



The Political Future of the European Economic Area

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Abstract

The purpose of this paper is to discuss the political future of the European Economic Area (EEA). The paper starts by providing a brief overview of the EEA (Section 2). Next, it discusses the factors affecting the future of the EEA from the vantage-point of Norway (Section 3). The Norwegian political system contains a set of gag-rules to prevent changes in the status quo of EU affiliation. What such gag rules imply for the EEA's future is important to address. Thereafter, the paper discusses the factors affecting the future of the EEA from the vantage-point of the EU (Section 4). Penultimately, the paper considers possible trajectories for the EU-level's development. Conclusively, the paper provides a brief assessment of the similarities and differences between the EEA and such alternatives as EU-UKTCA, the Swiss Model, and the Comprehensive Economic and Trade Agreement between the EU and Canada (CETA) (Section 5).

Keywords

EU scenarios – European Economic Area – European Union – Gag rules – Norway

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Introduction¹

The purpose of this paper is to discuss the political future of the European Economic Area (EEA). In order to do so, clarification of the key terms involved is necessary. Firstly, the European Economic Area consists of all the European Union (EU)'s 27 Member States, as well as the three European Free Trade Association (EFTA)-EEA states (Iceland, Liechtenstein, and Norway). An important question is whether the analysis should be confined to the future of the *EEA Agreement* or whether the European Economic Area should be considered more broadly. This paper takes the latter approach, and justifies that with reference to the fact that the EEA Agreement relies on a host of other arrangements, notably Schengen, to function. The EEA Agreement is tied to the most dynamic and integrationist portion of the EU's relations with third states; and hence, has a built-in propensity to widen and deepen, in line with EU developments. Thus, discussing the political future of the EEA² is not only a matter of clarifying what might happen to the EEA Agreement, but must include all relevant arrangements for the EEA. And since EFTA-EEA-EU relations are so asymmetric, the future of the EEA is intrinsically linked to the EU's future nature and development.

Secondly, it needs to be specified what is meant by the EEA's *political future*, and how that distinguishes itself from the EEA's *legal future*. There are of course no grounds for saying that the EEA's political future will be a different future from the EEA's legal future; the two futures are necessarily comingled, also given that law is a codification of politics. The legal order embedded in the EEA constrains as well as enables politics, and politics makes EEA law possible, but can also change or undermine it. Nevertheless, there are good grounds for analysing the EEA's legal and political future separately, of which this paper focuses on the political future. Law and politics are operated by different logics, and are operated and sustained by distinct (albeit to some extent overlapping) organisational configurations, unfolding according to different dynamics. The discussion about the EEA's political future thus sheds light on the actors and factors that may either sustain, alter, or undermine the EEA. There is often a time-lag between political as opposed to legal changes; and hence, a clear understanding of the nature and changes in the ideas, ideologies, and power political constellations surrounding the EEA Agreement is useful for analysing the EEA's legal future. Conversely, a clear understanding of the EEA's legal nature and development sheds light on the

¹ Forthcoming chapter in 'Research Handbook on EEA Internal Market Law', edited by Graham Butler and to be published by Edward Elgar. The author is grateful for very constructive comments and suggestions to earlier drafts by Graham Butler, Stein Reegård and Jarle Trondal, and to Birthe Einen for excellent editorial assistance.

² From here on within this paper, 'EEA' refers to all relevant aspects of the EFTA-EEA state's EU affiliations, whereas the legal arrangement is referred to as the EEA Agreement itself.

manner in which the EEA variously constrains, enables and gives shape to politics; and hence, is of great value for the assessment of the EEA's political future.

In order to zoom in on the relevant political dimensions, the paper introduces a distinction between policy, politics, and polity. The English language usefully distinguishes between politics and policy; a distinction that is unfortunately lacking in other languages, such as German, Norwegian, Danish, and Swedish. Politics refers to the ideas and ideologies that animate political action; and the distribution of preferences and interests, their contested nature; and claims for (re)distribution, recognition, and representation. Policy is about the substantive contents of issues and the processes and procedures for problem-solving and conflict resolution that (more or less overtly) terminate in binding decisions. Polity refers to the basic structural-institutional make-up of the political system and its constitutional fundamentals. The discussion of the EEA's future will mainly focus on the politics and polity aspects, under the assumption that changes in polity/politics, on the one side, and changes in policy, on the other, are quite asymmetrical. Changes in policy can have bearings on polity and politics, but these will most likely be less abrupt and upsetting than significant changes along the politics and polity dimensions. The implication is that the paper will focus the discussion on the EEA's political future with reference to the ideas and ideologies that underpin the arrangement; the basic power constellations pitting supporters against opponents; and structural-institutional factors that variously enable or constrain action and changes to the status quo.

The paper starts by providing a brief overview of the EEA (Section 2). Next, it discusses the factors affecting the future of the EEA from the vantage-point of Norway (Section 3). The Norwegian political system contains a set of gag-rules to prevent changes in the status quo of EU affiliation. What such gag rules imply for the EEA's future is important to address. Developments in the EFTA-EEA states, especially in Norway, as the main and by far largest of the three, will have bearings on the EEA. In effect, it is quite conceivable that without Norway, the EFTA-EEA arrangement would likely unravel, as having such a structure for Iceland and Lichtenstein might not work well. Thereafter, the paper discusses the factors affecting the future of the EEA from the vantage-point of the EU (Section 4). Is the EEA an arrangement that the EU actively embraces; or is it an arrangement it merely grudgingly accepts? Further, it is necessary to develop possible or plausible EU developmental trajectories or scenarios, and as part of that pay explicit attention to the EU and its Member States on the one hand, and the EFTA-EEA states on the other. Changes in one will have bearings on the other. Further EU enlargements, more EU integration, a more differentiated EU (whether through differentiated integration or differentiated disintegration) will all have bearings on the EFTA-EEA states and their EU affiliation. Penultimately, the paper considers possible trajectories for the EU-level's development. Including EU's Member States would have greatly complicated the analysis. The question is also if that would have seriously altered the assessment that is presented here. In today's inter-imbricated

Europe, the EU plays a central role in governing and coordinating action in a very broad range of policy fields, and EU-level developments will often reflect core Member States' concerns, or at least represent compromise positions. The critical point however is that the EEA is a direct function of the existence of the EU; and that changes in the EU will therefore likely manifest themselves also in the EEA, whether formally or informally. Conclusively, the paper provides a brief assessment of the similarities and differences between the EEA and such alternatives as EU-UKTCA, the Swiss Model, and the Comprehensive Economic and Trade Agreement between the EU and Canada (CETA) (Section 5). The purpose is to discern possible implications for Norway of adopting any one of these and no less importantly whether that model would be available from the EU.

The nature of the EEA from a political perspective

Norway and the EU

Since the paper focuses on the EEA through the vantage-point of Norway, it is necessary to start by providing a brief overview of Norway's EU affiliation. Norway has applied for membership of the EU four times: in the 1960s, 1970s and 1990s.³ In connection with the latter two applications, in 1972 and 1994, popular referenda were arranged to vote on the results of the EU accession negotiations. In both instances, a small majority of the population turned down EU membership.⁴

The second referendum was held in November 1994, well after Norway had become a party to the EEA Agreement. Thus, since the EEA Agreement gave Norway access to the EU's internal market, it was less clear what a no-vote in the referendum entailed (was it no to EU-membership, but yes to EEA, or was it no to both?) than what a yes-vote would have entailed for Norway's future EU affiliation.⁵ These referenda campaigns made readily apparent that the issue of Norwegian membership in the EU has figured as one of, if not the, most politically divisive issues, in Norway in the post-war period.⁶

For Norway, the EEA Agreement is the core of a whole tapestry of different arrangements. In other words, the EEA Agreement is not *the* agreement, but merely

³ The two first instances, in 1962 and 1967 were aborted due to de Gaulle's veto against the UK's application. Tor Bjørklund 'Old and New Patterns: The 'No' Majority in the 1972 and 1994 EC/EU Referendums in Norway', *Acta Sociologica* [1997], 143-144.

⁴ In 1972, 53.5 per cent voted against membership and 46.5 per cent voted for; and in 1994, 52.2 per cent voted against, whereas 47.8 per cent voted in favour.

⁵ John Erik Fossum 'Norwegian Reflections on Brexit', *Political Quarterly*, [2016], 343-347.

⁶ John Erik Fossum 'Norway's European "Gag Rules"', *European Review* [2010], 73-92; NOU 2012:2 [Norwegian Official Report] (2012) 'Outside and Inside: Norway's Agreements with the European Union', Report by the EEA Review Committee delivered to the Norwegian Ministry of Foreign Affairs, 17 January, available at: www.regjeringen.no/no/dokumenter/nou-2012-2/id669368/ [accessed 19 September 2022].

an important agreement, as regards Norway's relationship with wider Europe. Norway's EU affiliation covers most of the areas of EU relations. It is regulated by well over 70 international agreements (NOU 2012),⁷ with the EEA Agreement (EEA) at the core. There are different logics involved in these different modes of affiliation through different international agreements. The EEA Agreement is based on legal harmonisation and near-automatic expansion (dynamic homogeneity), whereas the patchwork of other international agreements that has been entered into in the foreign and security field is based on much more piecemeal bargaining processes;⁸ and thus, the political logic is far more pronounced in the latter in line with the EU's nature (a mix of different type of arrangements within the broader confines of the EU⁹).

