The Norway Option

Re-joining the EEA as an alternative to membership of the European Union

Dr Richard North

The Bruges Group

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> The sovereign nations of the past can no longer
> solve the problems of the present: they cannot ensure
> their own progress or control their own future.
> And the Community itself is only a stage on the way
> to an organised world of tomorrow.
>
> *Closing words of Jean Monnet's memoirs*

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Introduction

Should the UK decide to leave the European Union, there are several options for an exit settlement. One of these is for the UK to apply to join the European Free Trade Association (EFTA), and through that to continue its membership of the European Economic Area (EEA). This is the "Norway Option", so-called because Norway is the largest nation within the EFTA/EEA group, which also includes Iceland and Liechtenstein.

Staying within the EEA is an attractive proposition as it protects the UK's position in the Single Market and thus renders an exit economically neutral. Our trade with the remaining EU Member States could continue unabated, with no significant changes in the short-term, and no disruption. Such an option accords with Government objectives, explicitly stated on the BBC Radio 4 *Today* programme on 14 January 2013, when the Prime Minister confirmed his view that, as a trading nation, we need access to the Single Market.

Access, though, is not sufficient. Mr Cameron also added that, "we need a say in the rules of that market". He then reiterated his view, expressed previously, that it was not in our national interests to be in the Single Market like Norway: "just accept all the rules of the Single Market, pay for the privilege of being part of it and, as it were, be governed by fax rule".

Mr Cameron was to make the same claim in his speech on Europe on 23 January 2013, when he asserted that Norway, "has no say at all in setting its rules: it just has to implement its directives".[1]

This, on the face of it, would appear to be a major obstacle to the UK taking advantage of the "Norway Option". In a similar position to Norway, the UK would suffer the same disadvantage, with the consequences multiplied because of its larger and more complex economy. However, contrary to the assertions of diverse politicians and others, it is by no means the case that Norway is "governed by fax". Nor would Britain be disadvantaged by adopting the same arrangements as Norway, within the EFTA/EEA framework.

That is not to say that these arrangements are in any way optimal, or that there are not stresses in the system. But it is not true to say that Norway is without influence over the making of its own trading rules. Rather than reflect reality, this

canard has a strong element of political propaganda.

Progenitor of the canard, perversely, is a Norwegian politician.[2] In February 2001, the then Norwegian Prime Minister, Jens Stoltenberg, coined the phrase "fax democracy". Norwegian officials, he asserted, were sitting by the government fax machine waiting for the latest rules to arrive from Brussels. An advocate of full EU membership, though, he was not telling the whole truth. Instead, he was seeking to promote membership to his reluctant countrymen (who had already rejected membership in a referendum in 1994) as a better alternative to the EEA. Thus, it suited him to project the untruth that his government had no influence over the creation of Single Market rules.

More recently, a claim in like manner was made by Norwegian Foreign Minister Espen Eide. On 24 December 2012, he told BBC Radio 4's *World This Weekend* that Norway had "limited scope for influence". "We are not at the table when decisions are made", he said.

This again should be seen in its political context. During the 1994 referendum on Norwegian EU membership, Eide worked in the European Movement for the "yes" campaign. He held senior positions as project manager and acting Secretary General. He is an enthusiastic supporter of the EU and a prominent campaigner for Norwegian membership, despite nearly 80 percent of his voters opposing entry.

As to why Eide should make such claims, this author asked Anne Tvinnereim State Secretary for the Ministry of Local Government and Regional Development for a background to the politics. As a member of the same government, but as a member of the rival Centre Party, she explained that, as a coalition government, Eide could say such things in his capacity as a party politician and member of the Labour Party. But that did not mean the Centre Party agreed with this position. It did not. His comments and the many like them from EU supporters, had caused much debate in Norway. His was not the majority position of the people.[3]

Mrs Tvinnereim disagreed with the claim that the Norway had no influence over EU law. "It is true that we are not there when they vote", she said, "but we do get to influence the position". Explaining the facts of international relations, she

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1 http://www.conservatives.com/News/Speeches/2012/12/Prime_Ministers_Speech_on_Europe.aspx

2 http://www.euromove.org.uk/index.php?id=6509

3 Interview by the author: Oslo, 31 July 2013

told us, "Most of the politics is done long before it [a new law] gets to the voting stage". The Norwegian government, she said, tries to influence legislation at an early stage, so we "totally disagree" with Eide's position. "He does not represent the Norwegian debate".

Asked why Eide should make such statements, Mrs Tvinnereim clarified an often confusing position. People like Eide, who support the EU, she said, haven't given up. There may be no chance of Norway joining in the near future, but they are looking ahead, perhaps to twenty years, when they hope that the situation will change. Not only do they want the EU to succeed, they need the UK to continue with its membership of the EU. If the UK did leave, it would weaken the Norwegian europhile position and vastly strengthen the "no" campaign, especially if Britain joined EFTA. They are protecting their own position.

That said, assertions about lack of - or limited - influence are not confined to political figures. At one extreme is Matthew Price, BBC Europe correspondent, who asserted that the cost of membership of the EEA "comes with a cost". Norway, he said, "has to obey the trading rules of the European Union. And yet, unlike the 28 member countries that make up the EU, it has no say in what those rules actually are. They are, literally, imposed by Brussels".[4]

However, even the House of Commons library, in its briefing note on "Norway's relationship with the EU", stated: "Norway has little influence on the EU laws and policies it adopts".[5] The CBI has also been a major player in the argument, with a publication of its own.[6]

Taken literally, it is true that Norway's influence is "limited". Kåre Bryn, the current Secretary General of EFTA readily acknowledges that. No sensible person would disagree.[7] He nevertheless points to the elaborate institutional framework set in place to manage the Agreement. This includes a ministerial-level EEA Council, the EEA Joint Committee of senior officials, and subcommittees and working groups of officials and experts. There is also the EEA Joint Parliamentary Committee and the EEA Consultative Committee, creating the a so-called two-pillar system. Through this, there are multiple contacts at all stages of the legislative process, from the very earliest pre-proposal stages, to the final approval.

Although comprehensive, this is indeed limited. But then, any institution short of an absolute dictator bestowed with omnipotent powers is going to be limited in some way or other, as is the influence of every country limited. But, in the case of Norway, the lack of influence is being linked with the lack of a "seat at the table" when decisions are taken by EU institutions – the Council of Ministers,

the European Council and the European Parliament. In the final stages of the legislative processes, Norwegian representatives are not able to vote on new laws.

It is misleading, though, to assert that this lack equates with Norway being at a disadvantage when compared with the influence exerted by full EU members. Such a claim presents a distorted view of the way Single Market rules are made. In fact, Norway exercises very considerable influence on EU legislation, to the extent of sometimes sets the agenda. It also retains a "veto" – more accurately termed a "right of reservation" – set out in Article 102 of the EEA Agreement.[8] EFTA countries in the EEA thus have the right to opt out of new EU legislation that EU countries do not have.[9]

This notwithstanding, the reason for Norway and its "influence" being misstated is because it is too narrowly cast. The rules which constitute the Single Market do not by any means originate solely with the European Union. In a global trading environment, regulation is being globalised and standard-setting is now shared between many different bodies. Many of these act at a global level. There, Norway has considerable influence, far greater than is exerted by individual EU Member States. This more than compensates for the notional lack of influence within EU institutions.

In this report, therefore, we take a detailed look the way the rules are made, and at some of the bodies that make them. We then look at some of the ways in which the Norwegians exert their influence and shape the legislative agenda. We also look at how the Norwegians protect their national interests. And, as the issues rehearsed have significant implications for the UK, these are assessed throughout this report.

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4 BBC website, 3 September 2013. http://www.bbc.co.uk/news/world-latin-america-23941315

5 http://www.parliament.uk/briefing-papers/SN06522

6 http://www.cbi.org.uk/media/2133649/doing_things_by_halves_-_lessons_from_switzerland_and_norway_cbi_report_july_2013.pdf

7 http://www.efta.int/~/media/Files/Publications/Bulletins/eeadecisionshaping-bulletin.pdf

8 http://www.efta.int/~/media/Documents/legal-texts/eea/the-eea-agreement/Main%20Text%20of%20the%20Agreement/EEAagreement.pdf

9 http://www.neitileu.no/articles_in_foreign_languages/the_eea_alternatives#1

1 The Origin of Rules

The end product of any legislative process is law. At the European Union level this includes the Directive, Regulation and Decision. The formal procedures for their approval are well known. For instance, a Directive undergoing the "ordinary" (formerly "co-decision") procedure, requiring approval by the Council of Ministers and the European Parliament, will most often start its formal life as a "communication" from the Commission, in what is known as the COM (final) series.

A COM (final) document usually comprises a detailed explanatory narrative and the text of a proposed law. It will go before the European Parliament in a series of stages and, separately, through the Council of Ministers. Both bodies will agree their "common positions" and, if there are differences between them, there are procedures by which they might be reconciled.

At the end of the procedures, if successful, agreement will be reached by both parties and the approved text will be formally lodged in the Official Journal as the law, thus becoming part of the *acquis communautaire*. A Directive will then require transposition by the legislatures of the Member States and the EEA members, to be implemented in those territories. Regulations, of course, take direct effect, and apply once they are "done" at Brussels.

It is the nature of these formal processes which give rise to the claim that EEA members are subject to the so-called "fax democracy". Members such as Norway are not formally represented on the primary decision-making bodies, the Council and the Parliament, nor even the formal committees of the Commission. And they are not able to vote on proposals.

However, the passage of laws through the formal stages of EU law-making is most often only the visible part of a much longer processes that can take many years and even decades. The processes are diffuse, obscure and very often invisible. Thus there is not and cannot be any single mechanism for exerting influence. There is no single protocol and no single route, by which legislation is shaped. The situation is complex, nuanced and highly variable, exactly reflecting real life and the realities of politics.

Look at only part of the process, and in particular the visible part of the law-making process managed by the European institutions, is likely to present an entirely false picture. As a regional body, the European Union no longer has a monopoly in producing its own trade regulations. Standards are increasingly agreed at higher levels, often at global level, with multiple “actors” involved.

