

Official Norwegian Reports NOU 2012: 2

Outside and Inside

Norway's agreements with the European Union

Chapter 28 The way forward



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 Sjørusen, 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.

28.1 The future development of Norway's relations with the EU

Norway's relations with the EU are based on a close and continual association without membership. Such a solution was first adopted in the 1992 EEA Agreement, and was also subsequently brought into play (with some variations) in the Schengen Convention and other agreements. Although it has been developed and expanded along the way, the basic model has remained the same for the past twenty years.

It is impossible to say how much longer this state of affairs will last, or how the model will evolve in the future. It may continue to prevail for another twenty years; equally, it could also be challenged at any moment, either by the launch of a new EU debate in Norway or by circumstances outside the country's borders over which the Norwegian authorities have little or no control. Europe has witnessed dramatic and unpredictable events in recent decades, and has now re-entered a volatile phase whose consequences cannot be foreseen with any degree of certainty.

The Committee is not being asked to devise alternatives to the current form of association, or to describe scenarios for different possible future developments.

However, assuming that the fundamental features of Norway's current form of association with the EU remain unchanged over the next few years, it is possible to point to probable trends and identify likely issues, and to contribute certain recommendations and reflections in terms of possible initiatives and adaptations which could help to improve and reinforce the present situation. That is the framework for this last chapter.

The first thing which may be said with any degree of certainty is that Norway's relations with the EU over the years to come will depend primarily on developments within the EU. Such has been the case over the past twenty years, and such will probably continue to be the case in future. For so long now, matters have evolved on a generally reactive basis, and there is little sign of any change in this state of affairs. If anything, Norway is in many respects even closer to the EU and its Member States (in terms of political, legal, economic, administrative and a range of other factors) than it was in 1992.

This report is being concluded at the beginning of 2012, at a time when the EU and many of its Member States are facing a period of financial, political and social unrest and a great deal of uncertainty about the way forward. While some take the view that cooperation is on the point of collapse, others believe that it will intensify or strengthen. This is something that is impossible to predict at present. However, one thing is certain: whatever happens will affect Norway's relations

with the EU.

In drawing up its report, the Committee has identified five main axes in the development of Norway's relations with the EU over the past twenty years.¹ Each of those axes may be used – barring the unforeseen – as a basis for analysing anticipated future trends.

First, the *geographical* scope of Norway's agreements with the EU has continually expanded. As the EU has grown, so have Norway's agreements: the European Economic Area now extends to 30 countries, while Schengen covers 26. This process is expected to continue in the long term. The EU is currently involved in negotiations with five official candidate States (Croatia, Iceland, Macedonia, Montenegro and Turkey), while the process has begun with another four countries regarded as "potential candidates" (Albania, Bosnia and Herzegovina, Kosovo and Serbia). Progress is slow in the case of some of those countries, and it is doubtful whether they will ever become members. In other cases, EU membership is likely and will probably be achieved in the course of the next few years. This applies in particular to those countries located in the Balkan region. If this does happen, it will mean that Norway's agreements will be extended to apply to them too. In recent years there has been extensive discussion within the EU and in many Member States regarding the EU's relations with Turkey – one of the key questions dominating the EU's future. To the extent that this issue even registers on the radar in Norway, it is seen as a purely foreign affair which is of no concern to Norwegians. Very few people are aware that this is in fact also a discussion about Turkish membership of the EEA and Schengen, and that the possible accession of Turkey to the EU will affect Norway almost as much as it will the EU Member States. The fact that this is not yet regarded as an issue of direct relevance is another matter.

Secondly, Norway's relations with the EU have developed through a steady stream of *new agreements* in new areas, in particular over the past decade. The number of such agreements has been reflected in a constant upward trend, which shows no signs of levelling out or falling. On the contrary, there are several areas in respect of which the Norwegian authorities have indicated a desire for closer ties with the EU, and where work is already under way, in particular in terms of judicial cooperation. Furthermore, new agreements have also been concluded within the EEA framework on relations with new EU agencies and programmes, etc. Here too, the number of such agreements has risen constantly over the past decade and shows no signs of tailing off. On the contrary, a number of processes are currently under way, not least as regards affiliation to new agencies. Although some of those processes have recently come to a standstill, this has been as

¹ See in particular Chapters 3.2 and 27.3.1.

a result of institutional and constitutional problems, and not because the Norwegian authorities have been less inclined to become involved.

Thirdly, relations with the EU have intensified as a result of *new legal acts* being concluded in the EEA and Schengen. Again, there has been a steady increase in the number of such acts and no sign of any major change. Although certain aspects of EU cooperation are currently in crisis, others continue to develop rapidly, including many matters covered by the EEA and Schengen. The EU is currently engaged in a high level of legislative activities in areas such as the internal market, the environment, climate, communication, research, innovation, consumer protection, company law, copyright and patent law, financial services and supervision, IT, police cooperation, external border controls and many others, all of which will be included within the scope of Norway's existing agreements.

