

# OECD REVIEWS OF FOREIGN DIRECT INVESTMENT

NORWAY

# ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

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NORVÈGE

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## **Foreword**

This report examines Norway's foreign direct investment policies. It is the result of an examination held in June and October 1994 by an OECD Working Group made up of representatives of the Committee on Capital Movements and Invisible Transactions (CMIT) and the Committee on International Investment and Multinational Enterprises (CIME). These committees, whose members are officials from Ministries of Finance, Foreign Affairs, Commerce and Industry, and from central banks, promote liberal, non-discriminatory investment policies through the OECD Code of Liberalisation of Capital Movements and the National Treatment Instrument.

Following the Working Group examination, this report was reviewed and adopted by both committees. Factual updating has been made throughout March 1995. The report was adopted and derestricted by the OECD Council on 2 May 1995.

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## Introduction

In recent years, Norway has made serious efforts to foster its integration into the global free trade and investment system. In 1994 these efforts culminated in Norway's accession to the European Economic Area (EEA). Over the 1980s, Norway opened up its capital markets by removing its extensive network of foreign exchange restrictions. A number of important structural policy measures were taken conducive to greater economic efficiency and productivity growth: examples are the comprehensive tax reform and the reform of the electricity market. The adjustment process has not been without setbacks, witness in particular the serious crisis in the banking sector, which forced the Government to embark on a massive public bail-out. Moreover, Norway's bid to join the European Communities as from 1995 was defeated in a popular referendum.

Norway's signing of the EEA Treaty has led to important liberalisation measures that foster the country's integration in Europe. Pursuant to Norway's obligations under the EEA Treaty, new legislation was enacted in December 1994 that established a uniform notification and screening system for intended investments by foreigners and Norwegian nationals. The new system replaced Norway's traditional foreign direct investment (FDI) system, which was characterised by restrictive regulations that left a great deal of discretion to the enforcers. Under the old Concession Act, concessions were required for foreign acquisitions of real estate and of Norwegian enterprises beyond one third of voting capital.

Over the course of the 1970s, Norway's production structure changed considerably as a result of the offshore oil and natural gas exploration. By 1992, oil and gas production accounted for over 13 per cent of Norway's GDP and for 40 per cent of its revenues from merchandise exports. While the share of this sector in total production rose, that of agriculture and manufacturing dwindled.

On the other hand, the services sector has retained its prominence: its GDP share was 62.4 per cent in 1991, equal to that in 1970. In particular, the financial and governmental services have seen their share in GDP rise over the past decade. The pre-eminence of services is even more manifest in the data on employment, to which the oil and gas production contribute little: more than 70 per cent of the Norwegian labour force works in these sectors. This includes almost 30 per cent employed by the Government.

Foreign direct investment (FDI) amounted to 2.9 per cent of gross capital formation in Norway over the period 1981-1993. Foreign-owned firms contribute 8 per cent to employment in manufacturing (1989). The Norwegian Government stresses that it welcomes FDI and that, as a general rule, it has no intention of discriminating against foreign investors. Nevertheless, in some sectors restrictions to foreign participation have remained, notably in fisheries, air and maritime transport and broadcasting.

Relative to GDP and gross fixed capital formation, the volume of foreign direct investment has varied strongly over the years, since annual data tend to be influenced by major single operations. FDI is also concentrated in a number of sectors. In particular, oil and gas attract a large part of FDI inflows; at the end of 1992, about one-third of foreign investment stocks were held in this sector alone. In most years, Norway's direct investment balance was negative: outward investment surpassed inward investment. Outward direct investment rose sharply in the first half of the 1980s. After a dip in 1987, it resumed its rise. However, outward direct investment fell in terms of GDP after 1991 and the balance of payments has recorded a net inflow of direct investment capital since 1992.