2 International Treaty Bodies

Much of the work in creating standards which later become EU law is either managed or co-ordinated through international treaty bodies. One of the most important is the World Trade Organisation (WTO), its mission being the supervision and liberalisation of international trade. It came into being on 1 January 1995 under the Marrakech Agreement, replacing the General Agreement on Tariffs and Trade (GATT), which goes back to 1948. The WTO, though, represents only the tip of a gigantic iceberg. Many of the standards-setting bodies act under the aegis of the United Nations. Furthermore, trade orientated law is often supplemented by the work of international trade associations and standards organisations.

Typical of these is the World Customs Organisation (WCO), established in 1952 as the Customs Co-operation Council (CCC). It is an independent intergovernmental body, with its secretariat based in Brussels, representing 179 Customs administrations across the globe that collectively process approximately 98 percent of world trade. The EU joined the organisation on 30 June 2007, and now conducts negotiations on behalf of the 28 Member States. It defines and represents Community positions in the relevant bodies managing the conventions established under the aegis of the WCO.[10]

The "mission" of the WCO is to advise customs administrations world-wide "on management practices, tools and techniques to enhance their capacity to implement efficient and effective cross-border controls". It also works on standardising and harmonising procedures "to facilitate legitimate trade and travel and to interdict illicit transactions and activities". It administers the technical aspects of the WTO Agreements on Customs Valuation and Rules of Origin, and is responsible for the Harmonised System Convention of 1988.[11,12]

The output of such bodies has been termed international "quasi-legislation". It is not law, *per se*, but is the root of an expanding body of law. To be implemented,

it must be turned into legislation and embedded in an enforcement and penalty framework. Thus we have seen a subtle and unheralded shift in emphasis in regional bodies such as the EU. Rather than initiating law, it is now more likely to be converting standards handed down from international bodies into law. In effect, the EU have become a vast processing factory, converting international standards into local laws.

International standards, requiring two bodies (at least) in the passage to law, have been termed "dual-international quasi-legislation", abbreviated to "diqule". The reach of the diqule is phenomenal. For instance, the hugely important rules governing the conduct of the international banks, emanate as this form of quasi-legislation from the Basel Committee on Banking Supervision.

The Basel Committee was established by the central-bank Governors of the Group of Ten countries at the end of 1974. As a component of global governance, it effectively sets the capital adequacy policy applicable to equity and capital assets for the global banking system. It describes its role thus:

> The Committee does not possess any formal supranational supervisory authority, and its conclusions do not, and were never intended to, have legal force. Rather, it formulates broad supervisory standards and guidelines and recommends statements of best practice in the expectation that individual authorities will take steps to implement them through detailed arrangements - statutory or otherwise - which are best suited to their own national systems. In this way, the Committee encourages convergence towards common approaches and common standards without attempting detailed harmonisation of member countries' supervisory techniques.[13]

Norway itself is not directly represented on the Committee, but works through the Nordic Council of Ministers Working Groups, consisting of representatives from

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10 http://ec.europa.eu/taxation_customs/common/international_affairs/wco/index_en.htm

11 http://en.wikipedia.org/wiki/World_Customs_Organization

12 http://www.wcoomd.org/en/about-us/legal-instruments/recommendations/~/media/WCO/Public/Global/PDF/About%20us/Legal%20Instruments/Recommendations/HS/RecommendationsHSgeneral_20120101.ashx

13 http://www.bis.org/bcbs/history.htm

the Nordic ministries of finance.[14] These are active in making representations to and in monitoring the work of the Basel Committee. They work independently of the EU/EEA institutional frameworks.[15]

Input to the Committee is also managed via trade associations. These, such as the European Association of Public Banks (EAPB), founded on 4 May 2000, often have quasi-official status. The EAPB is a member of the European Banking Industry Committee (EBIC) through which the seven main European banking associations collectively register their views with the EU institutions.[16,17] Norway is well represented at several levels in these bodies.

In an entirely different sector, matters relating to trade in agricultural products, and in particular barriers to trade, are handled by the UN Food and Agriculture Organisation (FAO). This organisation takes the lead on agriculture, forestry, fisheries and rural development, feeding in to WTO negotiations.[18] It also co-ordinates implementation of the 1992 Earth Summit's Agenda 21. It also deals with best farming practice, plant health and farm animal welfare standards, guiding the EU's Animal Welfare Strategy, 2012-2015.[19,20] The FAO also hosts the Secretariat of the International Plant Protection Convention (IPPC), a body charged with creating "an international regulatory framework for the protection of plants from pests through which member countries agree to adopt science-based international standards for phytosanitary measures".[21]

The IPPC is one of the "three sisters" of international standard setting organisations recognised by the WTO Sanitary and Phytosanitary (SPS) Agreement: IPPC, Codex and OIE. The SPS is a wide-ranging agreement which allows that "no Member should be prevented from adopting or enforcing measures necessary to protect human, animal or plant life or health, subject to the requirement that these measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between Members where the same conditions prevail or a disguised restriction on international trade".[22]

Contracting parties to the IPPC have a series of obligations that are considered of key importance, amongst which is to establish and administer a National Plant Protection Organisation (NPPO), to nominate a single IPPC contact point, exchange certain official information, and to develop and take into account phytosanitary standards.[23] In many respects, the SPS agreement is the driver of EU policy.[24]

Codex *Alimentarius* promulgates international food standards, which are then adopted regionally and locally. All EU Member States are members of

the governing commission. In 2003, the European Community joined, sharing competence with EU countries depending on the level of harmonisation of the respective legislation. Since the entry into force of the Lisbon Treaty on 1 December 2009, the EU became the body of record. The EU and its Member States draw up EU position papers on the issues discussed in the Commission, the various Committees and Task Forces.[25] The Committee on Fish and Fishery Products is hosted by Norway.[26]

The *Office International des Epizooties* (OIE) – created in 1924 – deals with animal health controls.[27] OIE's primary objective is to protect the health of animals, to ensure a safe and fair trade in animals and animal products world-wide, along with the promotion and the co-ordination of all animal health standards work undertaken by international governmental and non-governmental organisations. It also sets guidelines for animal welfare although this mandate does not fall under the SPS agreement.

The World Assembly of OIE Delegates adopts standards, codes of practices and other related texts prepared by specialised Commissions and *ad hoc* working groups. Again, all EU Member States are members. EU involvement started in 2004 when the then European Community (EC) signed an agreement (2004/C 215/03 - 2004/C 215/04) with the OIE to become a formal observer. Since Lisbon, the EU has taken over from the EC and it shares competences with its Member

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14 http://www.norden.org/en/nordic-council-of-ministers/council-of-ministers/council-of-ministers-for-finance-mr-finans/working-groups

15 see, for instance: http://www.regjeringen.no/en/dep/fin/News/news/2012/report-from-the-nordic-working-group-on-.html?id=696320

16 http://www.eapb.eu/page?pge=index&page=Articles&orl=1&ssn=0&are=1&mi=5&mi=11

17 http://www.eubic.org/

18 http://ec.europa.eu/food/animal/welfare/seminars/index_en.htm

19 http://ec.europa.eu/food/animal/welfare/index_en.htm

20 http://www.fao.org/ag/againfo/themes/animal-welfare/en/

21 http://ec.europa.eu/food/plant/strategy/docs/conf_280910_ana_peralta_summary.pdf

22 http://www.wto.org/english/tratop_e/sps_e/spsagr_e.htm

23 http://ec.europa.eu/food/plant/strategy/docs/conf_280910_ana_peralta_summary.pdf

24 http://ec.europa.eu/trade/wider-agenda/health/food-safety-and-health/

25 http://ec.europa.eu/food/international/organisations/codex_en.htm

26 http://www.who.int/foodsafety/codex/general_info/en/index3.html

27 http://www.oie.int/about-us/

States on the basis of the level of harmonisation of the relevant legislation. The EU and its Member States elaborate EU comment and position papers on issues discussed in the OIE.[28]

Additionally, the OIE - in conjunction with the FAO - is responsible for the Global Framework for the progressive control of Trans-boundary Animal Diseases (GF-TADS). The current European steering committee president is Bernard Van Goethem, director of DG SANCO.[29]

Traffic in protected species is regulated in the first instance by the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES). Human health standards and the controls and monitoring of infectious disease are determined by the World Health Organisation (WHO). Labour laws are devised by the International Labour Organisation (ILO) which was set up in 1919, by the Versailles Treaty.

Dealing with postal services is the Universal Postal Union, a specialised agency of the UN that co-ordinates postal policies among member nations, in addition to the world-wide postal system. There is an equivalent for telecommunications, the International Telecommunication Union, also a specialist UN agency. It co-ordinates the global use of the radio spectrum, promotes international co-operation in assigning satellite orbits, works to improve telecommunication infrastructure in the developing world, and assists in the development and co-ordination of world-wide technical standards.[30]

At a global level, environmental issues are determined and co-ordinated by the United Nations Environment Programme (UNEP) and Climate Change issues are agreed through the aegis of the United Nations Frame¬work Convention on Climate Change (UNFCCC) and the Intergovernmental Panel on Climate Change (IPCC). There are many different environmental conventions, such as the Stockholm Convention on Persistent Organic Pollutants (POPs), set up to control the production, import, export, disposal and use of these chemicals.

The safety and security of shipping and the prevention of marine pollution by ships is dealt with by the International Maritime Organisation (IMO), which came into being in the wake of the 1912 Titanic disaster and spawned the first international safety of life at sea - SOLAS - convention, still the most important treaty addressing maritime safety.

The parent organisation has spawned numerous subsidiary conventions such as the “International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea,

1996".[31] This is known as the HNS Convention, to which has been added the 2010 Protocol. It aims to ensure adequate, prompt and effective compensation for damage to persons and property, costs of clean up and reinstatement measures and economic losses resulting from the maritime transport of hazardous and noxious substances.[32] Provisions are implemented in the territories of the EU Member States by a number of EU Directives.[33] Similarly, the International Convention for the Control and Management of Ships' Ballast Water and Sediments (BWM), which was adopted on 13 February 2004 and has been partly implemented by the EU, with further discussions in hand through the European Maritime Safety Agency.[34,35]

In 2002, the IMO amended the 1974 SOLAS Convention to establish the International Ship and Port Facility Security Code (ISPS Code). The EU responded with Regulation (EC) No 725/2004 on enhancing ship and port facility security, which made mandatory a number of recommendations introduced by the ISPS Code.[36] This was a classic example of the "diqule" driving regional legislation.