Fourthly, the substance of Norway's obligations under the agreements has developed as a result of the *interpretation and practice* of the EU Court of Justice, the EFTA Court, Norwegian courts, the Commission, the ESA and the Norwegian administration. Again, those processes have generally led to deeper and closer cooperation, and there is no indication thus far of any reversal in the overall trend. This natural development of the body of agreements will continue.

Finally, relations have also been characterised in recent years by *unilateral Norwegian adaptation* to aspects of EU cooperation in respect of which no agreements have been concluded. This is more difficult to delineate precisely, and takes place in many different ways and in a large number of areas. However, the overall impression is that this aspect has increased in scope in recent years and will probably continue to do so. In some areas, the Norwegian authorities have given a clear indication that this is the direction they wish to take, in particular as regards the general immigration policy. Barring any unforeseen events (either in the EU or in Norway), Norway is therefore expected to continue to develop ever closer and more extensive cooperation with the EU in the years to come within the framework of the current form of association, along the same axes as have been followed over the past twenty years.

28.2 Resistance and vulnerability

On the whole, Norway's relations with the EU since 1994 have developed in one direction, towards ever closer and more comprehensive association. The speed of such development seems if anything to have increased in recent years, just as the challenges are also mounting. This raises the question of how much longer this can continue. How long can such a policy be sustained? How robust or vulnerable is it to pressure?

Again, this is difficult to ascertain for sure. What is clear is that the EEA Agreement has already lasted for much longer than many would have believed twenty years ago. Viewed from that perspective, it has proved surprisingly resilient and has withstood major changes. While the EU has undergone considerable upheaval during that period, experiencing both upturns and downturns, Norway's association has remained flexible and stable. The same circumstances which have made it last so long may yet ensure its continued existence in the future.

At the same time, it also appears to be a vulnerable construct which, on closer analysis, depends in any case on two equally tenuous supporting elements: internal relations in Norway on the one hand and external relations on the other.

With regard to the first aspect, Norway's form of association with the EU is based on a political compromise within the country. With the exception of the Christian Democratic Party and the Liberal Party, none of the political parties supports the EEA Agreement as a first-choice solution in terms of European policy. However, many support it as a second-choice solution, and even those which oppose it in principle have in practice been able to use it as a basis for governance. This compromise has now lasted for twenty years – a long time for a political compromise, particularly in such a sensitive area. It presents certain advantages; otherwise it would not have lasted this long. However, it also imposes a political cost on many of the parties and limits their political room for manoeuvre.

The compromise seems to be holding up fairly well thus far, and there are no clear signs of any weakening. If anything, it could be said to have become stronger since the two parties which are opposed to the EEA and Schengen in principle have in practice governed on the basis of those agreements for over six years without any noticeable changes of course compared to the European policy conducted by all governments since 1994. Once the current coalition government comes to an end, it is clear that both parties will revert to a more active resistance to the EEA, but there will continue to be a broad majority of parties in favour of retaining the agreement.

At the same time, there are signs which could be interpreted as evidence of increasing movement. There has been some more discussion of EU/EEA-related matters recently, including somewhat more frequent demands to examine the use of the right of reservation in respect of individual directives. This may be down to the nature of the directives in question; alternatively, it may reveal evidence of increased political self-confidence in Norway, or be regarded as a sign of a certain degree of "wear and tear" in respect of the EEA. It may also stem from the fact that the "No to

the EU" movement has actively stepped up its campaign against the EEA agreement in the past two years, both in general terms and by demanding that the right of reservation be used in individual cases.

Many parties have indicated that they anticipate a discussion on the EEA Agreement once the Committee's report is published, and the government has also announced a parliamentary review in that connection. Consequently, 2012 will probably see the most active discussion of Norway's form of association with the EU for many years. It remains to be seen whether such a discussion will lead to the model being watered down or reinforced with new authority and legitimacy.

On the other hand, Norway's form of association also depends on external relations, first and foremost in respect of the EU and the main EU Member States. As long as the EU is satisfied with the agreements, they are reasonably robust. The principal evidence in that connection comes from support for the EEA and the other agreements, which is stronger and clearer than it has been for a long time². According to the conclusions adopted by the Foreign Affairs Council in December 2010, both the EEA and (more generally) relations with Norway are regarded as highly satisfactory. While those conclusions raise the question of reform, it is more in terms of preserving and strengthening the current model than anything else. Moreover, the EU currently has plenty of other challenges and tasks to deal with and has no incentive to spend time or expend energy on changing what is a smoothly functioning relationship with a cooperation partner.

² See Chapter 13.2.

While this is the principal message, there are also certain signs that, in future, the EU will be less sympathetic to Norwegian demands for special exemptions and adaptations, and that there is greater awareness of the Norwegian authorities' proclivity for prolonging disputed individual cases. There is also a desire on the EU's part to clarify and speed up the EEA procedures, and there is concern about the new tendency of certain Norwegian participants to request reservations, even if that tendency has not yet reached extremes. If a more critical EEA discussion in Norway were to coincide with a harsher attitude on the EU's part on specific issues, either of those tendencies could serve to inflate the other. In general, however, the EU will hardly want to jeopardise the current model.