The EEA across pillars and non-pillars

Formally speaking, the EEA Agreement is structured by means of a two-pillar structure, between the EU pillar, and the EFTA-EEA pillar and with bridging institutions for the latter. This two-pillar structure was devised to protect the EFTA-EEA states' sovereignty. As Frommelt has noted: from the very outset of the negotiations on the EEA Agreement, the EFTA states were unwilling to cede any legislative power to any institutions within the EEA. At the same time, they wanted to have a say in the development of EEA-relevant EU legislation. By contrast, the EU insisted on safeguarding the autonomy of its internal decision-making procedures, and the integrity of the EU legal order. These competing views still shape the two-pillar structure, and has created a considerable institutional complexity, with policy-specific arrangements for 'decision[-]shaping and decision[-]making'.¹⁰ Within the context of the EEA Agreement, the EEA – in contrast to the situation of EU Member states with regard to EU law – is not formally anchored in the legal precepts of primacy and direct effect. Hence, whereas in EU Member States, EU law has primacy over national law, that is formally speaking, not the case in Norway. The reality is, however, not as different as the formal structure would suggest.¹¹ The EFTA Surveillance Authority (ESA) ensures that legal incorporation is in accordance with the EEA Agreement as an enforcement body, and the EFTA Court in practice ensures the interpretation of

⁷ This number has expanded post-Brexit due to the need for working out Norway-EU-UK relations.

⁸ Christopher Hillion 'Norway and the changing Common Foreign and Security Policy of the European Union' (NUPI Report No. 1/2019).

⁹ Sergio Fabbrini *Which European Union? Europe After the Euro Crisis* (Cambridge University Press 2015); Sergio Fabbrini *Europe's Future – Decoupling and Reforming* (Cambridge University Press 2019); John Erik Fossum 'The Institutional Make-up of Europe's Segmented Political Order', in Jozef Batora and John Erik Fossum (eds) *Towards a Segmented European Political Order*, (Routledge 2020).

¹⁰ Christian Frommelt 'Institutional Challenges for External Differentiated Integration: the Case of the EEA' (EUI Working Papers RSCAS, No. 65/2020), 2.

¹¹ Erik Oddvar Eriksen and John Erik Fossum (eds) *The European Union's Non-members: Independence Under Hegemony?* (Routledge 2015); John Erik Fossum and Hans Petter Graver *Squaring the Circle on Brexit – Could the Norway Model Work?* (Bristol University Press 2018).

EEA law, as a judicial body.¹² The relationship is clearly one-way, from the EU to the EEA. In effect, the two-pillar structure of the EEA Agreement serves to cloak the amount of governing autonomy that the EFTA-EEA states de facto transmit to the EU.

For EU Member States, their ‘pooling and sharing’ of sovereignty comes with co-decision in all key EU bodies. That improves their ability to deal with externalities, and it expands their realm of governing well beyond their territorial bounds and across the EEA. The question for EU Member States is whether the added element of ‘external governing capacity’ is commensurate with their pooling of sovereignty in joint EU-level institutions. For the EFTA-EEA states, there is no similar extension of the realm of governing, given that they are mere norm and rule-takers. Nevertheless, the EEA Agreement ensures them of a high measure of external predictability; a stable framework of rules and norms that they can operate under; and a range of rights and obligations that ensure that they are treated on a par with EU Member States in the issue-areas where these rights and obligations apply. The EEA Agreement provides the EFTA-EEA states with formal sovereignty retention, but has significant implications for their legal and constitutional autonomy, as well as their scope for democratic self-governing.

From the above, it is apparent that the EEA Agreement ensures the EFTA-EEA states full access to and participation in the EU’s internal market. Institutionally speaking, that situates the EEA Agreement in direct relation to the EU’s system, which in other words, is the EU’s main supranational governing arrangement. The EEA Agreement is based on ‘dynamic homogeneity’, which entails that the operating conditions are as similar as possible across both pillars of the EEA. Among third states, the EFTA-EEA states are those with the most extensive reciprocal rights and obligations in the EU’s internal market. They are subject to the four freedoms, and other internal market-related provisions.¹³

There is also the Schengen Agreement. Norway is included here through the Schengen Association Agreement, which, in effect, locates it within the EU’s external borders and systems of border controls for persons (but not goods).

¹² There is a debate on the relationship between the Court of Justice of the European Union (CJEU) and the EFTA Court. See for instance Carl Baudenbacher ‘The Relationship between the EFTA Court and the Court of Justice of the European Union’, in Carl Baudenbacher (ed.) *The Handbook of EEA Law* (Springer International Publishing 2015); Halvard Haukeland Fredriksen ‘The EEA and the Case Law of the EU of the CJEU: Incorporation without Participation’, in Eriksen and Fossum (2015).

¹³ From citizens’ perspectives, this extensive access to and participation in the EU’s internal market entails that EFTA-EEA nationals, de facto Union citizens in all but name, can be understood as bearers of EU *economic* citizenship. Espen Daniel Hagen Olsen “‘Utenforskapets’ paradoks: mot et depolitisert statsborgerskap?” in Erik Oddvar Eriksen and John Erik Fossum (eds) *Det norske paradoks – Om Norges forhold til Den europeiske union* (Universitetsforlaget 2014).

Schengen has its own institutional arrangements that differ from those of the EEA.¹⁴ Since its inception, initially outside the EU legal order, but later incorporated within, much of Schengen has since been communitarised.¹⁵ Norway has also arranged for relations with the EU in the area of security and defence¹⁶, including, in recent years, in portions of Permanent Structured Cooperation (PESCO), and is affiliated with the European Defence Fund (EDF). In contrast to the EEA, this is a patchwork of arrangements, subject to case-by-case inclusion, and marked by a high degree of informality.

External differentiated integration

To sum up thus far, Norway has sought to be as closely affiliated with the EU as is possible for a non-EU Member State, and the EU has been receptive to that. The implication is that the EEA Agreement is a distinct form of EU *external differentiated integration* (EDI), which in contrast to external differentiation, underlines the reciprocal rights and obligations involved. External differentiation can be understood as a situation wherein EU rules extend to non-EU Member States, and where they are allowed to, through negotiation, participate in EU programs (generally in a piecemeal and partial manner). Under this form of rule-taking, there is no reciprocity in terms of rights and obligations. A non-EU Member State adopts the applicable law voluntarily, and without the rule-taker having any say in how or the extent to which conformity is ensured over time. The rule-taker has no real assurance that the rule-maker will respect the rules in their dealings with the rule-taker. In contrast, the distinguishing feature of EDI is that external actors are somehow *integrated* in the EU through shared operating conditions, but where the rule-taker cannot co-determine the rules.

From a governing perspective, EDI arrangements with third states have a far greater assurance of equal treatment (all actors are legally obligated to abide by these rules) than would have been the case under a situation of external differentiation as defined here. EDI is not a straight one-way relationship; there is some scope for mutual adaptation, consultation, and sounding out. In addition, the arrangement provides rights and obligations to actors within non-EU Member States (citizens, groups, and undertakings) that they can use against the EU and its Member States. Further, there are forums or arrangements where the non-EU Member States can bring up their concerns.¹⁷ EU actors recognise that the EFTA-EEA states (and their citizens and their

¹⁴ For the specifics of these, see Fossum and Graver (2018) For an assessment of constitutional issues in connection with Schengen, see Erik Boe and Fredrik Sejersted *Schengen og grunnloven* (Universitetsforlaget 1999).

¹⁵ Phillippe Delivet 'Schengen, thirty years on: results, realities, challenges' (*Fondation Robert Schuman*, No. 361 2015).

¹⁶ Helene Sjørnsen 'Reinforcing Executive Dominance: Norway and the EU's Foreign and Security Policy', in Eriksen and Fossum (2015).

¹⁷ For an overview, see Frommelt (2020).

economic actors) have these rights, and treat them accordingly. In the complex and composite European governing system, this formal-legal recognition is very important, because the larger and more complex the EU becomes, the less likely it is that all actors will have the relevant knowledge of the EU's many legal provisions and relations with third states. Lack of knowledge can lead to unequal treatment, exclusion, and discrimination.

The EEA Agreement was initially considered a temporary arrangement, a kind of membership waiting room, wherein recalcitrant states stay until they have worn down the domestic opposition to EU membership.¹⁸ Given that the EEA Agreement entered into force in 1994, it may also be considered a case of permanentising a temporary arrangement, and has obtained the status as a compromise between those that want as limited foreign influence as possible (sovereignty retention) and those that underline the need for binding international collaboration out of need or conviction (EEA and EU accession supporters).¹⁹

Factors and forces supporting and opposing the EEA in Norway

This section considers the degree to which there is ideational and interest-based congruence between Norway and the EU, which is important for understanding the structure of political support and opposition within Norway. The assumption is that the greater the ideational congruence and the more clearly the balance of political forces weigh in on the side of the status quo, the less likely it is that there will be an impetus to alter the EEA Agreement and Norway's other EU affiliations, either by abolishing some or all, downsizing/ downscaling some or all, or opting for EU accession. This section considers to what extent there is idea- and value convergence, as understood from the Norwegian side of the equation.

An EEA of shared ideas and ideologies

With regard to basic principles, there is a clear Norway-EU correspondence: Norway is a constitutional democracy, and the EU is, according to the treaties, based on democracy and the rule of law. Moreover, the EU has a set of democratic entrance requirements to ensure democratic coherence across its Member States. Since Norway is not an EU Member State, and the 'main objective of the EEA

¹⁸ Ulf Sverdrup 'Introduksjon: 25 år med hardt EØS-arbeid: Fra venterom til permanent oppholdssted? *Internasjonal Politikk* 77(4) [2019], 331-340.

¹⁹ Former PM Gro Harlem Brundtland in an interview in 2016 noted that 'it was quite a struggle to get the EEA through [domestically]'. Cited in Lise Rye *Norge i Europa* (Fagbokforlaget 2019). See also John Erik Fossum 'What is the Norway Model? Mode of Affiliation or Political Compromise?' *Political quarterly* [2019].