Rights and responsibilities of nations in their use of the world's oceans, establishing guidelines for businesses, the environment, and the management of marine natural resources, are dealt with by the UN Convention on the Law of the Sea (UNCLOS). In addition to the basic 1982 Agreement, there is now an extensive web of agreements relating to commercial fisheries, and in particular the Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (in force as from 11 December 2001).[37]

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28 http://ec.europa.eu/food/international/organisations/EU_comments_position_papers_en.htm

29 http://ec.europa.eu/food/international/organisations/oie_en.htm

30 http://en.wikipedia.org/wiki/International_Telecommunication_Union

31 http://www.imo.org/About/Conventions/ListOfConventions/Pages/Default.aspx

32 http://www.hnsconvention.org/Pages/TheConvention.aspx

33 http://emsa.europa.eu/implementation-tasks/environment/liability-a-compensation.html

34 http://www.imo.org/About/Conventions/ListOfConventions/Pages/International-Convention-for-the-Control-and-Management-of-Ships%27-Ballast-Water-and-Sediments-%28BWM%29.aspx

35 http://emsa.europa.eu/implementation-tasks/environment/ballast-water.html

36 http://ec.europa.eu/transport/modes/maritime/security/doc/legislation_maritime_security.pdf

37 http://www.un.org/depts/los/convention_agreements/convention_overview_fish_stocks.htm

This is augmented by the Food and Agriculture Organisation (FAO) Code of Conduct for Responsible Fisheries, adopted in October 1995.[38] This is a voluntary agreement, although certain parts are based on UNCLOS provisions and some parts have been given binding effect by means of other obligatory legal instruments, such as the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, 1993.[39] There is also the FAO International Plan of Action for the Management of Fishing Capacity, which came into force progressively, to be fully effective by 2005.[40] Scientific issues relating to human activities affecting, and affected by, marine ecosystems, and in particular fish stocks, are handled by the International Council for the Exploration of the Sea (ICES).[41]

As regards the European Union, the EU ratified the UNLOS agreement in 1998, and subscribes to the FAO codes, the combination being part of the external dimension of the Common Fisheries Policy.[42,43] Although the CFP is not part of the internal market *acquis* and is not part of the EEA Agreement, trade in fish and fish products is covered, and to some extent is affected by these international treaties and agreements. Norway, of course, represents herself on the relevant bodies, but EU Member States are represented by the European Commission and the EEAS.[44,45]

As regards the CFP, much of the current provisions are hedged by the international agreements, to the extent that it would be very difficult for individual member states to formulate their own independent policies. This is especially the case as the EU has also concluded or is party to multiple bilateral and multilateral treaties with neighbouring fishing states. For instance, it lists eleven with Norway, of which three are bilateral, eight with Iceland, and one with the Faroes.[46,47,48] These inter-relate with regional organisations such as the North East Atlantic Fisheries Commission (NEAFC), to which the Russian Federation, Norway, Iceland, Denmark (in respect of the Faroe Islands and Greenland) and the European Union are parties.[49]

Aviation is the province of the International Civil Aviation Organisation (ICAO), created in 1944, now comprising 191 members. It claims for its mission, safe, secure and sustainable development of civil aviation through the co-operation of its Member States. Under its aegis is the Air Navigation Commission, which considers and recommends, for approval by the ICAO Council, Standards and Recommended Practices (SARPs) and Procedures for Air Navigation Services (PANS) for the safety and efficiency of international civil aviation.[50]

There is even an International Committee for Weights and Measures (abbreviated CIPM from the French *Comité international des poids et mesures*) consists of eighteen persons from Member States of the Metre Convention (*Convention du Mètre*) appointed by the General Conference on Weights and Measures (CGPM) whose principal task is to ensure world-wide uniformity in units of measurement by direct action or by submitting proposals to the CGPM.[51]

The General Conference on Weights and Measures (French: *Conférence générale des poids et mesures* - CGPM) is the senior of the three Inter-governmental organisations established in 1875 under the terms of the Metre Convention (*Convention du Mètre*) to represent the interests of member states. Initially it was only concerned with the kilogram and the metre, but in 1921 the scope of the treaty was extended to accommodate all physical measurements and all aspects of the metric system. In 1960 the 11th CGPM approved the *Système International d'Unités*, usually known as "SI".

Under the authority *Convention du Mètre* has been created the International Bureau of Weights and Measures (BIPM). It acts in matters of world metrology, "particularly concerning the demand for measurement standards of ever increasing accuracy, range and diversity, and the need to demonstrate equivalence

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[38] http://www.fao.org/docrep/005/v9878e/v9878e00.HTM

[39] http://www.fao.org/docrep/meeting/003/x3130m/X3130E00.HTM

[40] http://www.fao.org/docrep/006/X3170E/x3170e04.htm

[41] http://www.ices.dk/aboutus/aboutus.asp

[42] http://ec.europa.eu/world/agreements/downloadFile.do?fullText=yes&treatyTransId=12001

[43] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0424:FIN:EN:PDF

[44] http://ec.europa.eu/trade/creating-opportunities/economic-sectors/fisheries/governance/

[45] http://www.eu-un.europa.eu/articles/en/article_1342_en.htm

[46] http://ec.europa.eu/world/agreements/searchByCountryAndContinent.do?countryId=3796&countryName=Norway

[47] http://ec.europa.eu/world/agreements/searchByCountryAndContinent.do?countryId=3795&countryName=Iceland

[48] http://ec.europa.eu/world/agreements/searchByCountryAndContinent.do?countryId=3794&countryName=Faeroes

[49] http://www.neafc.org/about

[50] http://www.icao.int/Pages/vision-and-mission.aspx

[51] http://www.bipm.org/en/committees/cipm/

between national measurement standards". The BIPM now has fifty-four Member States, including all the major industrialised countries.[52]

Few issues, it seems, are not covered in some way by international agreements, and some sort of global co-ordinating body. Crucial to world trade and the management of many programmes are adequate statistics, and again there is a global dimension in the United Nations Statistical Commission, established in 1947. It is described as "the apex entity of the global statistical system", bringing together the chief statisticians from member states from around the world. It is the highest decision making body for international statistical activities especially the setting of statistical standards, the development of concepts and methods and their implementation at the national and international level. The Statistical Commission oversees the work of the United Nations Statistics Division (UNSD), and is a Functional Commission of the UN Economic and Social Council.[53]

Under its aegis, in September 2002, the Committee for the Co-ordination of Statistical Activities (CCSA) was established.[54] It promotes the development, adoption and use by international organisations of common standards and platforms for the production of data and metadata, with the aim of creating a co-ordinated, global and high-quality statistical system. It also contributes to the co-ordination of the work on methodological development in statistics, aiming at ensuring internationally agreed standards for official statistics and facilitating their use in countries and international organisations.[55] The CCSA is now developing a Global Inventory of Statistical Standards.[56]

In this sphere, there is also co-operation between global and regional bodies on joint projects. One such is development of standard mechanisms for the measurement of "sustainable development", work carried out jointly by UNECE, OECD and the EU's own statistical agency, Eurostat. Interestingly, Statistics Norway and the Norwegian Ministry of Finance have given financial support to the research.[57]

Another major area under development is intellectual property rights. These are the province of the World Intellectual Property Organisation (WIPO), another UN agency headquartered in Geneva. Its mission is "to promote innovation and creativity for the economic, social and cultural development of all countries, through a balanced and effective international intellectual property system".[58] It is host to 24 different treaties, including its founding convention.[59] There has been EU accession to a number of them, for instance the Copyright and the Performances and Phonograms Treaties.[60,61] Under the aegis of the WTO, there

is also the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), which was signed in Marrakesh, Morocco on 15 April 1994.[62]

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52 http://www.bipm.org/en/convention/

53 http://unstats.un.org/unsd/statcom/commission.htm

54 http://unstats.un.org/unsd/accsub-public/workpartner_ccsa.htm

55 http://unstats.un.org/unsd/accsub/2008docs-12th/TORs-2011.pdf

56 http://unstats.un.org/unsd/iiss/

57 http://www.oecd.org/greengrowth/41414440.pdf

58 http://www.wipo.int/about-wipo/en/

59 http://www.wipo.int/treaties/en/

60 http://europa.eu/legislation_summaries/internal_market/businesses/intellectual_property/l26054_en.htm

61 http://ec.europa.eu/avpolicy/ext/multilateral/wipo/index_en.htm

62 http://www.wto.org/english/tratop_e/trips_e/t_agm0_e.htm

3 Single Issue and Non-Treaty Bodies

Then there are huge number of single-issue treaty and non-treaty bodies, which set standards or agreements, or influence the global agenda, from which rules emerge which are then implemented by signatories directly, or via groups such as the European Union.

One important non-treaty body is the International Financial Reporting Standards (IFRS) Foundation, which sponsors the International Accounting Standards Board (IASB), an independent not-for-profit private sector body. It states as its objective, "to develop a single set of high quality, understandable, enforceable and globally accepted financial reporting standards based upon clearly articulated principles". Set up in 2001, almost 120 countries have required or permitted the use of IASB standards.[63]

The EU has made IAS/IFRS standards and interpretations a mandatory part of its Single Market architecture, incorporating them into law as Commission Regulation (EC) No 1126/2008 of 3 November 2008 "adopting certain international accounting standards in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council".[64,65] The process of adoption is managed by the Brussels-based European Financial Reporting Advisory Group (EFRAG), set up in 2001 by a number of European member organisations prominent in capital markets. In these, Norway is well-represented.[66,67] The arrangement was formalised in 2006 in a working agreement which recognised EFRAG as an official advisor to the European Commission. In advising the Commission, it is supported by a Technical Expert Group.[68,69]

EU legal texts incorporating International Accounting Standards have EEA relevance, but countries such as Norway are fully engaged in the decision-making. As part of its remit, EFRAG consults with the national accounting standard setters within Europe, of which the *Norsk RegnskapsStiftelse* (NRS, Norway) is one, alongside the Accounting Standards Board (ASB, United Kingdom) and *Deutches Rechnungslegungs* Standards Committee (DRSC, Germany).[70] The Financial

Supervisory Authority of Norway has one observer at the Technical Committee on IFRS.[71]

In an entirely different sphere, an example of an "influence" body is the "Intergovernmental Forum on Chemical Safety" (IFCS). This is an "alliance of all stakeholders concerned with the sound management of chemicals", claiming to be a global platform where governments, international, regional and national organisations, industry groups, public interest associations, labour organisations, scientific associations and representatives of civil society meet to build partnerships, provide advice and guidance, and make recommendations. The IFCS thus describes itself as "a facilitator, advocates systemising global actions taken in the interest of global chemical safety".