Overall, the two main pillars of the current form of association appear to be relatively robust. In all probability this also means that the parties will endeavour to find a solution in which its main features can be preserved, should other external events occur; the most likely of these would be the need for the Agreement to be re-negotiated, if Iceland were to accede to the EU.

In assessing whether Norway's association with the EU is robust or vulnerable, we must also make a distinction between its institutional structure and its substance.

A particularly vulnerable aspect is the institutional structure under the EEA Agreement, which has a large apparatus to look after the interests of three small states. Since 1995 it has been functioning in circumstances other than those for which it was designed, and it is now already vulnerable. If the EFTA/EEA pillar shrinks further, it is difficult to see how it could fail to need rebuilding.

The substance of Norway's association with the EU is an altogether different matter. Through the EEA, Schengen and the other agreements, Norway has taken over approximately three-quarters of EU law, and incorporated it into 170 Norwegian laws and a thousand provisions, and made it the foundation for policy and administration. It has been incorporated, largely without controversy. This is not something which can simply be removed, and it is difficult to imagine a political majority that might wish to do so. Over the last twenty years Norway has participated in a broad process of European integration, driven by economic, technological, social, political, legal and other forces. As far as its substance is concerned, Norway's adjustment to the EU has to date been a fundamentally robust process.

28.3 The need for a clearer framework for Norway's association with the EU?

28.3.1 The framework for the Committee's recommendations

The Committee was asked to examine and analyse the current state of Norway's relations with the EU, not alternative models. In principle there are three main models for relations with the EU: full membership, the current model, or some other looser form of association. The Committee was not asked to investigate those alternatives, and has refrained from doing so.

This also means that throughout its review, the Committee has focused solely on the current form of association in its analyses and assessments. Where we highlight strengths or weaknesses, we do so within the framework of current agreements. In those few places where we have proposed amendments or adjustments, we have done so with a view to strengthening the current form of association. Similarly, we have tried to avoid any evaluation of whether the underlying EU cooperation in which Norway is involved is functioning well or badly.

Nor does our mandate ask for recommendations on the revision or reform of the current form of association³. Our main contribution will be a research-based account and analysis – so that the subsequent political consideration of the report can address the question of changes. In certain fields, the Committee also, in the course of its work, identified areas where improvements might be envisaged within the framework of the current model; in such cases, this was immediately taken up and discussed. Those recommendations are briefly summarised below. For more detail, please refer to the chapters in which the issue was originally discussed, as indicated in the footnotes.

We should make clear that the recommendations have been drafted on the basis that it should be possible to implement them within the framework of the current form of association, with the aim of improving it. This does not imply that the Committee is taking any position on whether or not this is the best solution for Norway's relations with the EU.

³ See parliamentary review No 23 (2005 – 2005) *Om gjennomføringen av europapolitikken* [On the implementation of European policy], a key aim of which was to formulate a plan of action with a number of specific measures for strengthening the administration's work on EU/EEA affairs. That was an altogether different type of review from the work of this Committee. It should be noted that a similar exercise has been carried out recently, and that most of the steps proposed in 2006 were subsequently implemented.

The Committee would also emphasise that many of the weaknesses of the current form of association are structural, and must be seen as a part of that very model which was desired by a broad majority of the Storting after a comprehensive evaluation. It would be an illusion to believe that we can reform our way out of the most fundamental problems, such as the democratic deficit. Moreover, most of the possible proposals for reform will be institutional, organisational or procedural in nature, and again there are limits to the extent to which we can organise our way out of the challenges of the current form of association. In the view of *the Committee* the room for manoeuvre as regards substantial improvements within the framework of the current form of association is limited. However, subject to these reservations, *the Committee* makes some recommendations. Several of these have also been discussed in earlier chapters.

28.3.2 A common framework for all Norway's agreements?

As mentioned above, Norway's agreements with the EU are a patchwork. As a whole, the system is complicated, and an overview is difficult to achieve. This gets in the way of democracy, and helps to conceal the reality of Norway's overall relationship with the EU. Only a very few in Norway or the EU have a view of the relationship in its entirety, which hampers overall political control and coordination. The dividing line between the different agreements does not necessarily match current EU structures, which creates challenges, including as regards which parts of EU rules are covered by Norway's agreements, and if so by which agreements.

If the current form of association with the EU is to be continued indefinitely, we should ask whether an attempt should be made to make it more uniform and coherent, and negotiate a common framework for current agreements.

Such a framework might be envisaged in various forms, but the main one must be one agreement package covering everything – including the EEA, Schengen, the other agreements on judicial matters, the agreements on security and defence policy, Interreg and other programmes, etc. Moreover, there would have to be a common institutional framework around the whole package, with procedures for higher and general political dialogue and direction, which are currently lacking. Further procedures could be harmonised, but could also continue to vary from one subject area to another, as in the EU. The simplest would probably be some form of expanded EEA Agreement which also covers the other areas where Norway has agreements, and strengthens the political level at the top. However, other models could also be envisaged. The reform could be purely institutional, and could involve a common framework around existing agreements, or one might at

the same time consider whether further areas of EU cooperation should be included.