Agreement is to integrate the EFTA states into the EU internal market',²⁰ it would not seem far-fetched to consider the EEA more of an economic arrangement, than would be the case with the EU, whose purpose of 'ever closer Union' is more explicitly political. In other words, the assumption would be that the EEA Agreement would be more market-friendly than the EU, which has also been asserted by the former president of the EFTA Court.²¹

The main part of the EEA Agreement has not been updated since its initial adoption, whereas the EU has become far more integrated, politically and legally, since the signing of the EEA Agreement. In this context, it is interesting to note the role of the EEA preamble. It has been noted that the impact of the preamble

has surpassed expectations. Faced with a "*Widening Gap*" between the Main Part of the EEA Agreement and the EU Treaties, the EFTA Court has on a number of occasions relied on the preamble in order to keep up with developments in the post-Maastricht case law of the [CJEU]. As a result, the legal importance of the preamble to the EEA Agreement probably outweighs that of the preambles to the EU Treaties in the context of EU law.²²

The text of the EEA Agreement's preamble contains reference to a wider remit than the EU's internal market, given that it includes human rights, regional policy, environmental protection, health, social, and environmental issues. Active reference to the preamble thus fosters horizontal integration. Whether that ends up being more market-friendly is less certain. It is clear that the text of the preamble has not been altered in synch with the EU's development, where arguably Article 3(3) Treaty on European Union (TEU) expresses a stronger commitment to a social market economy than does the EEA Agreement's preamble.²³ Nevertheless, the authors of a leading commentary underline that such a conclusion does not take adequate heed of the effects of the principle of homogeneity. For them, 'an approach based directly on the homogeneity principle leaves less room for assertions that EEA-law remains more *unreservedly free-market oriented* than the social market economy of the EU post-Lisbon'.²⁴

The active reference to the EEA Agreement's preamble, and even more so, the homogeneity principle, speak to an ongoing process of EU-Norway harmonisation during the tenure of the EEA Agreement. Nevertheless, in order to understand the

²⁰ Finn Arnesen, Halvard Haukeland Fredriksen, Hans Petter Graver, Ola Mestad and Christop Vedder *Agreement on the European Economic Area – A Commentary* (Nomos 2018), 172.

²¹ Carl Baudenbacher '(M)ust be interpreted in the light of economic considerations: some reflections on the case law of the EFTA Court', in David Edward, Assimakis Komninou, Jacquelyn MacLennan (eds) *Ian Forrester - A Scot Without Borders Liber Amicorum Volume II* (Concurrences Review 2015), 77-98.

²² Arnesen, Fredriksen, Graver, Mestad Vedder (2018), 153, emphasis in the original.

²³ *ibid*, 153-154.

²⁴ *ibid*, 173, emphasis in the original.

EU effect, one needs to go back and query what the status was prior to the EEA Agreement coming into effect in 1994. One relevant consideration pertains to whether it is possible to associate the EU with a distinct political and socio-economic model, or whether the EU is better understood as a composite of different models, pointing in different ideational or ideological directions. A further consideration is whether Norway, as historically speaking, a carrier of the Nordic model, stands apart from (parts of) Europe. On the former, Hall and Soskice²⁵ distinguish between coordinated market economies (Germany, Japan, Switzerland, the Netherlands, Belgium, Sweden, Norway, Denmark, Finland, and Austria), and liberal market economies (the USA, Britain, Australia, Canada, New Zealand, Ireland), where the former rely more on non-market mechanisms for coordinating relations in financial and industrial systems than the latter. The EU has arguably moved closer to market coordination since the book by Hall and Soskice was published. As will be further discussed below, there is no doubt that much of Norway's left-wing opposition to the EU is based on the notion of the EU as a neo-liberal regulatory system.

On the latter, proponents of the Nordic model claim that there are certain identifiable Nordic values that are institutionalised within, and across the five states that make up the Nordic region (Denmark, Finland, Iceland, Norway, and Sweden). The core components of the Nordic Model in the socio-economic realm are macroeconomic governance; organised working life; public welfare services; and gender equality.²⁶ The claim is that these are particularly pronounced in the Nordic region. Behind this, there is an implicit assumption that these values are shared across the political spectrum, in other words that they are not only espoused by social democrats on the left, but by parties on the right as well. With regard to Norway, there has been considerable cross-partisan agreement on the need to retain the welfare state, although to put it crudely, the left wants this to be within the public realm, whereas the right wants a significant private sector involvement. Right-wing governments sometimes also defer to the EEA Agreement as a vehicle for pursuing a more market-friendly line of policy.²⁷

With regard to the issue of Norway-EU value convergence given the legacy of the Nordic Model, the question is, on the one hand, whether the defining features of the Nordic model set the Nordic region on a different course than the EU; and on the other hand, whether Norway's non-membership of the EU has enabled it to sustain these traits better than the other main Nordic model carriers such as

²⁵ Peter Hall and David Soskice *Varieties of Capitalism* (Oxford University Press 2001).

²⁶ Jon Erik Dølvik, Tone Fløtten, Jon Hippe and Bård Leirfald 'The Nordic model towards 2030. A new chapter?' (Fafo report 2015); Mary Hilson *The Nordic Model: Scandinavia Since 1945* (Reaktion Books 2008); Adrian Woolridge 'Northern Light' *The Economist* [special report on the Nordic Countries 2013].

²⁷ There is scope for overinterpretation of EU rules here. See for instance Stein Reegård 'Stort og smått; rødt og blått - Eksempler på hvordan en regjering tilpasser seg internasjonaliseringens utfordringer', in Noralv Veggeland (ed.) *Den Solbergske staten* (Sandnes Forlag 2020).

Denmark, Finland and Sweden, which have been EU Member States since 1973 (Denmark) and 1995 (Finland and Sweden). There are a few studies on the Europeanisation of the Nordic model, but most of the debate on the Nordic model has failed to take the effects of Europeanisation sufficiently into account.²⁸ The lack of systematic studies suggests as a second-best approach to consult what the Norwegian political parties have stated on these issues. Political parties will thus be examined with a view to clarify not only where they stand on Norway's EU affiliation, but whether they relate their stance on Norway's EU affiliation directly back to the values, principles and, institutional arrangements associated with the Nordic model.

Interest congruence versus incongruence: mutual asymmetrical inter-dependence

The assessment thus far suggests considerable value correspondence, albeit with some reservations. Whether that amounts to congruence in basic interests must also be considered. For Norway, the case of Brexit is quite instructive given that the UK is Norway's largest single trade partner. At the same time, in overall terms, the EU matters even more to Norway's economy.²⁹ Thus, given these close links in both directions, the greater the EU-UK divergence, the more of a squeeze Norway would find itself in. That brings up two issues: one is which side Norway would prioritise, and the other is whether such a prioritisation is consistent across the entire political spectrum within Norway.

The previous centre right Solberg government (2013-2019) underlined Norway's strong dependence on the EU.³⁰ Former foreign Minister Ine Eriksen Søreide noted on 20 October 2018 that

a position that we share with the EU is that we are very concerned about the integrity of the internal market, namely that it should not be possible to divide up the four freedoms and as such destroy the internal market [...] we are concerned about having a very close relationship to the British and a close trading relationship also after Brexit. But we must at the same time be clear that for Norwegian interests it is readily apparent that preservation of the internal market which provides us with common rules of conduct, market access, common standards etc. is immensely important for Norway

²⁸ John Erik Fossum 'The Norway Model and the UK post-Brexit' in John Erik Fossum and Christopher Lord (eds) *Handbook on the European Union and Brexit* (Edward Elgar 2022).

²⁹ European Commission 'Norway. EU trade relations with Norway. Facts, figures and latest developments', available at: https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/norway_en#:~:text=Nearly%2060.5%25%20of%20Norwegian%20exports,of%20EU%20imports%20from%20Norway [accessed 19 September 2022].

³⁰ Kristin Haugevik 'Hva betyr Brexit for Utenforlandet Norge? *Internasjonal Politikk* [2017].

given that 80 percent of our exports go to the EU. That includes the opportunity to bring in labour when we need it.³¹

The new centre-left minority Støre government (2021-present) has a stronger more pronounced Eurosceptic contingent, and it relies on cooperation with a further Eurosceptic party for support in parliament. Several of these parties and portions of the trade union movement have expressed an interest in changing (downscaling) Norway's EU affiliation.

Nature and structure of support versus opposition

In order to assess the prospects for future changes in Norway's EU affiliation, the role of what may be termed 'veto actors' is particularly important to clarify. Veto actors are those actors that are in a position to alter the nature, status, or operations of the EEA (understood as the entire range of Norway's EU affiliations). Compiling such a list is a challenge because there may be formal changes that do not matter much to the substance of the affiliation, and there may be important informal changes that do not show up in changes in the formal status of the arrangements. Further, those officially in a position to make formal changes may not act autonomously; they may be persuaded or cajoled into either preserving or altering formal arrangements. These considerations suggest the following list of Norwegian veto actors: the government; the political parties; the key interest organisations (employers (NHO) and employees (LO)); the 'No to EU' movement; and public opinion. Each of these can, on its own or through the influence it has on other veto-capable actors, influence the role and status of the EEA.

The most obvious veto actor in Norway is the government itself. No government has thus far, during the EEA Agreement's duration (or Schengen's for that matter), sought to make any changes in the basic framework of the EEA, except from either accepting what has come from the EU, or taken measures to fill perceived gaps when considered necessary. No government has ever used the so-called 'reservation right' in the EEA Agreement (Article 102 EEA³²), though the centre-left Stoltenberg government (2005-2013) agreed after pressure from the Trade Union Confederation (LO) to use it in relation to the third postal directive. The change in government in 2013 meant that the possibility to invoke the reservation was not acted upon.

The incumbent Støre government (2021-present) is a minority coalition government between Labour (AP) with 48 seats and the Centre Party (Sp) with 28 seats. The

³¹ Ine M. Eriksen Søreide 'Møte i Europautvalget den 20. september 2018' [Meeting in the European Affairs Committee 20 September 2018], available at: <https://www.stortinget.no/no/Saker-og-publikasjoner/Publikasjoner/Referater/Europautvalget/2017-2018/refer-201718-09-20/?all=true> [accessed 19 September 2022]. Author's translation.

³² Agreement on the European Economic Area (OJ No L 1, 3.1.1994). For a legal assessment, see Arnesen, Fredriksen, Graver, Mestad and Vedder (2018), 803-819.

government has a total of 76 out of 169 seats in the parliament (Stortinget). As a minority government, it is therefore dependent on support from the opposition, and the Prime Minister (Statsminister) has pledged to seek support mainly to the left, from the Socialist People's Party (SV). When its 13 seats are added to the government's 76, there is a majority in support of the government in parliament. There is, however, no formal agreement in place; hence the government is compelled to seek support on a case-by-case basis.