Actual regulation of international trade in hazardous chemicals is managed by the Rotterdam Convention on the international trade in hazardous chemicals. This arose from a joint initiative between UNEP and FAO, which led to adoption of a text in a Diplomatic Conference held in Rotterdam on 10 September 1998. The Convention came into force in February 2004. The EU became a party to the Convention through Council Decision 2006/730/EC of 25 September 2006, and has implemented its provisions via Regulation (EC) 689/2008 of the European Parliament and of the Council of 17 June 2008.[72,73]

Another body is the International Union for the Protection of New Varieties of Plants (UPOV). It was established by the International Convention for the

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63 http://www.ifrs.org/The-organisation/Documents/Who-We-Are-English-2013.pdf

64 http://ec.europa.eu/internal_market/accounting/ias/index_en.htm

65 http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:320:0001:0481:EN:PDF

66 http://www.efrag.org/Front/c1-266/Supervisory-Board.aspx

67 for instance, the Comité Européen des Assurances, http://en.wikipedia.org/wiki/Comit%C3%A9_Europ%C3%A9en_des_Assurances, rebranded as "Insurance Europe", of which Norway is a member: http://www.insuranceeurope.eu/about-us/members

68 http://www.efrag.org/websites/uploadfolder/1/cms/images/EFRAG-EC%20Working%20Arrangement.pdf

69 http://www.efrag.org/Front/wg7-272/EFRAG-Technical-Expert-Group–TEG-.aspx

70 http://www.iasplus.com/en/resources/efrag-consultative-forum-of-standard-setters-of-europe

71 http://www.regnskapsstiftelsen.no/a9084301/english

72 http://www.pic.int/

73 http://europa.eu/legislation_summaries/environment/cooperation_with_third_countries/l21281_en.htm

Protection of New Varieties of Plants and provides a protection system for the intellectual property rights of plant breeders. The Convention was adopted in Paris in 1961 and revised in 1972, 1978 and 1991. UPOV describes its mission as "to provide and promote an effective system of plant variety protection, with the aim of encouraging the development of new varieties of plants, for the benefit of society".[74] After the accession of the EU to the Convention in 2005, it is driving the EU agenda on intellectual property rights on plants.[75,76] Norway became a member on 13 September 1993.[77]

Even where harmonisation and international law is less developed, there are still initiatives in place. One such is in the medicines industry, where there are no international conventions on standards. However, globalisation and expansion in international trade present a growing need to develop global quality standards for medicines.

As a result, the world's three major pharmacopoeias, the European Pharmacopoeia (Ph Eur), the Japanese Pharmacopoeia (JP) and the United States Pharmacopoeia (USP), came together in 1990 for a trilateral programme. From this emerged the International Conference on Harmonisation (ICH) for the harmonisation of testing of medicines. The conference takes places twice a year with meetings rotating between Europe, Japan and the United States. Alongside the conference is the Pharmacopoeial Discussion Group (PDG), which is working on a programme of international harmonisation.[78]

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74 http://www.upov.int/portal/index.html.en

75 http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52004PC0798:EN:HTML

76 http://ec.europa.eu/dgs/health_consumer/dyna/enews/enews.cfm?al_id=45

77 http://www.upov.int/export/sites/upov/members/en/pdf/pub423.pdf

78 http://www.edqm.eu/en/international-harmonisation-614.html

4 Regional Organisations

Global organisations are supplemented by regional bodies, such as the 56-member United Nations Economic Commission Europe (UNECE). For historical reasons, this includes the United States. Based in Geneva, it is a treaty body in its own right, but it also the sponsoring body for a number of conventions, being particularly active in the environmental field.

It is, for instance, the host body for the Aarhus Convention or more formally the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters.[79] It is described as going "… to the heart of the relationship between people and governments". It is not only an environmental agreement, it is also a Convention about government accountability, transparency and responsiveness.

The Convention was adopted on 25 June 1998 in the Danish city of Aarhus and entered into force on 30 October 2001. The UK ratified the convention in February 2005. The EU is a Party to the Convention since May 2005 and in 2003 two Directives concerning the first and second "pillars" of the Aarhus Convention were adopted; they were to be implemented in the national law of the EU Member States by 14 February and 25 June 2005 respectively.

Thus, we have yet another example of the EU implementing law which is based on higher-level international agreements. Norway, incidentally, is a Party – another example of "fax law", only with the Norwegians faxing the Commission to tell them to get on producing the necessary law to implement the Convention.

Another important environmental convention brokered by UNECE is the ESPOO Convention of 1991, with the full title of Convention on Environmental Impact Assessment in a Transboundary Context. Entering into force in 1997, it is now driving EU legislation to such a great extent that an EU official has

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[79] http://www.unece.org/env/pp/introduction.html

been appointed as a vice-chair on the convention committee.[80] Norway, as a full member of UNECE, and a signatory to the convention, works alongside the EU in its framing and implementation.

At a different level, UNECE is also responsible, *inter alia*, for most of the technical standardisation of transport, including docks, railways and road networks. With UNEP, it administers pollution and climate change issues, and hosts regional agreements.[81]

The UNECE Transport Division also provides a secretariat for the World Forum for Harmonisation of Vehicle Regulations (WP 29) and has been doing so for more than 50 years. The World Forum incorporates into its regulatory framework technological innovations for vehicles relating safety and environment impact.[82] WP 29 was established on June 1952 as the "Working party of experts on technical requirement of vehicles". The current name was adopted in 2000.

The core of the Forum's work is based around the "1958 Agreement", known formally as "Agreement concerning the adoption of uniform technical prescriptions for wheeled vehicles, equipment and parts which can be fitted and/ or be used on wheeled vehicles and the conditions for reciprocal recognition of approvals granted on the basis of these prescriptions". This was augmented by a further Agreement in 1998.

These form a legal framework wherein participating countries (contracting parties) agree a common set of technical prescriptions and protocols for type approval of vehicles and components.

There are currently 57 signatories to the Agreements, including non-EU countries such as Norway and the major vehicle manufacturing countries of Japan and South Korea. The EU acceded to the Agreements through Council Decisions 1997/836/EC of 27 November 1997 and 2000/125/EC of 31 January 2000.[83]

The UNECE instruments are classic "diqules". As quasi-legislation, they have no mandatory effect until converted into laws by the contracting parties. Despite that, they were called "UNECE Regulations" or, less formally, "ECE Regulations". Since many non-European countries are now contracting parties, the instruments are now called "UN Regulations". Application permits each contracting party's type approvals to be recognised by all other contracting parties.[84] As of 2012, there are 128 UN Regulations appended to the Agreements. Most regulations cover a single vehicle component or technology.[85]

Nevertheless, the agreement does not have a global reach. The US and Canada are not signatories and do not recognise the UN regulations. UN-compliant

vehicles and equipment are not authorised for import, sale, or use in the US, unless they are tested to be compliant with US car safety laws, or for limited non-driving use (e.g., car show displays).

The European Commission has acquired formal participatory status on the Forum and is engaged in a process of harmonising its laws with UNECE Regulations. Its own major regulations on the general safety of motor vehicles have already been replaced by UN Regulations.[86] As to the representation of EU Member States. As a result of this, the European Commission exercises the right to vote in WP 29 on behalf of the EU and its 27 Member States.[87]

Thus, despite the UK having major vehicle manufacturing interests, producing 1.58 million cars in 2012, it has no direct vote on vehicle standards. Norway, as an independent nation, represents itself on UNECE committees and votes on its own behalf. Despite having no indigenous manufacturing industry, it takes an active part in UNECE proceedings.

The Council of Europe

Another important regional body, often forgotten in the shadow of the EU, is the Council of Europe. Against the EU's 28 members, it has a membership of 47 European countries. Over term, it has agreed 214 treaties including its own founding treaty and, most notably, the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).[90]

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80 http://www.unece.org/env/eia/

81 http://www.unece.org/unece/welcome.html

82 http://www.unece.org/trans/main/welcwp29.html

83 http://ec.europa.eu/enterprise/sectors/automotive/files/unece/sec-2011-0689_en.pdf

84 http://en.wikipedia.org/wiki/World_Forum_for_Harmonization_of_Vehicle_Regulations

85 Wikipedia, op cit

86 http://ec.europa.eu/enterprise/sectors/automotive/files/unece/sec-2011-0689_en.pdf

87 http://ec.europa.eu/enterprise/sectors/automotive/files/unece/sec-2011-0689_en.pdf

88 statistics: http://cars.uk.msn.com/news/uk-car-production-breaks-export-records-in-2012

89 see, for instance: http://www.unece.org/fileadmin/DAM/trans/doc/2010/wp1/ECE-TRANS-WP1-2010-02e.pdf

90 http://www.conventions.coe.int/Treaty/Commun/ListeTraites.asp?CM=8&CL=ENG

The Council of Europe conventions have important implications, especially the ECHR which, in part, determines conditions under which immigrants are allowed into the signatory member states. In the UK, it has special relevance for, despite the influx of immigrants from other EU member states, the highest immigration of any ethnic group into the UK comes from India, beating the Irish, the Polish and even Pakistanis.

In this context, EU Directive 2003/86/EC on family reunification applies and it is family reunification which accounts for 17 percent of UK immigration. Significantly, permits for non-EU families as a percentage of total legal immigration in 2011 amounted to 13 percent. Yet, the Directive simply implements the right of family reunification is a right recognised in the ECHR. The EU is only giving legislative form to that which is set out elsewhere.

The rules thus produced are formalised long before they reach EU institutions. When they are adopted by the EU and published as formal proposals by the EU Commission, it is usually too late to make any changes. Most of such rules are passed by the Council and Parliament without a debate and without a formal vote. In the rare instances where the Council votes, it is by QMV, where it is difficult to block a measure. Even then, the rules themselves cannot be changed by the EU unilaterally. Where international agreements are involved, votes in Council can only reject or accept proposals.