In the Council conclusions adopted by EU Ministers for Foreign Affairs in December 2010, this idea of a more uniform framework was aired⁴. After noting that Norway had started a process to examine its agreements with the EU, the Council said that on the EU side there should be a "parallel process" to review the EEA and other agreements. The conclusions then state:

"35. Furthermore, it should be examined whether the EU interest is properly served by the existing framework of relations or alternatively *by a more comprehensive approach, encompassing all fields of cooperation and ensuring a horizontal coherence*. The EU review should also take into account possible developments in the membership of the EEA."

This was said a year ago, and has not yet been followed up by anything more concrete. On the EU's side, the indication has rather been that they will wait for the Committee's report before carrying out any further evaluation. The comments above should also be read in the knowledge that earlier in the same conclusions the Council had expressed great satisfaction with the EEA and the other agreements, so it hardly sees any pressing need for reform. That being so this might be interpreted as a sounding-out rather than a proposal, and the substance of their intentions is unclear.

At the same time it is a clear statement, which was adopted after a thorough procedure in the Council, sitting as the General Affairs Council and consisting of the Ministers for Foreign Affairs of the 27 Member States. That being so, it is a statement which Norway must take seriously, examine and respond to.

The Council's statement highlights the need to examine whether the *EU interest* is properly served by the existing framework of relations or alternatively whether it would be better served by a more comprehensive approach. In the same way, the Norwegian authorities must examine whether this would serve the *Norwegian interest*. Moreover, this process must also include Iceland and Liechtenstein, and possibly other countries too. A process is currently under way between the EU and Switzerland to bring together more than 120 bilateral agreements into a more uniform framework, and if the EU were first to use its energy to construct a new model for its relations with the three EFTA/EEA countries, then it might at the same time consider using it for other countries,

⁴ See the Council conclusions on EU relations with EFTA countries of 14 December 2010, as mentioned above in Chapter 13.2.1.

including Switzerland, and possibly others later. The EU would hardly want to expend time and energy on this just for Norway's sake.

If an inclusive agreement is to be achievable, and in a way which serves Norwegian interests, Norway must itself actively take the initiative and be its architect. This requires a prior evaluation of whether this is desirable and realistic. The arguments for and against are set out below.

Arguments *for* a common framework for Norway's relations with the EU include:

- Some of the democratic weaknesses of the current agreements could be reduced
- From an institutional point of view, relations between Norway and the EU would become clearer and more orderly
- It would then be easier to establish a level for general political contacts regarding all aspects of relations between Norway and the EU
- The current problems of determining what comes under the EEA, Schengen, or other agreements could be avoided
- It would make it easier for Norway to associate itself with the EU in areas where the Norwegian authorities currently find this difficult (particularly in the judicial sector)
- It would contribute to a more coherent European policy in Norway and a more coherent Norwegian policy in the EU

- Both the process and any agreement would make the extent and nature of Norway's overall relationship with the EU more visible, and make that relationship more transparent, thereby promoting political responsibility
- It would promote a European debate based on knowledge and steered by reality.

Arguments *against* a common framework agreement include:

- It does not seem strictly necessary ("if it ain't broke, don't fix it")
- It could prove to be both politically and legally burdensome and difficult to construct such an overall framework, and it cannot be taken for granted that the result would be better than the current situation
- It would not necessarily solve any of the democratic weaknesses found in the current agreements
- There is a risk of opening up a Pandora's box of difficult and uncomfortable demands from the EU side, including demands from each one of the 27 Member States, which might try to exploit the process to force concessions by Norway
- The asymmetry in the power relationship would make Norway's negotiating position towards the EU a weak one, much weaker than it was when the EEA and Schengen were negotiated
- Such a process would have to be coordinated with Iceland and Liechtenstein, and possibly other third countries
- As part of a more comprehensive and streamlined agreement, Norway might risk losing some of the special forms of association it has achieved, most obviously in Schengen affairs.

Other advantages and disadvantages would depend on the form the process took, and how it was conducted. It cannot be taken for granted that all potential advantages could be realised, just as it cannot be assumed that all imaginable disadvantages would materialise. Some counter-arguments could be parried in advance, for example by agreeing that the negotiations would only cover institutional questions, and not change any of the current substance. But nonetheless these would be difficult and demanding negotiations, both politically and legally.

An entirely new agreement on Norway's relations with the EU would also probably have to be approved by the Storting by a three-quarters majority, under Section 93 of the Constitution. There may be different views on whether this should be seen as an argument for or against; in either case, it helps to raise the political threshold. It is also difficult to envisage such a comprehensive agreement with the EU as this would necessarily become, without vehement debate and questions both about the current form of association and a new round of discussions on EU membership.