The Støre government's position on Norway's EU affiliation is set out in the joint declaration (Hurdalserklæringen) that forms the basis for the minority coalition government. This 86-page declaration lists the government's objectives, in considerable detail:

[t]he government will develop and deepen Nordic cooperation in a wide range of areas. Nordic and European countries are Norway's most important political and economic partners. The government will stand up clearly for the value of an open and cooperative Europe at a time when authoritarian forces, nationalism and xenophobia are on the rise. The EEA Agreement will form the basis for Norway's relationship to Europe. The government will work more actively to promote Norwegian interests within the framework of the agreement, and the wriggle-room in the agreement will be used with particular emphasis on ensuring national control in such areas as labour relations, energy and rail traffic.³³

The declaration shows that the government's position is one of 'status-quo minus'. There is no expressed will or commitment to alter the existing arrangements, but there is a commitment to use whatever wriggle-room that can be found. The implication is that this wriggle-room has not been sufficiently exploited in the past.

Pressure from several corners, including political parties and the trade union confederation, has led to the government establishing a committee to evaluate Norway's experiences with its current EU-affiliation.³⁴ The evaluation will examine Norway's experiences with the current affiliation in a wide range of issue-areas and in addition seek information on the experiences of Switzerland, the UK and Canada, as well as whether the EEA Agreement is necessary for Nordic cooperation. The government, in formulating the committee's mandate, has been criticised for not also including an assessment of the possible effects of Norwegian EU-membership.³⁵ The main focus of the assessment is to assess how (well or not) the present arrangements function. Thus, even if the range of topics to be examined is long, the assessment is also deliberately confined to focus on the status quo,

³³ Hurdalserklæringen. See: [Hurdalsplattformen - regjeringen.no](https://www.regjeringen.no) Author's translation.

³⁴ The mandate is presented here: [Utvalg skal vurdere erfaringene med EØS-avtalen - regjeringen.no](https://www.regjeringen.no)

³⁵ Nyhetsbyrået NTB 'Venstre vil ha EU-utredning' *Nationen* [2022], available at: <https://www.nationen.no/politikk/venstre-vil-ha-eu-utredning/> [accessed 19 September 2022].

although it could also be argued that insofar as it is oriented at change, the direction is towards downsizing, rather than upscaling arrangements.

At this stage, it is impossible to establish what the change impetus of the assessment's findings will be. A more realistic approach is to consider other actors and factors and in what direction they may push the government, including, as noted above, whether they anchor their EU opposition in the values and institutional arrangements associated with the Nordic model.

The partisan positions

If the different positions that have been proposed in the debate on Norway's EU affiliation over time are assessed, the following options are found:

1. Abolish the EEA Agreement, and negotiate a free trade agreement with the EU.
2. Renegotiate the EEA Agreement.
3. Renegotiate Schengen (with or without changes to the EEA Agreement).
4. Apply for EU membership.³⁶

If the Norwegian parties' positions on Norway's EU affiliation is considered, from left to right,³⁷ it is found that Red (Rødt, eight seats in the 2021-2025 Storting), with some of its roots in a former Marxist-Leninist Party, advocates for abolishing the EEA Agreement and replacing it with a mere free trade agreement. The party's stance is that the EU is far too market-liberal; and hence, an unravelling of this relationship is necessary. The Socialist Left Party (SV, 13 seats in the 2021-2025 Storting) is determined to terminate the EEA Agreement and opt for less binding alternatives. It justifies its stance with reference to the notion that the EU is too market-liberal.

The main governing party, the Labour Party (AP, 48 seats in the 2021-2025 Storting), underlines that Norway's EU affiliation is foremost based on the EEA Agreement and the consultation arrangements derived from this. The EEA Agreement, the party notes, has served Norway well throughout its duration. The party is a supporter of a strong political cooperation in Europe. The party notes that regardless of affiliation, it is in Norway's interest that the EU succeeds in handling decisive challenges such as a responsible climate policy and the defence of

³⁶ For this list of options, see John Erik Fossum and Joachim Vigrestad 'Is the Grass Greener on the Other Side? Norwegians' Assessments of Brexit' *Politics and Governance* [2021].

³⁷ A useful overview prepared prior to the last election in 2021 is found here: [Partiguiden – Hva mener partiene om Norge i verden – NRK](#)

democracy and the rule of law.³⁸ The Centre Party (Senterpartiet, 28 seats in the 2021-2025 Storting), which is part of the current governing coalition, seeks to replace the EEA Agreement with a set of trade and cooperation agreements, bent on ensuring Norwegian interests. The party notes that as long as Norway is part of the EEA Agreement, it should exploit the opportunities that the EEA Agreement provides for promoting Norwegian interests. The Centre Party underlines that Norway must resist conferring sovereignty to the EU through the EEA Agreement. The Centre Party is also determined to terminate Norway's role in the Schengen cooperation, and reintroduce national border controls.³⁹

The Christian People's Party (KrF, three seats in the 2021-2025 Storting) has historically been the most consistent and ardent supporter of the EEA Agreement, and argues that it preserves national action space in important issue areas, as well as ensures Norway's access to the EU's internal market, which is very important for Norway's economy. The Christian People's Party is thus a defender of the status quo, but also notes that the collaboration with the EU ought to be strengthened in those areas where Norway has special interests and priorities.⁴⁰ The Greens (MdG, three seats in the 2021-2025 Storting) is committed to a debate on Norway's EU affiliation. The party programme does not explicitly state that the party is in favour of EU membership, but the party's national convention in May 2022 clearly points it in the direction of eventual accession. The Greens are committed to close cooperation with the EU on climate issues and a fossil-free Europe within 2040. It will also, with its European sister parties, work to reform and democratise the EU.⁴¹ The Liberal Party (Venstre, eight seats in the 2021-2025 Storting) has, in recent years, turned towards support for Norwegian EU membership over time.⁴²

The Conservative Party (Høyre, 36 seats in the 2021-2025 Storting) has long been a supporter of EU membership, even if the Solberg government (2013-2021) toned down its support and underlined the need to preserve the EEA Agreement.⁴³ Nevertheless, at the last party convention, a majority of delegates decided that the Conservative Party should work towards EU membership.⁴⁴ The Progress Party

³⁸ Arbeiderpartiet 'EU', available at: <https://www.arbeiderpartiet.no/politikken/eu/> [accessed 19 September 2022].

³⁹ Senterpartiet 'EU og EØS' [2021], available at: <https://www.senterpartiet.no/politikk/A-%C3%85/politisk-sak/eu-og-e%C3%B8s> [accessed 19 September 2022].

⁴⁰ KrF 'EU', available at: <https://krf.no/politikk/utenriks-og-forsvar/eu/> [accessed 19 September 2022].

⁴¹ Miljøpartiet de grønne 'Europapolitikk', available at: <https://www.mdg.no/europapolitikk> [accessed 19 September 2022].

⁴² Venstre 'Venstre sier ja til EU' [2020], available at: <https://www.venstre.no/artikkel/2020/09/27/venstre-sier-ja-til-eu/> [accessed 19 September 2022].

⁴³ Høyre 'EØS' [Last modified 2021], available at: <https://hoyre.no/politikk/var-politikk/naeringspolitikk/eos/> [accessed 19 September 2022].

⁴⁴ Aftenposten 'Landsmøtet vedtok EU-debatten Erna Solberg ikke ville ha' *Aftenposten* [2022], available at: <https://www.aftenposten.no/norge/politikk/i/47AmOE/landsmoetet-vedtok-eu-debatten-erna-solberg-ikke-ville-ha> [accessed 19 September 2022].

(FrP, 21 seats in the 2021-2025 Storting) as Norway's right-wing populist party, is against Norway becoming an EU Member State. It is interesting to note that this stance has emerged in the last decade, before that the party did not take an explicit stance on the issue of EU membership.⁴⁵ The party is committed to renegotiate portions of the EEA Agreement, and is critical of the Schengen arrangements, mainly because the party is determined to increase national control of migration. It therefore does not want Norway to be part of EU's common asylum and migration policy.⁴⁶

This brief survey of the EU stances of Norway's main political parties shows that there is strong EU scepticism on both the left and right side of the political spectrum. Norway stands out in terms of the strong EU opposition on the left. Much of that is based on the notion that the EU is a market-liberal entity that will undermine the welfare state, foster social dumping, and increase inequality. The compromise position that runs through the political system is the current arrangement, with the EEA Agreement at the core.

Other veto actors are the employers' association (NHO) and the trade union confederation (LO). The former is a staunch supporter of the EEA Agreement, whereas the latter is divided with a majority in favour of the status quo. Historically, there are strong links between the employers' association (NHO) and the Conservative Party (Høyre), and between the trade union confederation (LO) and the Labour Party (AP). These close links obviously reinforce the veto power of these large umbrella organisations.

Another de facto veto actor is the Norwegian 'No to EU' (Nei til EU), a social movement, which remains active with around 20,000 members.⁴⁷ It should be considered a veto actor on the basis of the central role it played in mobilising the no-side during the 1972 and 1994 referendums. It has a permanent staff, and received public funding as an information organisation, even if it is more aptly to be considered as an advocacy organisation. There is little doubt that it will play an important political mobilising role again, should the EU membership issue reappear on the political agenda.⁴⁸

Finally, public opinion as a veto actor should also be considered, given that the question of EU membership for Norway more than likely be put to a popular referendum. Referenda in Norway are consultative only, and there is no formal legal requirement for a referendum to decide Norway's EU affiliation, but

⁴⁵ Fossum (2010).

⁴⁶ Fremskrittspartiet 'Norge og Europa', available at: <https://www.frp.no/var-politikk/utenriks-og-forsvar/eu-og-eos> [accessed 19 September 2022].

⁴⁷ Nei til EU 'Om nei til EU', available at: <https://neitileu.no/Om-oss> [accessed 19 September 2022].