These rules, which are agreed at a higher international level, are negotiated by individual countries, on an intergovernmental basis, many of which can be vetoed at that level. Thus, it is important to be involved at this stage, to shape the rules before they become formalised, at a stage when they can be shaped, advanced and even rejected. And it is this arena that Norway is fully involved. Not constrained by the 27-country European Union, it is able to operate as a fully-fledged global actor.

Eurocontrol

Some groupings combine regional scope with single issue focus, a good example of this being Eurocontrol. This is an intergovernmental organisation founded on 13 December 1960 by the International Convention relating to Co-operation for the Safety of Air Navigation. It has 39 members, which includes all the EU Member States except Estonia. The European Community signed an Accession Protocol

in 2002, followed by a "Memorandum of Agreement" establishing a framework of co-operation in 2003 and, most recently, an agreement on enhanced co-operation in January 2013.[91,92]

Headquartered in Brussels, it co-ordinates and plans air traffic control for all of Europe, and operates the Maastricht Upper Area Control Centre (MUAC), providing air traffic control for traffic above 24,500 ft over Belgium, Luxembourg, the Netherlands, and north-west Germany.[93]

Currently Eurocontrol is working with the European Union on its Single European Sky (SES) initiative, aimed at creating a legislative framework for seamless air traffic management throughout the whole of Europe.[94] SES is regarded a major part of ongoing single market development and features strongly in the "Single Market Act II" communication from the Commission in October 2012.[95] This has "EEA relevance" and thus involves EFTA/EEA countries such as Norway.

Norway exercises its influence though formal EFTA/EEA channels, but is also a member of Eurocontrol which it joined in 1993, through which it also has a "seat at the table".[96] However, there is additional leverage through the North European Functional Airspace Block (NEFAB) combining Estonia, Finland, Latvia and Norway in a formal agreement of 30 August 2011, which entered into force in 23 December 2012.[97] NEFAB is recognised as a consultation partner by the European Commission, and has submitted extensive observations, which are treated on an equal footing with EU Member States.[98]

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91 http://ec.europa.eu/transport/modes/air/single_european_sky/doc/2003_12_22_memorendum_en.pdf

92 http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:016:0002:0006:EN:PDF

93 http://www.eurocontrol.int/sites/default/files/content/documents/official-documents/factsheets/2013-eurocontrol-factsheet.pdf

94 http://ec.europa.eu/transport/modes/air/single_european_sky/

95 http://ec.europa.eu/internal_market/smact/docs/single-market-act2_en.pdf

96 http://www.eurocontrol.int/sites/default/files/content/documents/official-documents/pc/commission-act/cn-decisions-60-en.pdf

97 http://www.nefab.eu/north-european-functional-airspace-block-agreement-entry-into-force/

98 http://ec.europa.eu/transport/modes/air/single_european_sky/fab/nefab_en.htm

North-East Atlantic Fisheries Commission

This organisation is the Regional Fisheries Management Organisation (RFMO) for the North East Atlantic, one of the most abundant fishing areas in the world. The area covered by the NEAFC Convention stretches from the southern tip of Greenland, east to the Barents Sea, and south to Portugal.[99] It was set up by the 1980 Convention on future multilateral co-operation in North-East Atlantic fisheries (NEAFC).[100]

NEAFC was updated in 2004 (adding dispute settlement procedures) and 2006 (bringing the Convention in line with developments in international law and instruments since the 1980 convention was negotiated. The modern rebirth of NEAFC is as a result of the withdrawal of the EU Member States as individual members, which are now represented exclusively by the European Commission.

The organisation claims as its objective "to ensure the long-term conservation and optimum utilisation of the fishery resources in the Convention Area, providing sustainable economic, environmental and social benefits". To this end, NEAFC adopts management measures for various fish stocks and control measures to ensure that they are properly implemented.[101]

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[99] http://www.neafc.org/about

[100] http://ec.europa.eu/world/agreements/downloadFile.do?fullText=yes&treatyTransId=1337

[101] http://ec.europa.eu/world/agreements/prepareCreateTreatiesWorkspace/treatiesGeneralData.do?step=0&redirect=true&treatyId=503

5 Norway's Involvement in Rule-Making

Already illustrated to an extent is the Norwegian involvement in standard-setting and in diverse international organisations. In this section, examples of its activity are examined in more detail.

Overall, the scale of activity is substantial, reflecting the volume of legislation passing though the system. The total number of legal acts in the EEA Agreement stands at 4,179 (2012), albeit lower than the number of all acts that have been part of or incorporated into the Agreement since 1992 (7,464), as several old acts have been replaced by new ones or repealed.

By contrast, however, for the EU as a whole, it is estimated that there are over 100,000 rules, international agreements and legal acts. As of 2013, there have been identified 8,937 Regulations; 1,953 Directives; 15,561 Decisions; 2,948 Other Legal Acts; 4,733 international agreements; 4,843 non-binding legal acts, which may bind if agreed; 52,000 agreed international standards from CEN, Cenelec, Etsi etc. and 11,961 verdicts from the EU Court of Justice.[102]

In the EFTA/EEA area, the relatively small number of instruments is broken down by policy areas. Technical regulations, standards, testing and certification account for 33.6 percent of the total. Veterinary and phytosanitary matters account for 28.0 percent, transport 8.6 percent, statistics 7.2 percent, environment 4.8 percent, co-operation in programmes and agencies 3.6 percent, social security 2.5 percent, audiovisual services, ICT and information society 2.4 percent, financial services and free movement of capital 2.3 percent, social policy 1.5 percent,

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[102] http://nationalplatform.org/2013/01/12/tackling-the-eueurozones-assault-on-national-democracy/#more-412

company law 1.4 percent, competition and state aid 1.2 percent and "other" 2.9 percent.[103]

On this basis, more than eighty percent of EEA policy areas fall within the areas dealt with by international bodies. Norway is a full member in its own right of the bodies mentioned in this report, and plays an active part in many of them. Thus, upstream of the European Union, it is able to exert significant influence on the framing of rules. At this stage, long before the EU as a legislative body is involved, it is able to block or adapt those rules which are against the national interest.

On the other hand, while the UK is also a member of most of these bodies, within the EU it no longer has the power to negotiate its own deals. Trade policy, for instance, is an exclusive competence of the EU – so only the EU, and not individual member states, can legislate on trade matters and conclude international trade agreements.

Currently, the European Union lists 787 bilateral treaties on its treaty database, covering a vast range of subjects from the "Agreement between the European Union and the Republic of Moldova on the protection of geographical indications of agricultural products and foodstuffs" to the "Agreement on fishing between the European Community and the Kingdom of Norway".[104,105,106] Also listed are 243 multilateral agreements.[107] Norway is party to 166 agreements, and 215 are listed in which the UK is also party.

In drawing up trade agreements, the Commission negotiates with trading partners on behalf of the EU, working to general objectives set by the Council with the consent of the European Parliament.[108] Individual member states are obliged to accept the "common position" agreed by EU members, and the EU votes on behalf of Member States, using the position as its mandate.

That is especially the case with the World Trade Organisation (WTO).[109,110] On many international bodies, such as the International Labour Organisation (ILO), the EU's External Action Service (EEAS) conducts negotiations on behalf of Member States, assuming their voting rights. To facilitate this process, the EU maintains substantial missions to the UN in New York and Geneva.[111] Furthermore, EU funds furnished by Member States buy considerable influence. The European Commission contributes more than $1.35 billion in support of UN external assistance programmes and projects.[112] Because Norway retains it own voice and votes on its own behalf, in many instances it has a greater say on the "top tables" of some international bodies than

does the UK, especially when the voting is by consensus, which it so often is.

An example comes from an observer at a recent technical meeting of the World Customs Organisation (WCO), where the Harmonised System trade classification revision for 2017 was being discussed. During the long discussions, the Norwegian delegate was extremely active, intervening more than ten times. The EU Commission delegate, who spoke for the entire EU, intervened at about half that rate. So Norway, just by itself, had more impact during the meeting than the entire 27-nation EU.

Since the meeting worked by consensus, the EU had effectively less of an impact on the meeting results than even a single outside country. No EU country said anything and many were not even present. From this perspective, it would appear that being part of the EU actually limits an individual Member State's ability to impact the global regulatory machinery.[113]

For another example, in *Codex Alimentarius* negotiations, the UK and other EU member states have ceded authority to the EU on some technical issues, allowing exclusive EU "competence".[114] By contrast, Norway is not only an independent member but, in hosting the Fish and Fisheries Products Committee, is the lead nation globally in an area of significant economic importance to it. It is thus able to guide, if not control, the agenda on standards relevant to this product

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[103] http://www.efta.int/~/media/Files/Publications/Bulletins/EFTA-Bulletin-2012.pdf Other: Consumer protection and product liability (0.7%), energy (0.6%), intellectual property rights (0.6%), procurement (0.6%), recognition of professional qualifications (0.3%), and free movement of workers (0.2%).

[104] http://ec.europa.eu/world/agreements/searchByType.do?id=1

[105] http://ec.europa.eu/world/agreements/prepareCreateTreatiesWorkspace/treatiesGeneralData.do?step=0&redirect=true&treatyId=9342

[106] http://ec.europa.eu/world/agreements/prepareCreateTreatiesWorkspace/treatiesGeneralData.do?step=0&redirect=true&treatyId=38

[107] http://ec.europa.eu/world/agreements/searchByType.do?id=2

[108] http://ec.europa.eu/trade/about/policy-making/

[109] http://ec.europa.eu/trade/creating-opportunities/eu-and-wto/

[110] http://ec.europa.eu/trade/creating-opportunities/eu-and-wto/working-with-the-wto/

[111] http://eeas.europa.eu/delegations/un_geneva/eu_un_geneva/index_en.htm

[112] *ibid*

[113] Personal communication

[114] http://ec.europa.eu/food/fs/ifsi/eupositions/cccf/docs/cccf_6thagenda_en.pdf

group, to which the EU then reacts.[115,116] In all respects, Norway has a far greater say in *Codex Alimentarius* affairs than does the UK.

Outside the framework of the EU, Norway is thus able to make its voice heard on the international stage, permitting it to express its own interests and take up its own negotiating positions. It can also initiate rules on its own account, without first having to seek EU approval. It has, for instance, been particularly active in exploiting the opportunities afforded by international conventions.