The least realistic approach would in all probability be to launch a process to negotiate a completely new agreement. Such an agreement would have to be approved by all the EU Member States, and the process would be very difficult to handle and unpredictable. On the other hand, in principle much of the same effect could be achieved by means of a revision of the EEA Agreement, using the authority in Article 118 to take in the other areas where there are agreements under the EEA, and at the same time making such other changes and adjustments as can be agreed on. In this case, it would formally and genuinely be more a case of tidying up and expanding the EEA Agreement than of a new agreement package.

Irrespective of whether a comprehensive framework agreement between Norway and the EU following a review such as this one appears to be realistic, reflecting on the possibility is still a useful exercise for several reasons.

Firstly, the possibility cannot be excluded that the EU will follow up its signal from December 2010 and put forward proposals; in that case, Norway's response must be well thought through.

Secondly, the question may arise later at short notice if basic circumstances change, for example if the EEA has to be renegotiated in any case because Iceland accedes to the EU, or if the problems with the current model increase dramatically in future.

Thirdly, it is nonetheless interesting to think through how a comprehensive all-inclusive agreement between Norway and the EU *would* have looked – because doing so compels one to consider what sort of relationship Norway actually has with the EU at present. It illustrates the principal weaknesses in the current form of association, but also shows how difficult it is to make the structures for the relationship between Norway and the EU fundamentally any better.

On this basis, *the majority of the Committee, members Sejersted, Arbo, Bøckman Finstad, Dølvik, Hansen Bundt, Rye, Stubholt, Tallberg, Ulltveit-Moe and Aarebrot* recommend that the responsible Norwegian authorities think this through, and sound out the EU on whether this is realistic, and how the model might then look.

If it is not desirable, possible or realistic to launch a process with a view to a one single framework agreement for Norway's relations with the EU, it might be asked whether there are *parts* of the relationship where the framework could be improved. This can in principle be imagined for agreements in the justice sector, agreements and cooperation on foreign/security/defence policy, and EEA funds.

28.3.3 Cooperation with the EU on justice policy

The most obvious area where a more comprehensive framework agreement with the EU might be envisaged is the field of justice policy – where Norway is already associated with large parts of the EU rules on border controls, immigration and police cooperation through Schengen and other agreements.

Nowadays this appears to be a particularly fragmented and ill-defined field, and yet also to be the area where there is most impetus and where Norway is trying its hardest to bring about new agreements where they are wanted. The decisive criterion today is which parts of the EU rules are regarded as "Schengen-relevant". This is a distinction which is not drawn on the basis of anything to do with Norwegian wishes and interests, but on historical and other internal grounds within the EU, including those aspects in respect of which the UK does not wish to become involved, and what Romania and Bulgaria have not yet had the opportunity to do. From Norway's point of view this is not a good criterion, but nowadays it is the decisive one. Within the Schengen framework Norway is entitled and obliged to be involved in everything, and has quite good access to the decision-making processes. Outside Schengen, involvement is burdensome and difficult, as the negotiations on the European Arrest Warrant and enhanced police cooperation have shown, and at best there is little institutional access.

In the area of justice policy, one might therefore envisage a Norwegian initiative to establish a broader and more consistent and comprehensive Norwegian framework agreement with the EU, which could include all the agreements currently in force, and the possibility of further cooperation where the parties agree to it. From Norway's point of view it would be best if we could obtain the same level of access to the decision-making processes as we currently have for Schengen matters.

On this basis, *a majority of the Committee, members Sejersted, Arbo, Bøckman Finstad, Dølvik, Hansen Bundt, Rye, Seierstad, Stubholt, Ulltveit-Moe and Aarebrot* recommend that the Norwegian authorities examine and sound out the possibilities of negotiating a general framework agreement for Norway's association with the EU's justice policy, either as a separate agreement or as an extension of the EEA.

28.3.4 Cooperation with the EU on foreign, security and defence matters

Furthermore, we could assess the possibility of a more compact framework for association with the EU's foreign, security and defence policy. Nowadays Norway has an agreed "political dialogue" with the EU in this area, but it does not really go very far. Moreover, there are stand-alone agreements, particularly on participation in crisis operations, EU forces and association with the European Defence Agency (EDA). In general, particularly in the last ten years, Norway has sought close links with the EU in this area, but has only partially succeeded in establishing formal agreements in line with the Norwegian authorities' wishes. Relationships often depend on individuals and are susceptible to changes. With the establishment of the EEAS, the EU's foreign and security policy cooperation has taken on a new organisational form, which will over time strengthen the EU's ability to conduct a common policy in these areas. At the same time, the reorganisation and establishment of the EEAS has led to some lack of clarity and uncertainty about the form cooperation will take in future. At a stage where the formation of the EU's new policy in these areas is still being moulded, but where Norway also has a close relationship with the EU, the time may be ripe to think actively and constructively about how to form and ensure Norway's future institutional and procedural association with the EU's foreign, security and defence policy. Here too, a more compact framework for areas where there is currently cooperation might be envisaged.