⁴⁸ If 1994 is anything to go by, the organisation had 138,426 members. Tor Bjørklund *Hundre år med folkeavstemninger* (Universitetsforlaget 2005), 82. This large number reflects the organisation's great mobilising potential. By contrast, the 'Yes' side had 35,000 members when it reached its highest level.

politically speaking, no government could seek to decide the issue of EU membership without holding a referendum.⁴⁹ In both instances, 1972 and 1994, the referendums were held after agreement on the terms of membership had been reached. There is a clear majority of public opinion in favour of sustaining the EEA Agreement.⁵⁰ In a detailed opinion poll from 2019 aimed at mapping the attitudes towards the EEA in Norway, it was shown that seven out of ten consider the EEA Agreement a good deal for Norway. There is even a small majority in support of the EEA Agreement in the Eurosceptic Centre Party and the Socialist Left Party. At the same time, the survey shows that there is little knowledge of the specifics of the EEA Agreement. An interesting finding is that 'a clear majority of the respondents, almost six out of ten, think that the EEA Agreement provides Norway with greater national wriggle-room [or action space] than EU membership'. In addition, were the EEA Agreement to terminate, more than a majority of the respondents would prefer a less binding affiliation.⁵¹

The support for the EEA Agreement reflects the notion that this arrangement serves as a type of political compromise, given that the EU membership issue has been controversial, and given that there is such a strong insistence on the need for assured EU access across Norwegian society. The configuration of opposition to EU membership and support for the EEA, has given rise to what is here referred to as 'Norway's integration paradox': whereas the question of EU membership has long been a highly controversial and divisive issue, Norway's comprehensive incorporation in the EU through the EEA Agreement, and a whole host of other arrangements, has profound constitutional democratic implications, and yet has sparked surprisingly little controversy.⁵² It is well-known that the EEA Agreement raises serious constitutional and democratic challenges.⁵³ Nevertheless, the comprehensive and dynamic process of EU adaptation has evoked remarkably little conflict and controversy, especially since Norway is very proud of its

⁴⁹ John Erik Fossum and Guri Rosén 'Referendums: Norway 1972 and 1994', in Julie Smith (ed.) *The Palgrave Handbook of European Referendums* (Palgrave Macmillan 2021)

⁵⁰ Fossum and Vigrestad (2019); Ulf Sverdrup, Øyvind Svendsen and Åsmund Weltzien 'Holdninger til EØS-avtalen etter 25 år: Stor oppslutning, men liten kunnskap' *Internasjonal Politikk* [2019].

⁵¹ Sverdrup, Svendsen and Weltzien (2019), 370.

⁵² NOU (2012:2); Eriksen and Fossum 2015; John Erik Fossum 'Norway and the European Union' *Oxford Research Encyclopedia, Politics* [2019].

⁵³ For a brief selection, see: Dag Harald Claes 'EØS-avtalen - mellom diplomati og demokrati' *Internasjonal Politikk* [2003]; Eriksen and Fossum (2014, 2015); NOU (2012: 2); Trond Nordby and Frode Veggeland 'Lovgivningsmyndighetens suspensjon - Stortingets rolle under EØS-avtalen', *Tidsskrift for Samfunnsforskning* [1999]; Per Stavang *Parlamentarisme og Folkestyre* (Fagbokforlaget 2002).

democratic credentials and also ranks on top of a whole host of international democracy assessments.⁵⁴

Mechanisms for sustaining the EEA Agreement and the other arrangements

The assessment thus far has shown that there is considerable Norway-EU value and interest convergence. There is also very high support for international cooperation in Norway,⁵⁵ and there is a clear recognition of Norway's need for binding cooperation with the EU, not the least since almost all of Norway's closest economic and social collaborators are EU Member States. At the same time, there is little support for EU membership, despite there being limited knowledge of the specifics of Norway's EU affiliations, and little debate on the EU in general. Based on these observations, an important consideration with regard to Norway's role in shaping the future development of the EEA is to clarify the mechanisms that have produced and that sustain Norway's integration paradox, and what changes in these will imply for Norway's EU affiliation.

The Norwegian political system has dealt with the contentious EU affiliation issue by removing the question from the political agenda. That, of course, means removing the EU membership option from the political agenda, but it also means ruling out other changes to the status quo. Thus, underlining that the EEA Agreement (and Norway's other EU arrangements) is the compromise that ensures access to EU's internal market and other EU programmes (a key concern for EU membership supporters), and at the same time helps preserve national sovereignty (a key concern for EU membership opponents), effectively clears the path for the rapid and dynamic EU adaptation that Norway has experienced since the EEA Agreement's inception. That, in turn, has bearings on the discussion of the future of the EEA. Of critical importance would be to clarify the actors and factors that have enabled this issue removal or depoliticisation on the one hand, and to consider what will happen if there are changes to these on the other hand.

In discerning the mechanisms sustaining Norway's political compromise, it is useful to distinguish between actor-driven and structural factors. With regard to actor-driven factors, it is important to recall that Norway's political parties are deeply divided on the issue of EU membership. Some parties (especially Labour or AP) are deeply divided internally, and seek to limit the political fallout by keeping the contentious EU membership issue off the agenda. The parties recognise that they cannot allow the EU issue to block the functioning of parliamentary democracy. All parties have then also served both as opposition parties, and have

⁵⁴ Norway ranks top on the Economist Intelligence Unit's 2021 democracy index, available at: [Democracy Index 2021 \(eiu.com\)](https://www.eiu.com/norway-democracy-index-2021) [accessed 19 September 2022].

⁵⁵ Sverdrup, Svendsen and Weltzien (2019) at 367 report that 'almost nine out of ten Norwegians wholly or partially agree that Norway is dependent on binding international collaboration'.

had shorter or longer stints in government, or have supported governing parties during the period in which the EEA Agreement has been in place.

The main mechanism that Norwegian political parties apply to lock down the status quo is through ‘gag rules’.⁵⁶ Such gag rules are to be found in government declarations or coalition agreements, which specify the government’s commitment to maintain the present arrangement with the EU, through the EEA Agreement. Norway has, as the overview of partisan positions, shown a multiparty system. The proportional electoral system (based on the St. Lagüe formula) places a high bar against any one party obtaining a majority of seats in parliament.⁵⁷ Hence, every government is a (minority or majority) coalition government, and the structure of EU support/opposition is such that every coalition will consist of parties in favour of EU membership, and parties in favour of a less committing affiliation than the present. Thus, in order to avoid the highly contentious EU affiliation issue from destroying the climate of cooperation, each coalition agreement (including the present, as noted in the quote from the Hurdal Declaration) contains a statement to the effect that the coalition will govern on the basis of the EEA Agreement. The implication is that a political party that seeks to alter the status quo – actively seeking EU membership, or revoking the EEA Agreement – will violate the coalition agreement. Especially for the large parties, it is a Hobson’s choice: if you seek to change the EU membership status quo, you will no longer be able to govern. Such agreements have even been labelled ‘suicide clauses’. Gag rules ensure that the status quo is retained; and in so doing, they facilitate the ongoing and dynamic Norwegian incorporation in the EU, through the EEA Agreement as the core. The formal status of non-membership is politically important. It provides symbolic reassurance of constitutional-democratic sovereignty, and enables the no-parties to reassure their voters that they have successfully managed to keep Norway out of the EU. That the agreement can be understood to reconcile these two different sets of concerns would appear to be an important reason for why voters do not want Norway to be an EU Member State.

There are structural factors associated with the EU that are helping to sustain Norway’s integration paradox. The EU is inflexible with regard to third country internal market integration, and insisted during the Brexit negotiations that the four freedoms are indivisible. For a third state such as Norway, bent on ensuring full market access/participation, the cost is dynamic homogeneity and strong sanctioning mechanisms against non-compliance. What is important to underline is that this is a structural issue. For the EU, as a polity, internal market coherence is not simply a policy matter, given that the EU’s internal market is at the core of the

⁵⁶ For this notion, see Stephen Holmes *Passions and Constraint* (Chicago University Press 1995). For an application to Norwegian political parties, see Fossum (2010); Fossum (2019).

⁵⁷ Ministry of Local Government and Regional Development ‘The main features of the Norwegian electoral system’ [Last modified 2017], available at: <https://www.regjeringen.no/en/topics/elections-and-democracy/den-norske-valgordningen/the-norwegian-electoral-system/id456636/> [accessed 19 September 2022].

EU's *acquis*, and is constitutive for the EU as a political system.⁵⁸ The EU's insistence on limiting flexibility and adaptiveness is about sustaining the EU's coherence as a political and legal system.

The structural make-up of Norway's EU arrangement further lends itself to depoliticisation and issue removal. Norway's EU affiliation, especially the incorporation in the EU's internal market, undermines the international-national distinction. Nevertheless, the effect is less visible in Norway's institutional arrangements than it is in EU Member States, since the Norwegian political system, in contrast to EU Member States, is hard-wired to deal with EU issues as foreign policy issues. Foreign policy is the realm for executive prerogative par excellence. That is then also reflected in how the Norwegian parliament (Stortinget) handles EU matters. The contrast to Norway's Nordic neighbours is instructive. The parliaments in Sweden and Denmark deal with EU issues in manners similar to how they deal with domestic issues, whereas the Norwegian parliament deals with EU issues in a manner much more similar to how it deals with foreign policy issues, which naturally locates the government in a central position,⁵⁹ and in turn, helps to de-politicise the debate and handling of these issues. That is readily apparent when the Norwegian Storting's European Consultative Committee is analysed, which relates to EU issues differently from what is the case in otherwise comparable Nordic states who are EU Member States. An analysis of the Norwegian committee's written transcripts revealed that there were very few debates; executives simply briefed the legislators on what was taking place; and the Committee's work and deliberations were marked by a clear 'system-enforced consensus', and the absence of debate on principled and constitutional issues.⁶⁰

Another structural factor is that Norway's EU affiliation provides very limited scope for Norway to sort out contested issues in common EU level forums, through coalitions and alliances with like-minded states. Norway's EU affiliation effectively compels Norwegian authorities to sort out conflicts and contested issues at the domestic level, which makes issue-avoidance a very attractive and convenient option. Further, the structure of Norway's EU affiliation exacerbates a government-population information, activation, and engagement divide, in the sense that whatever Norwegian EU engagement there is, effectively only involves the government. The lack of Norwegian access to EU-level decision-making bodies means that society is not activated or compelled to stay abreast with EU issues. Thus, whereas there is scope in Norway's EU affiliation for decision-shaping, the arrangements for extending that to Norwegian civil society are extremely weak, both

⁵⁸ John Erik Fossum 'The EU and third countries: Consequences for democracy and the political order' forthcoming.