Ad Hoc Convention Membership and Involvement

Many Single Market laws start life as international conventions, treaties or agreements, which are produced by ad hoc bodies assembled for the purpose. Once agreed, they are then adopted by the EU. Since Norway plays an active role in promoting international conventions, it can often play a lead part setting up bodies which then formulate standards. As with much else, these are then adopted by the EU and via that route are incorporated into the Norwegian statute book as actionable legislation.

A good example is the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal. This convention was adopted on 22 March 1989 by the Conference of Plenipotentiaries in Basel, Switzerland, in response to a public outcry following the discovery in Africa and other parts of the developing world of deposits of toxic wastes which had been imported from developed countries. It entered into force in 1992, establishing a secretariat in Geneva. Norway was a signatory and took an active part in framing the regulatory provisions embodied in the convention. Through its permanent mission in Geneva, it maintains a liaison with the secretariat established specifically to monitor the workings of the convention.[117]

Despite being a full participant in the workings of the Convention, Norway has not found it necessary to initiate its own legislation. This is because on 1 February 1993 the EU approved the Convention through Council Decision 93/98/EEC, and on 22 September 1997 through Council Decision 97/640/EC. Then, on 14 June 2006 it produced Regulation (EC) No 1013/2006 of the European Parliament and of the Council on shipments of waste.[118] With that, it set up a system for the supervision and control of shipments of waste within its borders and with EFTA/EEA countries which, of course, included Norway.

It is not recorded whether the Commission faxed the Regulation to Oslo, but then as now, it was certainly available on the Internet. Either way, it would not have come as a surprise to the Norwegians who had been party to its origination. Latterly, the EU became a signatory in its own right, which put it on a par with Norway, allowing it to sit at the same table. Then, presumably, delegates could pass the documentation to each other by hand, after they had discussed them. As to the original regulatory scheme, it was Norway, amongst others, which agreed the requirements, which were then processed into legislation by EU institutions for its Member States and EFTA/EEA members.

Another good example was the treaty governing the developing Antarctic fishery exploiting the krill resource. The treaty itself is known as the Convention on the Conservation of Antarctic Marine Living Resources (CCAMLR) which came into force in 1982, as part of the Antarctic Treaty System.[119]

The aim of the Convention is to conserve marine life. This does not exclude harvesting as long as such harvesting is carried out in a rational manner, but it has spawned a huge raft of regulations to which signatory countries (Contracting Parties) are required to enact. While Norway is a signatory, it has made no regulations to implement the convention, even though it fully complies with it, again relying on the EU making them for it to then implement.

A typical example of this process is Council Regulation (EC) No 1721/1999 of 29 July 1999, laying down certain control measures in respect of vessels flying the flag of Non-Contracting Parties to the Convention on the Conservation of Antarctic Marine Living Resources.[120] This regulation came into effect after the 16th Annual Meeting of CCAMLR in 1997, when the signatories adopted a conservation measure on a "Scheme to Promote Compliance by Non-Contracting Party Vessels with CCAMLR Conservation Measures".[121]

The objective was to ensure that the effectiveness of conservation and enforcement measures established by CCAMLR is not undermined by Non-

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115 http://www.fsis.usda.gov/codex/Codex_Committee_Fish/index.asp

116 http://ec.europa.eu/food/fs/ifsi/eupositions/ccffp/ccffp_index_en.html

117 http://www.basel.int/TheConvention/Overview/tabid/1271/Default.aspx

118 http://europa.eu/legislation_summaries/environment/waste_management/l28043_en.htm

119 http://www.ccamlr.org/

120 http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:1999:203:0014:0015:EN:PDF

121 http://www.ccamlr.org/en/organisation/camlr-convention

Contracting Party vessels. It required the signatories to impose an inspection regime on vessels flying the flag of non-contracting parties, which had been sighted engaging in fishing activities in the Convention area. Such vessels seeking to land or tranship produce in an EU member state could only do so in a designated port, whence an inspection would be carried out to ascertain whether the produce had been caught in accordance with the Convention. If the master could not prove this, then entry had to be denied.

Largely, this and many other similar regulations are entirely unobjectionable. But in this case, the EU does not originate the substance of regulations – it merely transcribes the wishes of the CCAMLR signatories and turns them into actionable law. By this means, Norway as a convention signatory takes an early part in the proceedings and thus, effectively, has a hand in dictating what eventually becomes EU law applicable to all Member States and EFTA/EEA Members.

Another excellent example of this dynamic arises in respect of one of Norway's key economic interests - shipping services. Here, on-board living conditions in sea-going vessels are a competition issue, with flagged vessels operating at low standards enjoying a cost advantage. Thus, as a means of implementing and enforcing international standards and "levelling the playing field", the EU in April 2009 promulgated Directive 2009/16/EC on port State control of shipping. This, *inter alia*, required member states to enforce the provisions of the Maritime Labour Convention, 2006, of the ILO.[122,123]

In the Directive, Member States were asked to "make efforts to ratify, for the parts falling under Community competence, that Convention as soon as possible, preferably before 31 December 2010". Norway, though, had been the first European country to ratify it, before even Directive 2009/16 had been promulgated. It had played a leadership role throughout more than five years of preparation leading to the adoption of the Convention in 2006. The then Deputy Minister of Trade and Industry of Norway, Ms Karin Yrvin, was a special guest speaker at the International Labour Conference in February 2006, the Conference that adopted the Convention.[124]

Norway also played a key role in developing the international guidelines for flag State inspections and port State control officers carrying out inspections under the Maritime Labour Convention, 2006, that were adopted in September 2008 by a tripartite meeting of experts. Far from being the passive receiver of instructions from Brussels, therefore, Norway was the acknowledged driver of the legislation, which was then adopted by the EU and its Member States.

Standards Bodies

Another major generator of Single Market rules are the national standards organisations which act singly and in concert to devise and approve standards for equipment, machines, chemicals and a huge range of products and devices. The negotiations between these bodies give rise to harmonised national standards and then international standards, which are then adopted as legislative standards, incorporated in national and EU law.

In Norway, the national standards organisation is Standards Norway (*Standard Norge*). It takes responsibility for all standardisation areas except for electrotechnical and telecommunication issues, and represents its country in the European Committee for Standardisation (CEN) and the International Organisation for Standardisation (ISO). ISO, itself claims responsibility for international standards which "ensure that products and services are safe, reliable and of good quality", helping companies "to access new markets, level the playing field for developing countries and facilitate free and fair global trade".

In Norway, over 2,000 voluntary experts from the business community, the public authorities, and employee and consumer organisations participate in this international standardisation work. The voluntary input of resources is estimated at approximately CHF 27 million.[125]

The ISO itself is based in Geneva, Switzerland. It is an independent, non-governmental organisation made up of members from the national standards bodies of 164 countries, including Norway. It was founded in 1947 and since then has published more than 19,000 International Standards covering most aspects of technology and business.[126] These in turn drive European Standards devised by the three recognised European Standardisation Organisations (ESOs): CEN, CENELEC or ETSI. These then become "a key component of the Single European Market".

These ESOs are involved "in a successful partnership" with the European Commission and the EFTA. The ESOs support European legislation in helping

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122 http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:131:0057:0100:EN:PDF

123 http://www.ilo.org/global/standards/maritime-labour-convention/lang–en/index.htm

124 http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_101671/lang–en/index.htm

125 http://www.iso.org/iso/home/about/iso_members/iso_member_body.htm?member_id=1994

126 http://www.iso.org/iso/home/about.htm

the implementation of the European Commission directives, particularly those developed under the New Approach.[127]

As an integral part of the "standards community", Norway thus has a significant role developing Single Market rules, equal with any other EU Member State. The UK, with its own equivalent British Standards Institute, also takes part in the development and approval of International Standards, work which would continue unchanged if the UK decoupled itself from the political union elements of the European Union and focused on trade issues through the EEA.

Research

A huge amount of policy and then law comes out of the EU research framework programme, which is used to fund policy research.[128] European research policy in the last five years has shifted from an extensive vehicle for R&D-project funding to a more strategic policy making forum, which includes co-ordination of policies between Commission, Member and Associated States in order to pool resources. Those entities which carry out the research have a considerable ability to influence and shape legislation, long before it comes into the public domain.[129]

An active participant in the EU research programme is Norway, within the context of the EEA. Participation in the EU research framework programmes and educational programmes represent the largest EFTA/EEA budget contributions, with around 85 percent of total annual expenditure.[130] In Framework Programme 7 (FP7), Norway was involved in 1,139 projects, with 226 having specific policy implications. By contrast, the UK has 7,588 projects, with 967 having policy implications. Ireland (with about the same population) has significantly less input than Norway, with 1,079 projects, of which only 161 have policy implications.[131]

Examples of projects are "ERANET" - Strengthening cooperation in European research on sustainable exploitation of marine resources in the seafood chains and "SmartGrids ERA-NET" on developing transnational research activities to speed up the development of a Smart European Electrical Infrastructure. This was set up to assist realisation of the European Action Plan Energy Policy for Europe, typical of the type of research that fuels Commission legislative proposals.[132,133] Furthermore, the Research Council of Norway is an integral part of the European Research Area, through the ERA-NET system, engaged in co-operation and the

co-ordination of research activities carried out at national or regional level in the Member States and Associated States.[134]

Norwegian business sector participants have emphasised that collaboration in European research has allowed them access to broader opportunities and networks, allowing development as neutral meeting places, and the conduct of industrial research. Internationalisation has become a key element of Norway's research and innovation policy and the EU Framework programmes have formed the main mechanism for that internationalisation. This enables the development of policy networks and, many see the European policy networks as a good basis to build up joint non-EU collaborations.[135]

Decision Shaping

Very much downstream, at European Union level, EFTA members such as Norway also adopt mechanisms under the generic title of "decision shaping". This term does not appear anywhere in the EEA Agreement, yet is used to describe a series of mechanisms within the EEA framework. It is a convenient label for the processes of contributing to and influencing policy proposals up until they are formally adopted.[136]

The principal decision-shaping mechanisms consist of EFTA members of the EEA participating in committees hosted by the European Commission, engaged in the preparation of legislation or in managing programmes. Members will also submit written contributions and resolutions. This participation is not limited to

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127 http://www.cen.eu/cen/products/en/pages/default.aspx

128 http://ec.europa.eu/research/social-sciences/pdf/insights_policy_research_en.pdf

129 http://www.regjeringen.no/upload/KD/Vedlegg/Forskning/rapporter/EU-forskningENG.pdf

130 http://www.efta.int/~/media/Files/Publications/Bulletins/EFTA-Bulletin-2012.pdf

131 http://cordis.europa.eu/fp7/home_en.html

132 http://cordis.europa.eu/projects/rcn/106875_en.html

133 http://cordis.europa.eu/projects/rcn/87964_en.html

134 http://www.forskningsradet.no/en/European_Research_Area_ERA/1138969864047

135 http://www.regjeringen.no/upload/KD/Vedlegg/Forskning/rapporter/EU-forskningENG.pdf

136 details taken from EFTA Bulletin 1-2009: Decision Shaping in the European Economic Area http://www.efta.int/~/media/Files/Publications/Bulletins/eeadecisionshaping-bulletin.pdf

legislative acts but also covers broader EU policies or non-legislative ("soft law") policy instruments.