A majority of the Committee, members Sejersted, Arbo, Bøckman Finstad, Dølvik, Rye, Tallberg, Ulltveit-Moe and Aarebrot believe that the Norwegian authorities should look into the possibility of developing strategic dialogues with the EU on foreign policy issues which are important for the whole range of Norway's and the EU's interests. This majority also recommends that the Norwegian authorities should assess and sound out the possibilities for a more compact framework for the areas where there is currently cooperation.

A minority of the Committee, members Dag Seierstad and Stubholt, believe that independence in foreign and security policy is key. Even though good cooperation with the EU in this area is important for Norway, it is not therefore evidently necessary to take the initiative on a compact framework with the EU.

28.3.5 Norway's financial contribution to reducing economic and social disparities in Europe

Furthermore we should consider whether it would be appropriate to establish a more defined framework for the financial mechanisms (EEA funds) for contributions from Norway and the other EFTA states to reduce the economic and social disparities in Europe.

The current set-up, as described in Chapter 24, is that Norway has not made any firm commitment to contribute funds, but instead negotiates its contribution for five years at a time. Since the first five-year period ended in 1999 there have been three such rounds of negotiations. In each round, and especially in the latest two, Norway and the other EFTA states have in reality been in a weak position, and have reluctantly had to accept large increases in transfers, after long, burdensome and difficult negotiations. The EFTA states officially continue to insist that this is something they provide voluntarily, but in reality the mechanism has long since been established and institutionalised.

A majority of the Committee, members Sejersted, Arbo, Bøckman Finstad, Dølvik, Rye, Sjursen, Tallberg, Ulltveit-Moe and Aarebrot believe that the time has now come to accept the consequences of the fact that the financial mechanism has now become an integral part of cooperation between the EU and Norway, and to try to find a method which will provide greater stability and a more fixed framework, and will promote better use of resources. This means that Norway (and the other EFTA/EEA states) should take the initiative for a fixed framework agreement on contributions to reduce economic and social disparities in Europe. In reality this will just be a matter of formalising the obligations which have in fact existed for a long time. This should be counterbalanced by an attempt to negotiate a fixed scale for the calculation of the contribution. Establishing the mechanism in an agreement in this way will hardly mean any extra expenditure over time, and Norway will also obtain a safeguard against disproportionate demands in future, and remove a source of political unrest and conflict in the relationship with the EU which recurs every five years.

A minority of the Committee, members Hansen Bundt, Dag Seierstad and Stubholt, find that they are unable to support the idea of formalising the financial mechanisms. They can imagine future situations where a voluntary contribution mechanism of this order of magnitude might strengthen Norway's negotiating position. If the mechanism were to be formalised in the EEA Agreement, it would have to be as the result of a negotiated revision of the Agreement, in which priority Norwegian wishes were also met.

28.3.6 Other recommendations and requests

Recommendations on the constitutional framework for Norway's association with the EU

The Committee has also discussed whether it would be appropriate to amend the Constitution with a view to adapting the procedures for the Storting's approval on the particular issues arising from Norway's current form of association with the EU⁵.

- A constitutional amendment to fit the rules on the Storting's approval for concluding international obligations to Norway's current association with the EU

The Committee recommends that there should be further examination of how the Constitution's procedures for approval of international obligations in Sections 26 and 93 might take better account of the particular issues arising from Norway's association with the EU.

A majority of the Committee, members Sejersted, Arbo, Bøckman Finstad, Dølvik, Hansen Bundt, Rye, Sjursen, Tallberg, Ulltveit-Moe and Aarebrot emphasise that such reform should principally be focused on codifying existing law, and that it should not make it more difficult than is currently the case to become associated with areas of EU cooperation which an ordinary majority in the Storting believes will serve Norwegian interests.

Furthermore, in Chapters 11 and 26 the Committee considered how the Storting's position has weakened in European policy, and what measures could be taken to remedy this. There have recently been several minor reforms in this area, and the Committee has no proposals for further institutional or procedural changes. It is rather a case of Norwegian representatives making more active use of the procedures which already exist in European affairs (EEA, Schengen etc). Here the Committee calls on the Storting to:

- Strengthen the control function in European affairs
- Send a signal to the Auditor General's Office that it should pay increased attention to European affairs
- Develop the consultation mechanism under Fo. §13a to involve more real debate and clarification

Continue work to strengthen the administration's competence and capacity in European affairs.

⁵ See Chapter 27.4.4, and further particulars in Chapter 11.3.

Recommendations on how the Norwegian authorities handle the relationship with the EU

In Chapter 8 the Committee considered how the Norwegian authorities (the political leadership and the administration) manage EU/EEA obligations within Norway, and in Chapter 9 they considered how they should approach the decision-making process in the EU to obtain cooperation and information. This is also illustrated in a range of individual areas in subsequent chapters.

The Committee's view is that there is no simple organisational measure which could be undertaken to meet current challenges⁶. In essence an active and effective European policy means "getting up early in the morning" – as regards political and administrative priorities, engagement, efforts and resources – and targeted work over time to build up and maintain competence and capacity.