⁵⁹ Hans Hegeland 'The European Union as Foreign Policy or Domestic Policy? EU Affairs in the Swedish Riksdag', in Thomas Persson and Matti Wiberg (eds) *Parliamentary Government in the Nordic Countries at a Crossroads* (Santérus Academic Press 2011); Claes (2003), 289.

⁶⁰ John Erik Fossum and Cathrine Holst 'Norsk konstitusjonell debatt og europeisk integrasjon', in Erik Oddvar Eriksen and John Erik Fossum (2014).

within the EFTA framework, and domestically in Norway. For EU Member States, their access to and participation in EU-level entities, and the fact that their domestic institutions are tailored to deal with what happens in the EU, serve as civil society activation mechanisms.

For Norway, there is a serious time-lag between when an issue arises on the EU agenda, and when the Norwegian population becomes aware of it, often well after the issue has run its course through the institutions and other entities at the EU level and a decision has been reached. The assumption that informs the assessment in the below is that as long as these mechanisms are in place, there will not be a Norwegian change impetus, because the mechanisms are precisely geared to keep the EU affiliation issue off the political agenda.

Sustainability and/or susceptibility of the mechanisms

It is necessary to reflect on the sustainability and susceptibility of the mechanisms regarding Norway's relationship to the EEA. The reflections are based on the observations presented above, as well as participant observation at numerous political and academic events, and conferences. As reflections on the future, they are tentative and conjectural. Nevertheless, they are drawing on the existing body of knowledge to avoid unfounded speculation.

One aspect that characterises Norway's EU affiliation is, as noted above, limited knowledge. For one, there is, as recent scandals have shown,⁶¹ very little knowledge of the EU and the EEA, not only within the general public, but within large parts of the public sector, as well. Increased knowledge of the EU affiliation, what it is, and what it entails will likely prevent future scandals, and it will also likely improve the scope for action or wriggle-room for Norway. Increased knowledge of the affiliation may improve its workings; it may also generate impetus for change. In that connection, it is important to try to establish what kind of knowledge will generate momentum for changes in Norway's current EU affiliation. One problem is whether increased factual knowledge will make any difference which also relates to the manner in which knowledge is framed as will be further elaborated below. Another problem pertains to the dynamic nature of the affiliation, especially in the areas of the internal market and Schengen. Individual items such as a directive or a regulation yield limited information on trends and patterns. Focus must be on the cumulative effects of the dynamic process of EU adaptation. The lack of attention and debate yields limited feedback on effects. This situation leaves a lot of scope for quite different interpretations of the situation to abound, since the corrective mechanisms are weak.

⁶¹ In particular the Norwegian social benefits (NAV) scandal. For an overview and assessment, see Tommaso Pavone and Øyvind Stiansen 'The Shadow Effect of Courts: Judicial Review and the Politics of Preemptive Reform', *American Political Science Review* [2021].

With regard to impetuses for change, one possibility is the emergence of new modes of affiliation, especially if these are considered more attractive than the existing ones. Another possibility is a major internal or external crisis or upset with bearings on the affiliation. A third option is a value or interest change that puts the affiliation in a new and different light.

On the first possibility, Brexit may be considered an effort at establishing a new mode of affiliation. In Norway, Brexit has however not had wide traction as a model to be emulated, not the least because it has been associated with a further turn towards neo-liberalism.⁶²

On the second possibility, Norway's EU affiliation has persisted throughout all the EU's crises, and recent events such as COVID-19 and Russia's aggressive attack on Ukraine have thus far not had notable effects, although there are voices suggesting that Norwegians for security reasons reconsider EU membership in the light of Sweden's and Finland's decision to join NAT.⁶³ There are reports of Russian increased militarisation of the Arctic, an area that was earlier marked by binding interstate collaboration and in many ways exempted from deteriorating Russia – Western relations in the wake of the Russian annexation of Crimea.⁶⁴

On the third point, that of possible value change, the absence of debate and engagement entails weak corrective mechanisms and thus a possibility that different views and how they were framed have persisted since. Frames structure a society's understanding of itself and of the world.⁶⁵ Value changes would be conveyed through frame changes. In addition, there is also the prospect of change through frame manipulation, in other words, the systematic (re)interpretation of a given phenomenon from a specific vantagepoint such as the EU as a neo-liberal juggernaut, the EU as undermining Norwegian democracy and sovereignty, the EU as a guarantee for continued prosperity and growth, or the EU as a necessary impetus for the green transition. All of these and other interpretive frames are available, and to different degrees, activated in the Norwegian context. Nevertheless,

⁶² Fossum and Vigrestad (2021); LO [Norwegian Trade Union Confederation] 'BREXIT – et liberalistisk prosjekt? – et blikk på arbeidsliv, økonomi og samfunnsorganisering' (2022).

⁶³ EU membership notes the editor of the newspaper Nordlys Skjalg Fjellheim is particularly important for Northern Norway due to the Russian security threat. Skjalg Fjellheim 'Sverige og Finlands Nato-medlemskap må føre til ny diskusjon om det norske utenforskapet i Europa' [2022], available at: <https://www.nettavisen.no/norsk-debatt/nord-norge-taper-mest-pa-det-norske-utenforskapet-i-eu/o/5-95-554490> [accessed 19 September 2022].

⁶⁴ Consider the following report: Boulègue, Mathieu 'The militarization of Russian polar politics' [2022], available at: <https://www.chathamhouse.org/2022/06/militarization-russian-polar-politics/04-pacific-arctic-bering-strait-and-northeast-asia> [accessed 19 September 2022]. John Berg, a Norwegian defence analyst has referred to 'creeping Russian annexationism' on Svalbard which is under Norwegian suzerainty. John Berg 'Bør vi frykte russisk "krypende annektering" i nord?' *Aftenposten* [2022], available at: <https://www.aftenposten.no/meninger/kronikk/i/z7dEq1/boer-vi-frykte-russisk-krypende-annektering-i-nord> [accessed 19 September 2022].

⁶⁵ Donald S. Schön and Martin Rein *Frame Reflection* (Basic Books 1994).

the contested nature of Norway's EU affiliation makes for a strong propensity to orient issues along the lines of yes or no to EU membership, in other words to mobilise such frames in support of yes or no to EU membership.

Gag rules by suspending debate on a contentious issue, do not do much to foster learning or reflection, and may preserve prevailing frames and conflict patterns. Norway's gag rules offer little assurance that time is on the side of greater convergence on any given mode of affiliation, or that the passing of time will necessarily be of help for reconciling conflicting positions. In this context it is also useful to keep in mind that the entire Norwegian political class has lived with the EEA since the early 1990s. Generational change of political leadership may be more conducive to change, insofar as there is a whole new incoming generation that feels less encumbered by the past than the current political class.

Weak justification

Today's situation of depoliticisation coupled with a lack of serious debate on the cumulative effects of Europeanisation has thus far served to maintain the status quo, but it does not appear to be a very effective mechanism for justifying Norway's present EU affiliation. It is, of course, always difficult to justify a hard-won compromise as more than a temporary resting-point in the struggle between contending interests and worldviews. Viewed in that light, the EEA Agreement has proven remarkably resilient. An important issue is whether that resilience comes down to the gag rules. As suggested above, gag rules do little for justification. One possible pathological effect of long-term issue silence and absence of debate is that TINA (there is simply no alternative (to the present arrangement)) replaces the need for ongoing justification of the arrangement in broader values, worldviews, or situational assessments. If so, the arrangement's rationale is de facto tied to the lack of debate on alternatives. If that is the case, then the very opening of debate can generate momentum for changes in the affiliation.

There is a further aspect of weak justification that pertains to the nature of the political compromise that underpins the EEA, namely, that the compromise is framed as one of ensured participation in the EU's internal market versus sovereignty protection. The implicit assumption underpinning the compromise is that it is possible to retain a form of sovereignty based on congruence between state and popular sovereignty in today's world. The EU, as a case of 'pooling and sharing of sovereignty',⁶⁶ in a set of common institutions, represents an explicit departure from such congruence thinking. The more the EU develops, and the more Norway is incorporated in the EU, the greater the discrepancy between the reality of the affiliation on the one hand, and the notion of sovereignty underpinning the understanding of the EEA on the other hand. An important issue is what will

⁶⁶ Robert O. Keohane 'Ironies of Sovereignty: The European Union and the United States' *Journal of Common Market Studies* 40(4) [2002], 743-765.

happen if the gag rules are lifted. Unless specific efforts are made to explain the merits of the EU's pooling and sharing of sovereignty, the political impetus will be to align the reality with the traditional conception of state sovereignty; and hence, a push for a looser affiliation. The opinion poll referred to above indicated that the general popular inclination would be to opt for a looser affiliation. It seems plausible that the onus on sovereignty retention in the EEA plays a role here.

The issue of trust

An important issue with bearings on the sustainability of Norway's current EU affiliation is the role of trust. It is well-known that Norwegians exhibit a very high level of trust in the public sector.⁶⁷ The resilience of the EEA might then suggest that some of this trust has rubbed off on Norway's EU affiliation. As noted above, the EU membership issue is however one of the most controversial issues marking the Norwegian political scene in the post-war period. In addition, after the 1972 referendum there were strong criticisms launched against the government's role during the campaign period, notably launched against the Foreign Ministry.⁶⁸ In this context, it appears more likely that trust is retained because the membership issue is removed from the political agenda. Since the gag rules cloak the extent to which the EU affiliation has hollowed out the basis for sovereign rule; hence, ironically, gag rules may prevent the affiliation from affecting trust. Alternatively, trust in the public sector derives from those features of Norway that enable it to live with the affiliation. Public sector competence and responsiveness, coupled with a generous welfare system (and a significant fiscal buffer), may outweigh or recompense for the perceived negative effects of the EU affiliation. It is, however, also possible that the EEA helps sustain trust by providing an assurance of fairly stable and predictable operating conditions in a world of rising authoritarianism and uncertainty.