It also includes other EU and EFTA institutions, for instance the participation in what are termed the EFTA/EEA "social partners in the EU social dialogue, relations with the European Parliament and the EEA Joint Parliamentary Committee". In addition to the activities of governmental bodies in the EU and EFTA, it also covers the increasingly important and formalised involvement of non-governmental actors in the decision-shaping process in the EEA and the EU. The EEA Agreement provides for EFTA/EEA participation in three main types of committees – programme committees, expert groups, and comitology committees – as well as certain other committees.

Programme Committees

These are responsible for the development and management of the Community programmes, and consist of representatives of participating states. They assist the Commission in tasks like specifying the content of the programme, drafting texts for public calls for proposals, or selecting projects for funding. Article 81 sets out the modalities for the participation of the EFTA/EEA States in Programme Committees. In addition, Article 79 of the Agreement provides for formal input or discussions on new programmes from the EFTA/EEA States through the EEA Joint Committee structure. From 2007 to 2013, the EFTA/EEA States are participating in 16 such programmes through the EEA Agreement.

The Commission is required to take note of EFTA/EEA State views, placing them on the same footing as those from EU Member States. In cases where an issue is referred to the EU Council because the vote of the programme committee conflicts with the opinion of the Commission, EFTA/EEA States have a right to refer the matter to the EEA Joint Committee.

As the procedures needed to establish a legal basis for EFTA/EEA participation in a programme can only be completed after a programme has been legally established by the EU institutions, representatives of the EFTA/EEA States will often formally join the committee somewhat later than their colleagues from the EU Member States. This regarded as less than ideal, as important discussions often take place in the committee at the start-up of a programme. However, in some cases, notably when an existing programme is replaced with a similar new programme, participants from the EFTA/EEA States have been invited to

the committee as "guests" or "observers" awaiting their formal entry in order to secure the continuous participation.

Expert Groups

Expert groups are established by the Commission to assist it in drafting new legislation. Since the EEA agreement was concluded. In 1990, the number has nearly doubled from the original 600. The groups give opinions and insights in the so-called "pre-pipeline" stage of legislation. Although nominated by member states, they are not official government representatives and their contributions do not necessarily reflect their country's position. Often, however, experts will convey their country's position, if only to pre-empt problems and avoid surprises when there are votes. The committees are advisory and do not take decisions or vote. Those who participate in them have the same status, whether from EU or EFTA/EEA Member States.

Working in the groups gives access to important information from the Commission and makes it possible to clarify and communicate national positions at an early stage. It also provides a key channel to influence and contribute to emerging EU policies and legislation.

Comitology Committees

EEA/EFTA States can participate in comitology committees, although they have no voting rights. These committees assist the Commission in drafting and adopting implementing measures where the Council has delegated authority. EFTA experts are co-opted on a footing equal with that of national experts from the EU Member States during preparatory work.

The Commission also consults committees that fall into neither of the categories mentioned above. These fulfil the Commission's requirement for advice on complex scientific, technical or legal issues, such as veterinary and pharmaceutical matters, money laundering, and social security for migrant workers. The Agreement provides for the EEA EFTA States' participation and, as of early 2009, there were 26 "other" committees in which EFTA/EEA States had the right to participate.

EFTA/EEA Comments and Written Contributions

EU Member States are often asked to provide comments on policy issues. Depending on relevance to the EEA Agreement, the EEA/EFTA States provide written comments to a legislative proposal or programme. This is considered part of the consultation procedure set out in Article 99(1) and (3) of the EEA Agreement (see above). Comments may be sent individually by each EFTA/EEA State or they may be co-ordinated at the EFTA level.

A typical comment is brief, on average about five pages long, and provides commentary and suggestions on Commission initiatives such as a green paper or a legislative proposal. More than a hundred EFTA/EEA comments were submitted in response to Commission initiatives during the first fifteen years of the EEA. In recent years, the number of annual comments has been between five and ten, which is somewhat lower than in the late 1990s and early 2000s, when between 10 and 20 comments were submitted annually.

Once the opportunity for input at the committee stage has passed, EEA/EFTA comments represent a particularly important way for the EEA EFTA States to provide input on emerging EU policy. These are usually elaborated by EFTA working groups with the help of the EFTA Secretariat, and then cleared by the appropriate subcommittee before being sent to the relevant services in the Commission, the European Parliament and the Council. EEA/EFTA comments are endorsed by the Standing Committee and officially taken note of by the EEA Joint Committee.

EFTA States often participate individually in a public consultation organised by the Commission before the adoption of a legislative proposal. Comments could already be submitted at this early stage if a proposal is considered to be of particular importance to the EFTA/EEA States.

Otherwise, the EFTA/EEA comment is transmitted as soon as possible after a proposal is adopted by the Commission, ideally before the draft report is discussed in the responsible committee in the European Parliament. Another opportunity is to submit comments before the Council has agreed on a common position. If a second reading is necessary, further EEA/EFTA comments may be needed in order to take into account possible revisions to the proposal during the discussion between Parliament and Council. Finally, EFTA/EEA comments may be submitted to an amended proposal of the Commission.

The opportunity to comment at various stages of the policy-making process in the EU is illustrated by the EFTA response to the Television Without Frontiers Directive. During the review process of this directive, which started in 2003 and ended with the adoption of the Audiovisual and Media Services Directive in December 2007, four joint comments were submitted by the EFTA/EEA States during the consultation phase, after publication of the proposal, and after the publication of an amending proposal by the Commission.

Other Avenues of Decision Shaping

In addition to the formal decision-shaping mechanisms of the EEA Agreement, there are numerous, more informal channels and arenas allowing for an exchange of views and information.

The numerous meetings of the EFTA institutions established for the EEA provide one such arena. The main task of this structure of subcommittees and working groups is to ensure the smooth incorporation of new EEA acts into the EEA Agreement but it is also used for the exchange of information and policy positions between the EU and the EFTA/EEA.

Bilateral relations between individual EFTA/EEA States and the EU are conducted through numerous channels, with the EU Member States and with the EU institutions. National comments on EEA issues are one way for the EFTA/EEA States to influence the EU policy-shaping process. The advantage of sending national comments compared with EFTA/EEA comments is that the former may be elaborated and sent more quickly, and more effectively address an issue of particular concern to an EFTA/EEA State. The comments are usually addressed directly to the relevant Commission services.

Informal contacts with MEPs are also considered increasingly important. This is done by individual members or jointly through meetings between the chair of the EFTA Standing Committee and MEPs, or by sending comments to relevant committees and MEPs in the European Parliament.

6 Maintaining Sovereignty

As an independent state, and despite its enthusiastic participation in international bodies and close association with the EU, Norway is still capable of acting unilaterally to protect its national and economic interests.

A recent example of this is oil and gas production, a major and valuable contributor to the Norwegian economy. Nevertheless, the industry is not without its stresses. According to a report from Bloomberg last August, Norway desperately needed to simplify its rules for offshore oil rigs and reduce labour costs. This was the finding of a government-appointed committee, which discovered that drilling costs in Norway were about 40-45 percent higher than in the UK. As a result, Norwegian companies were drilling less and exploitable resources were being left in the ground.[137]

Thus, the Norwegians were not favourably disposed to the idea of costly new regulations - certainly according to Lundin Petroleum AB (LUPE), which holds a stake in the biggest oil discovery off the coast of Norway since the 1970s. President and Chief Executive Officer Ashley Heppenstall said of his government, "They've got to acknowledge the issue, and they've got to get the balance right between regulation and cost".[138]

Despite this, on 27 October 2011 the EU had proposed regulations to cover offshore drilling, announcing with great fanfare that their new law would "ensure that European offshore oil and gas production will respect the world's highest safety, health and environmental standards everywhere in the EU". According to the Commission, the draft regulation set clear rules "that cover the whole lifecycle of all exploration and production activities from design to the final removal of an oil or gas installation". Because the Commission also decided it had "EEA relevance", the very clear intention was that it should apply to Norway, the biggest gas and oil exporter in western Europe.[139]

The greatest concern, however, was expressed by the UK industry. Said Oil and Gas UK, "the voice of the offshore industry":

> Oil & Gas UK is extremely concerned by the European Commission's proposals for EU Regulation of offshore safety. While we will always support proper moves to improve safety standards, this proposal to dismantle the UK's world-class safety regime which is built on decades of experience and replace it with new centralised EU Regulation, is likely to have exactly the opposite effect. We are encouraged by the fact that the UK Government is of the same position and has signalled its intention to oppose the Regulation in the best interests of safety.[140]

Norwegians were nevertheless quite relaxed about the regulations, a stance explained by a report from the EEA Joint Parliamentary Committee on 27 November 2012, which stated: "The Norwegian government has taken the view that the proposed regulation by the European Commission falls outside the geographic and substantive scope of the EEA agreement".[141,142]

This makes for an interesting contrast. On the one hand, the UK, a full member of the EU, is concerned that it is to be exposed to a debilitating new EU law, which it opposes. However, it is likely to be approved by Qualified Majority Voting (possibly as a directive), over which it has no veto and thus no means of blocking. On the other hand Norway, as an EEA member, was able to resist the proposal. Although the Commission clearly wished to apply the law to this country, its government refused to accept it. On current state of play, Norway will preserve its economic interests and its right to legislate in this vital economic sphere.

