – 2010, Interest Representation and Lobbying*, Europautredningen, rapport nr. 5, The scope is relatively low in comparison with the equivalent number of actors from comparable countries such as Sweden and Switzerland. Some of the Norwegian actors that seem to have the best access in Brussels are the social partners (NHO, LO etc), that particularly actively participate through their European umbrella organisations. As pointed out in Chapter 9 it can be a democratic paradox that the Norwegian form of association in many ways gives better representation and participation in the EU to the corporative channel than for the electorate.

¹⁵ In addition there is the control function over the courts, which is considered in Chapter 26.4.5 on the rule of law and individual rights.

¹⁶ See above Chapter 10.5. For a more detailed analysis see Sejerstad, F. (2002) *Kontroll og constitution*, Cappelen Akademiske Forlag, Chapter 17 on “Kontroll og konsultasjon” and especially Chapter 17.5 on “Kontroll og konsultasjon I europapolitikken” (pp. 591-611).

¹⁷ See Chapter 12 for a review of the knowledge of and debate about the EU Agreements in Norway.

¹⁸ An illustrative example of this is the Norwegian and Danish reports on the balance of powers. Both pointed out that adaptation to the EU in the recent decades has contributed to comprehensive judicialisation. But while that is viewed in the Norwegian Report on Power and Democracy as an undesirable development that weakens national democracy, it is in the Danish Balance of Powers report, also from 2003, viewed as a positive development that strengthens national democracy.

¹⁹ See St.meld. nr. 23 (2005-2006) *Om gjennomføring av europapolitikken*. The Parliament wished a more active relationship to the Norwegian cooperation with the EU, and suggested a adjustment fo the Parliament’s own methods of cooperation on issues that concern Norway’s relationship with the EU and the EEA, see Opinion S. nr. 115 (2006-2007). The Opinion was unanimous. Later on, the Parliament followed up with certain reforms to its European activities, see Chapter 11.5.