In essence, there are change agents in Norway, but they face the fact that the Norwegian political system has developed a range of mechanisms bent on avoiding change by keeping alternatives to the current EU affiliation off the political and legislative agenda. The current affiliation is based on a compromise between formal sovereignty retention, and assured participation in the EU's internal market, and many other EU programmes. The absence of debate, coupled with a recognition that the current arrangement has negative democratic and constitutional implications, suggest that the status quo rests on a fairly weak foundation. The lack of debate has permitted the retention of a statist conception of sovereignty that is entirely out of sync with the reality of complex interdependence in contemporary Europe. Barring a more realistic view of sovereignty, a reinvigorated debate is

⁶⁷ Johan P. Olsen *Democratic Accountability, Political Order, and Change* (Oxford University Press 2017), 107.

⁶⁸ Nils Petter Gleditsch, Øyvind Østerud and Jon Elster *De utro tjenere: embetsverket i EF-kampen* (Pax Forlag 1974).

likely to move in the direction of ensuring greater congruence between the mode of affiliation and sovereignty as substantive autonomy; and hence, towards downscaling, rather than towards EU membership. If the depoliticisation mechanisms are maintained in place, the momentum for change would appear to have to come from the outside.

The EU's views of the EEA, and possible future trajectories

The EEA is an intrinsic aspect of the EU's policy of forging partnerships with third states. The EU is treaty-bound, according to Article 3(5) TEU, to foster partnerships with third states that share its principles of 'democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law'.⁶⁹ The Commission states that 'EU-Norway cooperation is based on shared fundamental values and underpinned by our common heritage and history, as well as strong cultural and geographical ties'. Furthermore, for the Commission, the EEA Agreement 'created a privileged partnership which soon became a stable point of reference for later relationships. Once in place, it structured the subsequent logic of EU neighbourhood relations'.⁷⁰ This status is also reflected in connection with Brexit, with reference to the Barnier's 'staircase'.⁷¹ Thus, it is clear that, for the EU the EEA is a preferred option for associating with third states. The assumption, of course, is that these states are sufficiently EU-compatible to be able and willing to function under dynamic homogeneity.

It is important to note that it is the EU's distinct approach to pooling and sharing of sovereignty that leaves space for such a close third states affiliation as the EEA. Were the EU to develop into a more state-like entity, or conversely, in a more explicitly intergovernmental direction, the space for third country states would be significantly reduced. The EU is currently discussing reforms, in the wake of the Conference on the Future of Europe,⁷² but the scope and direction is unclear.

⁶⁹ David Mitrany 'The prospect of integration: federal or functional' *Journal of Common Market Studies* [1965] sees federal constitutional systems as closed and exclusive, whereas the EU – a functional system – is open to new members.

⁷⁰ Sieglinde Gstöhl and David S. Phinnemore (eds) *The Proliferation of Privileged Partnerships between the European Union and its Neighbours* (Routledge 2019), 187.

⁷¹ European Commission 'Slide Presented by Michel Barnier, European Commission Chief Negotiator, to the Heads of State and Government at the European Council (Article 50) on 15 December 2017' [2017], available at: https://ec.europa.eu/info/publications/slide-presented-michel-barnier-european-commission-chief-negotiator-heads-state-and-government-european-council-article-50-15-december-2017_en [accessed 19 September 2022].

⁷² Conference on the Future of Europe 'Report on the Final Outcome' [9 May 2022], available at: <https://futureu.europa.eu/pages/reporting?locale=en> [accessed 19 September 2022].

Further, the EU's complex character, its internal and external vulnerability, and the uncertainties surrounding broader global developments (possibly moving away from a rule-bound world and facing the rise of authoritarianism), justify spelling out several possible EU developmental trajectories.

The political future of the EEA is intrinsically related to the EU's future. In effect, the relationship is so asymmetrical that it is obvious that the EEA's future is highly dependent on the EU's future. The EU is a highly contested, dynamic, and unprecedented type of political entity. In many ways it is a political experiment in supranational governance that is still under construction. As a political system however, it is vulnerable and susceptible to change. That is amplified by the consistent presence of different visions for its future development, both at EU level, and within its Member States. Three scenarios are considered, and are held up against the EEA.

Scenario I: Towards a more intergovernmental Union

This scenario posits that the long-time fallout from the various crises that the EU has experienced over the last decade or so (manifested in financial-turned-Eurozone crisis, refugee crisis, COVID-19, and the war in Ukraine), possibly combined with populist election victories in a number of EU Member States, and a further rise in Eurosceptic populism; a further entrenchment of the GAL-TAN cleavage,⁷³ which pits nationalists against cosmopolitans; a possible failure of major EU initiatives such as NextGenEU; and a host of other factors that would undermine EU coherence and legitimacy would then be pushing the EU in an intergovernmental direction. This may entail a serious weakening of the supranational institutions, notably the Commission, the Court of Justice, and the European Parliament. Or it could manifest itself in a more subtle 'weakening from within' as part of a shift in the centre of gravity towards the EU's intergovernmental institutions, notably the European Council, which has served as the main crisis handler. This latter option is largely consistent with the account by the 'new intergovernmentalists',⁷⁴ who note that since the Treaty of Maastricht, the EU has seen a significant increase in integration but without supranationalism. Additional EU integration, the argument goes, has taken the shape of more policy coordination through intergovernmental means, rather than through uploading to the supranational EU institutions. This account resonates with a recent trend to the effect that there is an important change wherein right-wing populists no longer advocate abolishing the EU, but rather, seek to reform it to suit their interests and

⁷³ GALTAN stands for: Green–Alternative–Libertarian vs. Traditionalist–Authoritarian–Nationalist. See Pieter de Wilde, Ruud Koopmans, Wolfgang Merkel, Oliver Strijbis and Michael Zürn *The Struggle Over Borders: Cosmopolitanism and Communitarianism – Cosmopolitanism and Communitarianism* (Cambridge University Press 2019).

⁷⁴ Chris J. Bickerton, Dermot Hoodson and Uwe Puetter *The New Intergovernmentalism: States and Supranational Actors in the Post-Maastricht Era* (Oxford University Press 2015).

needs.⁷⁵ That would take the EU in a decidedly intergovernmental direction, but not necessarily on all fronts, as right-wing populists are keen to erect borders to the EU's external world.

For Norway, a shift in the centre of gravity towards the EU's intergovernmental institutions would likely mean a weakening of the EEA Agreement, an end to dynamic homogeneity as economic rules become more flexible, and less overall legal predictability. The shift in the centre of gravity towards intergovernmental-type affiliations would seem to favour more informal arrangements, and a greater resort to political bargaining. There would be less assurance of access, and less predictability overall.

Scenario II: Towards a more structurally differentiated EU

This scenario refers to a two- or multi-tiered EU, made up of a core and a periphery/peripheries, or concentric circles of membership. Two sets of proposals can be distinguished. The most radical refers to such proposals as the idea of 'Kern-Europa', presented by Schäuble and Lamers in 1984.⁷⁶ The Commission, in its White Paper from 2017, also presented future options for the EU that would solidify the EU as a two-tiered Union.⁷⁷ A more recent and elaborate academic proposal is formulated by Fabbrini, who seeks to combine de-coupling with reforming the Union. De-coupling means forming two separate organisations, and in doing so the entire union would be reformed. For him,

[t]he first organization is the exclusive federal union, based on a political agreement of constitutional import, built starting from the core member states of the Eurozone. The second organization is the inclusive economic community, open to all the European states that respect the basic principles of the rule of law and the fundamental criteria of the free market, based on an essential and functional interstate treaty.⁷⁸

It is not entirely clear whether Fabbrini's approach entails a single-tracked union (based in a hard core), or a two-tracked union with different functions. In any case, if the EU consolidates further in a hard core, the issue for the EFTA-EEA states is whether such closely associated third states will be treated similar to EU Member States that are only in the internal market, or whether they will form a distinct third

⁷⁵ Sergio Fabbrini and Tiziano Zgaga 'Sovereignism and its Implication: The Differentiated Disintegration of the European Union' (EU3D Research Paper Series 2022).

⁷⁶ Schäuble, Wolfgang, and Karl Lamers 'Überlegungen zur europäischen Politik, Positionspapier der CDU-CSU Fraktion, 1. Oktober 1994' [1994], available at: <https://www.blaetter.de/ausgabe/1994/oktober/ueberlegungen-zur-europaeischen-politik> [accessed 19 September 2019]. See also: Karl Lamers, Pauline Green, Wolfgang Wessels and Rolf H. Hasse *Ein Kerneuropa in der Europäischen Union?* (Nomos 1994).

⁷⁷ European Commission 'White Paper on the Future of Europe' (COM 2017).

⁷⁸ Fabbrini (2019), 134.

state category. If the latter, they will lose the type of assured access that they have held thus far through the EEA Agreement. If the former, they would de facto join non-core EU Member States whose concerns may differ. A critical issue pertains to the status of EU membership, and whether it is ultimately tied to the federal core or to the EU's single market. For the longevity of the EEA, the decision is highly consequential. Further, whatever groups third states end up in, their scope for access to core federal powers will likely be even more limited than the current EEA.

