



## Brexit The Norwegian Model



The European Economic Area (EEA), a trade block comprising the EU member states and three out of the four EFTA member states (Iceland, Liechtenstein and Norway) has been proposed as a possible blueprint for shaping the UK's post-Brexit relationship with Europe. In this article we explore whether the Norwegian example might be used as a guiding model for the future UK/EU relationship.

### Background

The EEA Agreement came into being in 1994 primarily as a mechanism for EFTA member states to join the EU, but instead of joining the EU, Norway, Liechtenstein and Iceland opted to continue their relationship with the EU through the EEA as EFTA states.

In broad terms, the EEA Agreement incorporates EU legislation in all policy areas of the Single Market, including the four freedoms, as well as competition and state aid rules. This means that companies and economic operators in the EU as well as in EEA countries have equal access to the internal market.

The Agreement also covers a number of horizontal policy areas, such as consumer protection, company law, environment, social policy, and statistics, and provides for cooperation in areas such as research and technological development, education, and employment. Through Article 6 of the EEA Agreement, the case law of the Court of Justice of the EU (CJEU) is also of relevance to the EEA Agreement.

Norway, however, retains complete sovereignty over agriculture and fisheries policies (although the EEA Agreement contains provisions on trade in agricultural and fish products); common foreign and security policies; justice and home affairs (the EEA states are part of the Schengen area); direct and indirect taxation; and it is outside of the customs union or Economic and Monetary Union (EMU).

This means that Norway negotiates its own trade deals and does not benefit from the international trade agreements concluded by the EU, currently covering 53 markets, including the EU's most recent and comprehensive trade agreements with Canada and South Korea. More crucially, Norway does not have any influence in the EU's negotiation with the US in relation to Transatlantic Trade and Investment Partnership (TTIP), even though Norway may find itself significantly impacted if it is implemented across the EU.

Whilst it may appear that Norway has substantial benefits from being within the EU without the drawback of compromising sovereignty, the reality is that its compliance obligations are significant, crucially including EU secondary legislation (with limited scope for adaptations) without influence over the drafting process.

### Working with the European Union

#### *EEA Structure, EU laws and regulations*

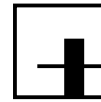
The EEA states are not directly part of the EU legislative, administrative or judicial structures. The EEA states have not transferred any legislative competencies to the EU institutions and they are unable to accept direct decisions by the European Commission or the CJEU. To deal with this the EEA Agreement established bodies that mirror those of the EU, amongst the key institutions, EFTA Surveillance Authority and EFTA Court.

However, this does not seem to have presented an insoluble problem for Norway in that it has been successful in achieving some concessions from the EU in policy areas that it considered to be of national importance, for example in relation to alcohol advertisement rules. And although this has taken significant effort, it has meant that it has not resorted to the power of veto, which in any event has significant limitations.

As and when the EU adopts EEA-wide legislation, it takes supremacy over Norwegian legislation. The Norwegian Supreme Court has ruled that in certain limited circumstances the Norwegian legislator could trump the EEA law, but the lower courts have seemingly avoided any potential conflict in practice and the issue has not arisen.

#### *Exempted subject matter scope of the EEA*

Certain areas such as fisheries, agriculture, taxation (direct and indirect taxation such as VAT), and customs are all within exclusive competence of Norway. This means that fisheries and agriculture are not subject to the free movement rules and both Norway and the EU may impose trade barriers, such as tariffs. Generally,



Norway perceives it as a benefit that it can impose duties on agricultural products from the EU, thus protecting its farming industry. On the flip side, one of the key Norwegian exports, fish products, faces EU trade barriers. EU's anti-dumping duties on Norwegian Salmon imposed in 2006 were removed following a lengthy legal battle at the World Trade Organisation.

#### *Free movement*

As part of Single Market, Norway adheres to the free movement rules in their entirety. The principle of free movement of goods and services, subject to exempted areas of agriculture and fisheries, gives Norway unrestricted access to free circulation in the EEA: customs duties, quantitative restrictions and measures having equivalent effect are prohibited. EEA nationals can work and reside in Norway. Norway is also part of Schengen, although it has not introduced the EU citizenship. Under the EEA Agreement individuals and companies enjoy freedom of establishment and the right to provide services across the EEA on equal terms. Norway's financial sector benefits from the EEA-wide 'passporting', meaning that financial operators within the EEA adhere to the same EU regulatory standards. The free movement of capital enables cross-border investment by residents and companies in the EEA, without discrimination on grounds of nationality, place of residence or place of establishment.

#### **Does the Norwegian experience provide signposting for the UK?**

The UK Government has published a document setting out alternatives to membership: *Possible models for the United Kingdom outside the European Union* and lists the Norway Model as its first alternative. Under this model, whilst gaining the benefit of the EU single market, the UK would continue its contributions to the EU budget, and would be subject to the bulk of EU law although without having a say in those laws.

It should not be forgotten that the UK's option to adopt the Norwegian model is subject to the agreement by the remaining 27 EU member states, as well as the three EEA states. The UK's membership of the EEA would provide the EU (and EFTA) with access to the UK market and it would do so in a way that did not give the UK any preferential treatment. However, from the Norwegian point of view, one may pose a question reversing the premise – would Norway consider accepting the UK, a state that is nearly 13 times larger in terms of population (the basis of voting power), into the EEA circle, where it now enjoys a lead role?

Our view remains that it is likely that the UK adopts a bespoke European model.

#### **What next?**

Shepherd and Wedderburn has been for many years offering balanced and impartial advice on how the different scenarios might play out in the event of constitutional change.

Now that the vote has been cast to leave the EU, members of our dedicated Brexit group continue to interrogate the regulatory and commercial issues and to advise clients on next steps and outcomes. Visit our Brexit Advisers homepage [here](#).