The Committee believes that at the moment the weak areas, where improvements should be achievable by increased effort, are:

- Clearer and more comprehensive political guidance and coordination of the authorities' European policies
- An enhanced and systematic administrative prioritisation of analysis and assessment of how association with the EU affects Norway's administration, at central and local levels
- Enhanced and systematic building up and maintaining of EU/EEA competence in the administration, at central and local levels
- The formulation and implementation of an administrative policy to make better use of the European competence which is built up by Norwegian representatives in Brussels, in the broadest sense
- Participation in programmes should be seen in an overall perspective.

Recommendations linked to the institutional system in the EEA/EFTA

As argued in Chapter 27.4.7, the Committee thinks that the time is ripe for a review, evaluation and possible revision of how the institutional apparatus in the EU/EEA pillar functions, in particular the EFTA Secretariat, the EFTA Surveillance Authority (ESA), and the EFTA Court⁷. These three institutions are facing different challenges, and the process for each of them must be adapted accordingly, and respect the independence of the ESA and the EFTA Court.

⁶ In addition a number of concrete steps have recently been taken in connection with follow-up to parliamentary review No 23 (2005-2005) *Om gjennomføringen av europapolitikken* [On the implementation of European policy], and several of them work rather well.

⁷ Even if there are changes in the EFTA/EEA pillar as a result either of Iceland leaving or other countries joining, this review and revision will nonetheless be necessary.

The Committee therefore recommends that the Norwegian authorities take the initiative with their cooperation partners in Iceland and Liechtenstein, to set up:

- A review and evaluation of the EEA part of the EFTA Secretariat, including an assessment of whether current procedures are appropriate, whether the Secretariat has sufficient resources, whether the institution is sufficiently open and transparent, and whether the arrangement involving only temporary appointments should be changed.
- A review and evaluation of the EFTA Surveillance Authority with a view to ensuring that the institution is able to fulfil its role in a competent, effective and proper manner.
- A review of the EFTA Court's procedures, in particular to consider whether they could be amended in such a way as to promote the Court's proceedings, competence and authority.

Recommendations in individual areas

Furthermore *the Committee* would point out that the report sets out proposals and recommendations as follows:

- The requirement for a comprehensive description of Norway's relationship with the EU should be included in the curriculum for primary schools and (especially) further education⁸.
- Research effort devoted to European affairs should be increased, by larger and longer research programmes, preferably using a dedicated fixed heading in the national budget⁹.
- Cooperation with Eurostat should be enhanced to make possible analyses of the EEA as a whole.
- Participation in the Eurobarometer¹⁰ should resume.
- The public information provided on European policy and on the contents and development of the agreements¹¹ should be increased further.
- There should be a critical review of how the rules on official appointments are formed at national level, within the framework of EU/EEA law¹².

⁸ See Chapter 12.4.2.

⁹ See Chapter 20.7.

¹⁰ See Chapter 20.7.

¹¹ See Chapters 7 and 8

¹² See Chapter 15.6.

- There should be annual assessments of Norway's overall financial contribution to the EU/EEA system in the national budget¹³.

Closing remarks from member Dag Seierstad

When the Storting approved the EEA Agreement by a three-quarters majority in October 1992, that majority approved much more than most people realised at the time:

The Storting agreed to take into Norwegian law:

- the whole of EU legislation for the internal market: the rules on the free movement of goods, services, capital and labour, the right of establishment and competition law;
- all future legislation which the EU might come to adopt for that internal market – whatever it might be.

At the same time, the Storting agreed to set aside all Norwegian laws, rules and administrative decisions which might conflict with the basic principles of the EU Treaty or with any EU law on the internal market – both those which existed in 1992 and any which might subsequently be adopted.

Furthermore, the Storting agreed to use as a basis the state of the law as established through the interpretation of treaties and laws by the EU Court of Justice and the Commission at the time the EEA Agreement was signed – and all future interpretations of treaties and laws by the EU Court of Justice and the Commission.

At the same time, Norway also became linked to an economic system where the basic principles for the economic policy to be followed are laid down in the EU Treaty. In 1992 they were laid down in the Single European Act (1985) and the Maastricht Treaty (1992). They have been carried through via the Treaties of Amsterdam and Nice to the current Treaty of Lisbon.

¹³ See Chapter 24.

The idea behind the EU's internal market, and thereby behind the EEA, is that competition in the markets for goods, services, capital and labour will make all production more effective, by forcing businesses to adapt. In area after area, the EEA obligations force there to be harder competition in Norwegian working life. Increased competition means faster readjustment, more commuting, more job cuts, more shutdowns, more industrial insurance, and more early retirement.

In no way does the EEA Agreement increase Norway's freedom to step in to counteract unfortunate effects of market competition. This is the fundamental weakness of the EEA Agreement. Neither in Norway nor in any EU Member State is a lack of free movement of goods, services and capital an important social problem.

It is the same in all the countries covered by the internal market. A central part of what we in Norway know as the EEA debate, is in EU countries a debate about market liberalism in the internal market. The greatest democratic problems both with the EEA and with the internal market is that such market liberalism is laid down in an EU Treaty which can be amended only if all EU governments agree.