Not is this by any means the first time that EFTA has disagreed with the European Commission's view of the application of the agreement. The EFTA Secretariat has so far identified more than 1,200 EU acts marked as EEA relevant

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137 http://gcaptain.com/norwegian-production-strangled/

138 http://www.businessweek.com/news/2012-08-27/norway-s-drilling-costs-create-disadvantage-lundin-ceo-says

139 http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0688:FIN:EN:PDF

140 http://www.oilandgasuk.co.uk/ProposedEURegulation.cfm

141 http://www.efta.int/~/media/Documents/advisory-bodies/parliamentary-committee/jpc-reports/EEA_JPC_Report_Energy_Policy.pdf

142 http://ec.europa.eu/energy/oil/offshore/standards_en.htm

by the European Commission that were contested by experts from the EEA/EFTA Member States. An analysis by the Liechtenstein Institute concluded that these rejections were quite consistent with the EEA Agreement because most of these were excluded for technical reasons.[143]

Furthermore, Norway has other means of expressing its interests. In 2011, the Norwegian government notified the EU that it was rejecting the EU directive on postal services. Foreign Minister Jonas Gahr Støre had to accept his Labour Party veto on the directive which would have deregulated Norway's postal system along with others in Europe. It would have required the Norwegian postal service (*Posten*) to give up its monopoly on letters weighing less than 50 grams and such postal services would be put out to bid.

Ironically, Støre and other leaders of his Labour Party wanted Norway to conform with the EU directive, but a grass-roots movement within the party forced a vote on the issue at a national party meeting in April. They won, and Labour leaders like Støre and Prime Minister Jens Stoltenberg lost.[144]

It should be noted, incidentally, that the EFTA/EEA is not just Norway, but also Iceland and Liechtenstein. And it was Iceland that was responsible for one of the biggest rejections of the EU there has ever been by an EEA member. The dispute related to the collapse of the Icesave online savings account in 2008 which prompted the UK to invoke terrorist legislation against it.

Crucially, when Icesave collapsed, EU countries, notably the UK and the Netherlands, attempted to force Iceland to fulfil its EU obligations. Two legal arguments were invoked, that the Icelandic government was obliged to guarantee at least the first €20,000 in Icesave accounts and that actions relating to the collapse of the Icelandic bank *Landsbanki* were discriminatory against non-Icelandic creditors.

The first challenge came under EU Directive 94/19/EC, which was incorporated into Icelandic law in 1999. The second was that Iceland was in breach of its obligations under Article 4 of the EEA Agreement, prohibiting discrimination on grounds of nationality.

Currently, Iceland, via the EEA, is contesting both charges, with the dispute ongoing amid complex legal arguments after four years and two referendums. Thus, Iceland - a small country with a population of circa 313,000; a country with fewer people than the London Borough of Croydon – has the resilience, influence and the ability to say no to the EU.

But the final word on “influence” must go to Helle Hagenau, International Officer of the country’s “No-to-EU” campaign. Being outside the EU, she told this author, “Norway has kept its political independence both nationally and internationally”. This, she said, has been “especially valuable in dealing with the United Nations. When the Norwegian government decides to promote a certain point of view at the UN General Assembly, we just do it. There is no need to negotiate with numerous other countries and an EU Commission, resulting in a watered down version of that message”.

Hagenau described an experience, about which we had also heard from Norwegian State Minister, Anne Tvinnereim. She recalled how, when she was a member of the official Norwegian delegation to the UN General Assembly in New York, she had both the Swedish and Danish delegations tell her that they had asked the Norwegians to present their case to the UN. They had been unable to do so themselves, constrained as they were by the “common position” within the EU.[145]

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143 http://www.efta.int/~/media/Files/Publications/Bulletins/EFTA-Bulletin-2012.pdf

144 http://www.newsinenglish.no/2011/05/23/historic-no-to-an-eu-directive/

145 Interview with this author in Oslo, 2 August 2013.

7 Conclusions

From this report, it can readily be seen that, as regards Norway, the "fax democracy" premise is a wanton distortion of the state of the situation. To assert that Norway has "limited influence" is true, but – as was suggested at the beginning of this treatise - the influence of all countries is to some extent limited, not least EU Member States who have limited voting power under Qualified Majority Voting (QMV). No country in the world has absolute power or unrestrained influence on the international stage.

Inherent in the "fax democracy" meme is the idea that Norway's influence is somehow reduced by virtue of its membership of the EEA, compared with the situation which would prevail had it become a member of the European Union. Even within the tightly framed institutional context of the EEA, however, this is only partly true. The consultation afforded throughout the legislative processes affords plenty of opportunities of the EFTA/EEA case to be heard. Where measures are implemented without full discussion, it is often the case that EFTA/EEA States have reacted too late to proposals, or have not sought fully to put their arguments.[146]

But what more normally transpires is that, when dealing with the framing of EU Single Market legislation, Norway exerts its influence in a different manner to EU Member States, and at different points in the legislative process, very often outside the EU institutional framework, upstream of the EU deliberations.

The crucial point to support this contention, more than adequately illustrated in this report, is that so many of the single market rules no longer originate at EU level, and are increasingly framed by global and regional (supra-EU) bodies. And it is at these levels that the Norwegian government and its agencies are extremely well represented. As an independent nation, it not only takes active part in proceedings – and especially where it has significant economic interests – it is able to vote on its own account. The relationship between Norway as an EEA member and the EU is far from one of a supplicant to a greater power.

Effectively, in terms of its representation on international bodies, Norway is on a par with the EU, where they both have a presence. Far from monopolising the origination of rules and standards, the EU is just one voice, and not necessarily

the most vocal. Its primary role is becoming that of the middle-man, turning the outputs of international bodies – the quasi-legislation, or "diqules" - into actionable law. From being a major "manufacturer" of law, it is increasingly a "wholesaler and distributor" of law made elsewhere.

While Norway often has freedom of action, the UK does not. As long as we are in the EU, we have less control than we would like over the formulation of quasi-legislation. Because they are tied into a network of intergovernmental treaties, they cannot be changed, not even by the EU. Its institutions simply act as the "middle-man", turning quasi-legislation into actionable law. If there was such a thing as "fax law", the EU would be as much a recipient as any other body.

Compared with the UK (and any other EU Member State), Norway has far more autonomy and influence, and for a relatively small country with a population of five million, it punches massively above its weight.

When it comes to the UK, whether it is technical standardisation of vehicle standards in UNECE, common banking rules from the Basel Committee on Banking Supervision, international food standards from *Codex Alimentarius*, animal disease controls from the OIE - or labour laws from the ILO, we often defer to the "common position" decided by the EU when dealing with these bodies, allowing the European Commission to vote on behalf of Member States. Norway is able to represent itself and its own interests.

Therefore, very far from reducing us to accepting "fax law" from the EU, decoupling from the EU would release ourselves from the political integration agenda. Re-engagement with the international community would restore our status and allow us to resume our proper role on the international stage, alongside Norway which enjoys considerable freedom and influence. Membership of the EFTA/EEA, alongside full participation in framing international standards, is a realistic option. It cannot be considered a less advantageous arrangement than full membership of the EU.

In many respects, the UK would significantly benefit from securing access to the Single Market via the EFTA/EEA route, even if this was only a temporary home pending a long-term arrangement. As long as the bulk of legislation originates at global level, the UK needs representation of its interests there, putting its own

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[146] http://www.efta.int/~/media/Documents/advisory-bodies/consultative-committee/cc-resolutions/English/2012-05-04-eea-cc-resolution-on-the-eea-review.pdf

point of view without it being filtered though the EU "consensus" and presented by European Commission.

We need to resume our seats at the top tables, and with the advent of globalisation, these are no longer in Brussels, where the "little Europeans" reside. We need to break out from this claustrophobic cockpit and rejoin the world.

About the Author

Dr Richard North is a British blogger and author. He has published books on defence and agriculture. In 2006 his blog (*www.eureferendum.com*) was rated by the Financial Times as the UK's most influential political blog. Dr North was previously research director in the European Parliament for Europe of Democracies and Diversities Group.

Dr North has collaborated with journalist Christopher Booker on climate change, public health and other issues. North has co-authored a number of books with Booker, as well as collaborating on Booker's journalism.

North had a brief career in the Royal Air Force before becoming a local government officer, and then for two decades ran his own consultancy business. In the 1990s North completed a Ph.D. on public sector food-poisoning surveillance at Leeds Metropolitan University. He then moved into trade politics and thence to the European Parliament as research director for the group of European Democracies and Diversities, a grouping of eurosceptic political groupings which existed from 1999 to 2004, in which the UK Independence Party (UKIP) participated.

North stood for the Referendum Party in the 1997 election. In the early 1990s Richard North began collaborating with journalist Christopher Booker, they co-authored books on a range of issues, including the European Union. Their first book, *The Mad Officials: How The Bureaucrats Are Strangling Britain* (1994) focused on EU regulation in the UK, and was followed by *The Castle of Lies: Why Britain Must get Out of Europe* (1996) and *The Great Deception: Can the European Union Survive?* (2005). In 2004 he wrote a Bruges Group paper on the European Union's satellite navigation system titled *Galileo: The Military and Political Dimensions*.

THE BRUGES GROUP

The Bruges Group is an independent all–party think tank. Set up in February 1989, its aim was to promote the idea of a less centralised European structure than that emerging in Brussels. Its inspiration was Margaret Thatcher's Bruges speech in September 1988, in which she remarked that "We have not successfully rolled back the frontiers of the state in Britain, only to see them re–imposed at a European level…". The Bruges Group has had a major effect on public opinion and forged links with Members of Parliament as well as with similarly minded groups in other countries.
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Norway, as a member of the EEA – outside of the EU but with influence over it in exchange for some obligations - is often dismissed as lacking in influence, taking its orders from the EU in what is known as "fax democracy". As this report demonstrates, though, that is a wanton distortion of the true situation.

As long as we are in the EU, we have less control than we would like over the formulation of intergovernmental treaties which cannot be changed, not even by the EU. Its institutions simply act as the "middle-man", turning quasi-legislation into actionable law. If there was such a thing as "fax law", the EU would be as much a recipient as any other body. Compared with the UK (and any other EU Member State), Norway has far more autonomy and influence, and for a relatively small country, it punches massively above its weight. As an independent country, using the "Norway Option", the UK could do likewise.

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