This report is organised as follows. Chapter 1 analyses direct investment trends in Norway and the role of foreign direct investment in the Norwegian economy and contains charts and tables concerning Norway's direct investment flows and stocks. Chapter 2 discusses Norway's policy towards FDI, focusing on horizontal and sectoral issues, respectively. In Chapter 3, an assessment of these policies is made. Annex 1 explains the nature and role of the OECD's liberalisation instruments in respect of Member countries' FDI policies and details Norway's position under these instruments. Finally, Annex 2 presents statistics on foreign direct investment in the OECD area.

## Chapter 1

# The role of foreign direct investment in Norway

### A. Inward direct investment: trends, countries of origin and sectoral breakdown

In the late 1970s, heavy investments were made in the emerging offshore oil and gas production. In line with the reduction of these investments over the subsequent years, net foreign direct investment inflows followed a steadily declining trend, to reach negative levels in 1984 and 1985. Since the mid-1980s, the annual volumes of net inflows have followed a more erratic pattern, due to the impact of large individual operations. For example, net aggregate FDI was negative over 1991, because of large loan repayments by one subsidiary to its foreign-owned parent. On the other hand, net FDI over 1993 topped above 2 per cent of GDP for the first time because of the acquisition by a United States investor of one large Norwegian enterprise.

No separate data are available on the amounts invested in greenfield and in merger and acquisition activity, respectively. The number of "concessions" (*i.e.* foreign investment approvals) over the years 1980-1991 was the same for both greenfield and M&A operations, namely 412. But there have been vast differences per sector. Offshore investment largely took the form of greenfield operations, while this category was also prevalent in services. On the other hand, mergers and acquisitions were the dominant form of direct investment in the manufacturing sector. A large part of the investment volumes has been related to some relatively important foreign acquisitions. "Transit ownership" is not widespread: less than 5 per cent of foreign-owned Norwegian firms has controlling shares in foreign enterprises.



Data on stocks of foreign direct investment has been available as of 1987. They showed a steady increase over the years through 1991. However, the rise in the latter year was largely attributable to a definitional change (see Section C), which affected the financial and the wholesale and retail trade sectors in particular. Over 1992, FDI stocks declined slightly. The main cause of this reduction was the introduction of a new tax code in January of that year, which prompted investors to withdraw equity from Norwegian enterprises. The foreigners among them repatriated substantial sums in the form of special dividends, thereby reducing their aggregate investment stocks.

In spite of a series of net annual divestitures, the United States has remained the single largest investing country in Norway, accounting for 25.0 per cent of foreign investment stocks at the end of 1992. The second largest is neighbouring Sweden, with 18.3 per cent. Switzerland was third with 12.5 per cent. Investment from the Nordic countries together made up 24.1 per cent of total stocks, while the EC countries together accounted for 28.0 per cent. France (8.2 per cent), the Netherlands (6.6 per cent) and the United Kingdom (5.1 per cent), are the largest investors among these EC Member states in Norway. The share of the EC, including the countries that were admitted to membership as from 1995, amounted to 49.0 per cent.

Regarding flows, the dominant position of the United States is even more conspicuous, notably in the past few years. Net FDI flows from all other countries have been around or below zero since 1990. Over these years, the United Kingdom in particular divested large amounts (Nkr 9.0 billion aggregate). Trends over the late 1980s had been the opposite: the United Kingdom had been by far the highest investor within the EC over the period 1986-1989 (coming in second overall, after Sweden), while the United States withdrew investments during those years.

A breakdown according to sector is published only for FDI stocks, not for flows. FDI stocks are concentrated in a number of sectors, notably oil production, finance and wholesale and retail trading. Table 1 gives a survey of eight sectors and compares the share of each of these in total FDI with their shares in Norway's GDP and in aggregate investment in Norway. It appears that the FDI shares do not reflect the weight of most sectors to GDP, nor their shares in total investment: FDI is relatively concentrated in some particular sectors.