The other more recent set of proposals relates closely to how the EU should address the pleas for inclusion of Ukraine, and Georgia and Moldova, as well as the Western Balkan states. The EU has now accepted Ukraine as a candidate state, but as the President of France, Mr. Macron has noted, enlargement is a long and arduous process. He therefore proposed in a non-paper a 'European Political Community' to include non-EU Member States, but without that altering the EU's design.⁷⁹ In a similar manner, the President of the European Council, Mr. Michel proposed a European geopolitical community. He noted:

[w]e must also think beyond enlargement. With the EU assuming greater geopolitical leadership, international expectations of our Union are also increasing. In particular, the expectations of a number of our neighbours who would like a new relationship with us. This stems from a fundamental conclusion: there is a geopolitical community that extends from Reykjavik to Baku or Yerevan, from Oslo to Ankara. I firmly believe that we need to give this geographical area a political reality. And we need to do it immediately.⁸⁰

The idea here is to develop a political framework for developing closer cooperation in foreign policy. Michel noted:

[t]he aim is to forge convergence and deepen operational cooperation to address common challenges. To promote peace, stability and security on our continent. The Western Balkans, the associated countries of our Eastern Partnership and other European countries with whom we have close relations come to mind first. The heads of state or government of the participating countries would take the lead and meet at least twice a year. Foreign policy would be a major area of cooperation within the community.⁸¹

⁷⁹ [Macron floats European 'community' open to Ukraine and UK – POLITICO](#)

⁸⁰ Charles Michel 'Speech by President Charles Michel at the plenary session of the European Economic and Social Committee' [18 May 2022], available at: <https://www.consilium.europa.eu/en/press/press-releases/2022/05/18/discours-du-president-charles-michel-lors-de-la-session-pleniere-du-comite-economique-et-social-europeen/> [accessed 19 September 2022].

⁸¹ *ibid.*

For the EEA, such a framework could provide a vehicle for closer, more structured foreign policy cooperation. At the same time, the EFTA-EEA states are far more similar to EU Member States than to the other states in this outer circle, and such a forum might be considered a form of demotion to a less central EU affiliation.

Scenario III: Towards a more consolidated federal Union

The third and final scenario pertains to a strengthening of the EU's community system as part of a federal-type constitutional and institutional consolidation. Such a development would require EU treaty change, and might develop on the back of the recommendations from the Conference on the Future of Europe, or the European Parliament's proposals discerned therefrom. Some of the pointers in this more federal direction are NextGenEU, if that is extended to an EU substantial right to levy taxes and acquire own resources. A further impetus could be the 'Green Transition', as well as further foreign and security policy consolidation in response to the Ukraine war, and the Russian territorial threat. Such a development requires political leadership and a leap of faith.

For the EEA, such a move would be highly consequential because a further EU supranational consolidation, especially if that entailed a significant build-up of core state powers, would shift the centre of gravity within the EU, whose polity constitutive traits would change. At present, the internal market's role is polity constitutive; and hence, the EU's strong onus on coherence. Core state powers consolidation would alter that, and enable the EU to be more flexible and accommodating within the realm of the internal market. That would however place the EFTA-EEA states in a quandary, because they would end up with less predictable EU arrangements than at present. Their choice would therefore be binary: join as a full-fledged EU Member State with all the rights and obligations that entails, or operate as a non-EU Member State with a more loose and less predictable arrangement. In effect, the status of EFTA-EEA states would change from external differentiated integration, to external differentiation, and rule-takers with little assurance of EU reciprocity.

The role of alternative models post-Brexit? UK, Switzerland, Canada

The fact of Brexit, with a new mode of affiliation, and especially in the UK, has brought up a comprehensive debate on alternative affiliations to the EEA. For Norway, the issue is whether the alternatives may be more suitable for its needs than the present EEA. Three sets of considerations will be addressed to that end. First, is whether the model is compatible. Second, is whether the model enables Norway to continue its present balancing of formal sovereignty retention coupled with assured EU market access, or whether it compels changes, if so, in what direction that might be. Third, is whether the model is available.

With regard to the EU-UK TCA, this is a far more limited trade agreement than the EEA Agreement, and falls well short of ensuring full access to the EU's internal market. The agreement clearly falls down on the sovereignty side of the equation, and is part and parcel of Brexiteers' desire to give state sovereignty a new lease of life in Europe. The EU-UK TCA can be construed as 'a managed divorce agreement', in that it 'manages increasing regulatory divergence in an orderly way. In doing this, it does not regulate harmoni[s]ation but it manages the reaction to divergence'.⁸² For Norway, moving in the direction of the EU-UK TCA would therefore represent a significant change in direction from the past, not only towards less integration with the EU, but also as noted above in a more neo-liberal direction.

From a Norwegian perspective, the Swiss model has traditionally been considered a closer approximation to Norway's EEA compromise. The EU has always preferred the EEA over the Swiss model, and the process of Brexit, coupled with internal Swiss developments (increased opposition to free movement of persons), have affected the future of the Swiss model. As put,

The parallel EU-UK negotiations following Brexit did not alleviate the pressure on Switzerland, nor did they corroborate Brexiteers' interest in the Swiss model. The EU made it very clear that a partnership relying on sectoral agreements was no option. Instead of widening the scope of negotiations, Brexit therefore reinforced EU pressure on the Swiss model. The Swiss Federal Council's unilateral decision in May 2021 to end the negotiations on an institutional agreement is unlikely to reduce this pressure. Whereas the actual status quo with the bilateral agreements is not invalidated, without regular updates, their substance and hence market access will gradually erode. Beyond the specific case of Switzerland and Brexit, the developments examined in this chapter highlight a new approach in the EU's relations with third countries, in which the homogeneity of the single market and the balance of benefits and obligations predominate over economic or other functional interests in promoting integration below the threshold of membership. Part of this package is the obligation to sign on to the dynamic adaptation of the evolution of the *acquis* and a dispute settlement mechanism, similar to the model of the EEA. In sum, the Swiss 'side-street' of bilateral sectoral agreements may well have turned into a "dead-end" [...].⁸³

At present, then, the main problem associated with the Swiss Model may be that it is no longer available.

⁸² Nanette Neuwahl 'The 2020 EU-UK Trade and Cooperation Agreement as a Canada Style Agreement' (EU3D Working Paper 4 2020), 15.

⁸³ Sandra Lavenex and Alexandre Veuthey 'The Swiss model in the context of Brexit - From 'side-street' to 'dead-end'?', in Fossum and Lord (2022).

The final model to be assessed here, the EU-Canada trade agreement (CETA) is also far less comprehensive, and without any element of dynamic homogeneity. It is marked by a general preference for ad hoc arbitration and mediation over more institutionalised forms of dispute settlement. This sets the 'Canada-type' agreement apart from other model-type agreements such as 'Norway' (EEA), and the trend is picked up also in the TCA. Neuwahl argues that the CETA holds important similarities to the EU-UK TCA.⁸⁴ Politically speaking, for Canada, the CETA would appear to have limited integrating effects, given Canada's strong ties with the United States in particular, but far from exclusive through the North American Free Trade Agreement (NAFTA). The North-South pulls on the Canadian economy have historically been very strong, and have put constraints on the federal government's East-West integrative efforts. Similar dynamics are bound to affect the CETA as well.

This assessment has shown that the main alternatives to the EEA are either unavailable, or would represent a significant downscaling of Norway's current EU affiliation. In this context, it is important to recall that the EU's approach has firmed up through its stronger insistence on the indivisibility of the four freedoms. In that sense, Brexit has highlighted the polity constitutive role of the EU's internal market.

Conclusion

The purpose of the paper was to discuss the political future of the EEA, boiled down to the full range of Norway's affiliations with the EU. The paper showed that Norway's EU affiliation covers most of the areas of EU law and policy, and to a large extent, echoes the EU structure post-Maastricht, which, in other words, is deeply entrenched in the EU's legal order. The EEA Agreement ties Norway through dynamic homogeneity to the EU's internal market, which, for the EU, is a polity constitutive trait. That accounts for the EU's limited flexibility towards EU Member States, and closely affiliated non-EU Member States alike. At the same time, the EEA Agreement and portions of Schengen are manifestations of external differentiated integration, which is more and different from external differentiation, because it involves reciprocity and decision-shaping.

The assessment of the domestic Norwegian actors and factors that variously opt for preserving and altering this arrangement demonstrated that the political system was marked by a range of mechanisms for retaining the status quo. The Norwegian political system has instituted a set of gag rules to prevent debate on alternative modes of affiliation, because the EU membership issue has proven to be so controversial, and the current EEA Agreement (as well as the other arrangements) is considered the compromise that the different sides can live with. Given this situation, few of the real veto actors have had a significant incentive to change the

⁸⁴ Neuwahl (2020).

complex compromise. At the same time, it was noted that this was a frail compromise, in the sense that the lack of debate was also a lack of ongoing active justification, which in any case would be difficult because it rests on seeming irreconcilables (sovereignty retention and assured EU access). The lack of debate has failed to address the crucial question: what Norway in what Europe? That suggests considerable political volatility if the gag rules are lifted, and in turn also suggests that most of the present political class is not interested in altering the status quo. Barring such interest, the change impetus is likely to come from the outside.

The paper discussed that with reference to three future EU developmental trajectories or scenarios: towards a more intergovernmental Union; towards a more differentiated Union, or towards a more pronounced federal Union. Ironically, all these major change scenarios for the EU would entail less scope for third states such as Norway. The first intergovernmental scenario would generate weaker ties and greater uncertainty; the second depended on whether the EU developed into a two-tiered or a three-tiered system; and the third would bring up the EU membership issue as a much more starkly binary choice.

The last section briefly considered alternative models such as the EU-UK TCA, the Swiss model, and the CETA model, and found that they were either off the table (Swiss model) or would entail a significant downsizing of Norway's current affiliation. In this connection, it is interesting to note that the EU-UK TCA is about managing divergence, and for Norway, a move in that direction would entail the same given Norway's deeply Europeanised character.

The assessment that has been conducted here has been cast in a 'fair weather' light. It is based on the assumption that it remains possible to entrench forms of interstate collaboration in Europe in legal rules and arrangements. Global developments in the direction of multipolarity, strongly personalised forms of authoritarian rule (Russia and China), and violent power politics (Russia's aggressive attack on and brutal war against Ukraine) raise questions about the future relationship between legal and political dynamics. Law is generally understood as and works well as a codification of politics, but that hinges on a politics that is attentive to, and subservient to legal rule. Untrammelled power politics either instrumentalises law, or simply does away with it.

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