Through the EEA, Norway is able to compete "on an equal footing" with EU businesses on the large EU market – just as all EU companies are able to compete on an equal footing with us here in Norway. But nature, climate and location do not give us "an equal footing" in competition on the markets.

For large foreign companies there are few particularly attractive sectors in Norway. If they were to invest in Norway, it would be by buy-ups, not by new establishments – and in sales departments, not production. This was shown by an investigation of Norway as a target for investment carried out by FAFO [the research foundation of the Norwegian trade unions] in 1994, the year the EEA Agreement came into force.

The leaders of the 50 largest foreign companies with activities in Norway would rather invest in Asia, after that in Eastern Europe, then in low-cost countries in the south of the EU.

The Nordic countries came at the bottom of the list. Why?

The investigation revealed that there are too few of us, we live too far from the major markets, and markets will grow fastest in other parts of the world.

In a world where capital can move ever more freely, those who control capital are free to wrench profitability from every difference in levels of remuneration, tax rules, and employees' ability to resist them. Low pay, low taxes and an obedient workforce suck in investment capital – if an active business policy and other domestic circumstances do not pull them in another direction.

In the EEA, Norway has to compete on the same terms as any region in Germany – in competition for market share and investment with other regions of Germany. The most important difference by comparison with the German region is that Norway is not in Germany.

Moreover, Norway is not near the major markets in Europe. Companies cannot pick and choose between a wide range of suppliers – or supply parts to companies which finish their products an hour's drive away. Our company heads are not part of German networks, with control over all sorts of technology and shortcuts to major German banks. We don't even speak perfect German.

Of course, we will compete with Germans and Dutch, using everything the Germans and Dutch use to compete, such as effective organisation, high levels of competence and the effort put into the job.

In this competition the Germans and Dutch are free of all the disadvantages of Norwegian nature, climate, location and settlement patterns. On the contrary, in the EEA we have to give up most of the advantages which well thought-out, politically led use of natural resources and the building up of businesses have given us. Natural resources, effectively developed business clusters, a responsible trade union movement which is inclined to solidarity, and political control over the resource base have been the cornerstones of Norwegian competitiveness.

The EEA has taken away much of the control over resources and important aspects of political leadership. In so doing, the EEA has taken away the most significant advantages which Norway has had from not being a region in the middle of Germany or France.

It is competition on deregulated markets, particularly the free movement of capital, which may make Norwegian jobs less secure than they are now – together with the rules which stop us using our resources in such a way that they "are for the good of the whole of Norwegian society" as the Oil Law put it – before it was prohibited by the EEA.

In a world with free movement of capital, it is not evident that there will be investment in Norway – by domestic or foreign investors. But this has nothing to do with "access to the EU market". Neither nature, climate, location, free movement of capital nor EEA membership give us anything for free when it comes to investments in Norwegian workplaces.

Norway has had two particularly important competitive advantages in the last century: we have had cheap and ample access to energy (hydropower, oil, gas) and to other natural resources (fish, timber, ore) which other nations have needed. On that foundation, we have built up strong businesses in industrial processing, oil-based industries, and maritime activities, which have been promoted by business policy means which are now banned to a significant extent by the EEA.

At the same time, an employment model has developed with a compact remuneration structure, good welfare arrangements and close cooperation between the social partners. Cooperation in the workplace has contributed to smooth adjustments, since the trade union movement was able to ensure that employees also gained benefits from the changes. Norwegian business life has therefore been able to adapt quickly enough to be competitive, despite high wage levels.

This model has been based on two premises: a high level of employment and a shortage of labour, and country-wide tariff agreements regulating wages and employment conditions in many sectors.

Similar social models are under great pressure in many EU countries. The danger is that they may also come under pressure in Norway, as a result of the market liberalism imposed by the EEA Agreement.

The EEA is contributing to a general liberalisation of the Norwegian economy, and makes it difficult to prevent an increasing division of the labour market, in which many working immigrants end up in a permanent low-wage group in Norwegian society.

Our association with the EEA means that we have attached ourselves to a liberal market system which in many countries is leading to increasing differences in income levels, insecure employment where permanent full-time work is undermined, and where vulnerable people are increasingly being excluded from working life.

The EEA Agreement must therefore be assessed not only as regards its effects in Norway, but also as regards what is happening on the labour market in those countries to which we are most closely linked, and with which we do most trade. Through the EEA we are participating in promoting a market regime in Europe, with its consequences in differences in income levels, job security and exclusion from working life.

The development of the crisis since 2007 has a close connection with the liberalised markets both in the EU and in other parts of the world. The Norwegian economy will feel the effects of this crisis to an increasing extent, and cannot expect special help from stagnating European markets. It would therefore be better for our foreign trade gradually to direct itself towards other, expanding markets.

It may become a growing problem that the EEA Agreement limits our opportunities to step in actively to counter deregulated capital markets. Through the EEA Agreement we have approved the liberal market principles and must therefore take our part of the responsibility for the mess Europe is currently in.