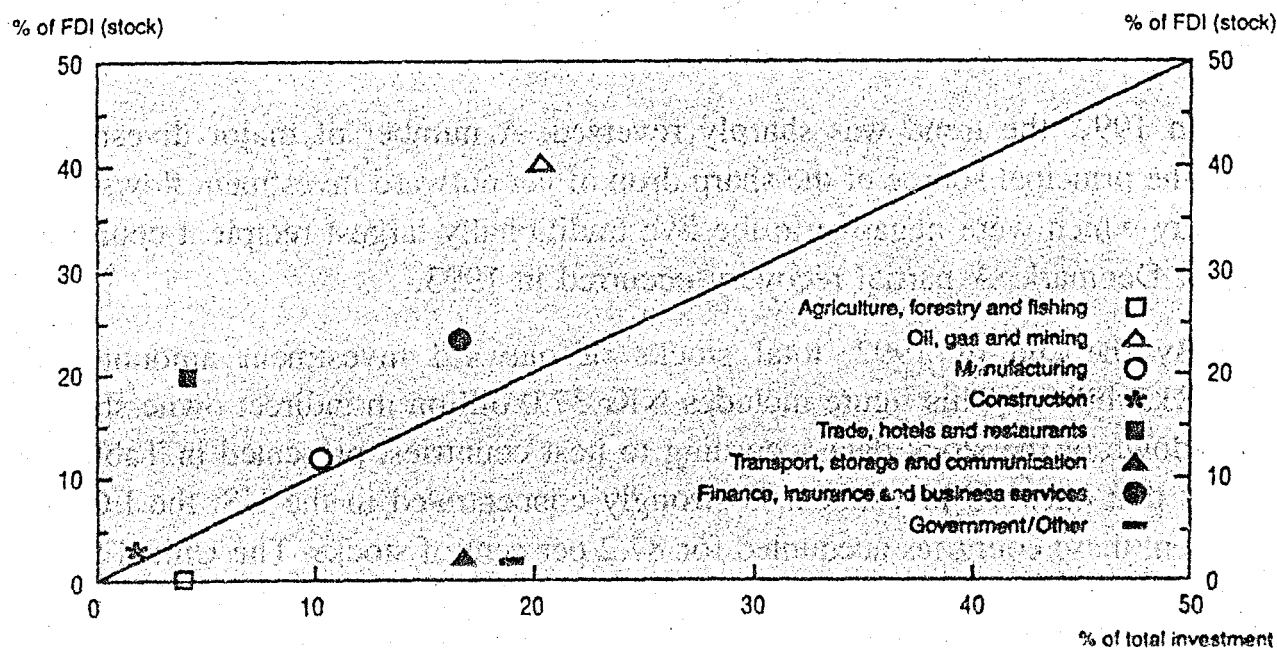
Table 1. Production and investment structure, 1991

	Per cent shares		
	of GDP	of total investment	of FDI (stocks)
1. Agriculture, forestry and fishing	2.9	3.8	0.0
2. Oil, gas and mining	13.3	20.5	39.8
3. Manufacturing	13.5	10.3	10.9
4. Construction	6.9	1.8	2.8
5. Services	63.4	43.4	53.6
i) Wholesale and retail trade, hotels and restaurants	11.0	4.2	19.5
ii) Transport, storage, post and telecommunications	8.9	16.7	2.0
iii) Finance, insurance, real estate, business services	13.7	16.6	23.2
iv) Government/other services	16.3	19.1	1.7

Source: OECD: National Accounts of OECD Countries; International Direct Investment Statistics Yearbook 1993.

This is also shown in Chart 1, in which the shares of the eight sectors in FDI in a given year (1991) are juxtaposed with those in total investment. FDI stock data have been used as a proxy for the unavailable flow data. Sectors above the

Chart 1. Relative Importance of FDI per sector  
1991



Source: OECD/DAF.

45° line are those in which FDI is relatively strongly represented; in sectors below this line FDI is under-represented. Three sectors in particular stand out as relatively attractive venues for foreign investment: oil, finance, and wholesale and retail trade. It should be pointed out that the diagram only indicates the relative attractiveness of the various sectors as compared with each other: it says nothing about the openness of the sectors, or the Norwegian economy, for FDI *per se*. Sectors where FDI plays only a limited role are transport and government services. Furthermore, foreign investment in agriculture, forestry and fishing has been non-existent.

## **B. Outward direct investment: trends, host countries and sectoral breakdown**

Expressed as a percentage of GDP, outward direct investment flows by Norwegian residents increased almost without interruption between 1981 and 1991. The only downward adjustment of the time series came in 1987, but this was due to a special factor, namely the introduction of the Norwegian International Ship Register. This measure led to a sharp cut in Norwegians' investment in ships under a foreign flag, which at the time was included in the statistics as outward direct investment.

In 1992, the trend was sharply reversed. A number of major divestitures were the principal source of the sharp drop of net outward investment flows from Norway which were negative in the five traditionally largest recipient countries, except Denmark. A partial recovery occurred in 1993.

By the end of 1992, total stocks of outward investment amounted to NKr 81.5 billion. This figure includes NKr 37.0 billion in indirect ownership. A breakdown of the stock data according to host countries, presented in Table 10, shows that outward investment is strongly concentrated in the US, the EC and Sweden: these countries accounted for 87.2 per cent of stocks. The United States was the single largest recipient of outward investment from Norway. Within the EC, the main host countries were Denmark, the United Kingdom and the Netherlands.

Broken down by sector, the stock data show that more than half of outward direct investment was held in manufacturing. Within this sector the chemical industry was the main beneficiary.

### **C. Data and methodological issues**

Statistical data on inward and outward direct investment flows are collected by Norges Bank, the central bank of Norway, as part of its foreign exchange and balance of payments statistics. Norges Bank also gathers data on stocks of inward direct investment under its mandate provided by the foreign exchange legislation. However, the collection of stock data on outward direct investment has been committed to the Directorate of Taxes of the Ministry of Finance by the Tax Assessment Act. Flow data are published monthly. In addition, quarterly flow figures provide breakdowns by country or country groupings. Stock data are obtained by annual surveys of enterprises. These surveys also seek to strengthen the data base for the balance of payments by capturing data which are not yet incorporated in the monthly statistics, such as the reinvestment of retained profits. The annual statistics of stock data are presented with breakdowns by main countries or country groupings, and by sectors following the International Standard of Industrial Classification.

There are a few gaps in the availability of direct investment statistics. In particular, no separate data are published of greenfield investment and merger and acquisition activities. Furthermore, unlike stock data, flow data are not broken down according to sector.

With a number of exceptions, the definition of direct investment is in compliance with the guidelines of the IMF and the OECD. Direct investment is defined as a cross-border investment made for the purpose of acquiring a lasting interest in the enterprise and exerting influence on that enterprise's operations. In practice, an acquisition of more than 10 per cent of the equity capital of an enterprise is considered a direct investment. The extension of cross-border loans by parent companies to subsidiaries, as well as claims by the former on the latter, is included in the definition.

In 1991, some important definitional changes in direct investment statistics were introduced. Since that year, FDI data have been collected on the basis of

Norwegian enterprises' consolidated accounts, with the result that indirect ownership has been incorporated in the definition. Furthermore, short-term loans were included in the definition of inward investment, but not in that of outward investment.

Stock and flow data are not entirely compatible. The flow data are based on market values and on direct ownership only. On the other hand, stock data are based on book values and include indirect ownership, *i.e.* the ownership of subsidiaries of the directly owned company. The stock statistics of outward investment contain data on each individual enterprise in which a Norwegian investor holds at least a 10 per cent stake directly, or 50 per cent indirectly. Separate data are available for direct and indirect holdings. The stock statistics on inward direct investment cover Norwegian enterprises in which a foreign investor directly owns 10 per cent or more of the equity capital, including the enterprises' consolidated Norwegian subsidiaries. No separate data are available for direct and indirect holdings.

In principle, the net flows over a given year should be reflected in the changes of stocks over that year. In actual fact, there are substantial discrepancies between the two, as appears from a comparison between stock and flow data in the tables. Continuous efforts are being made to clarify the reasons for the discrepancies. In part, these are due to the differences in valuation base: book values for stocks and market values for flows. Another cause appears to be the fact that data on FDI stocks include retained earnings, whereas these are still excluded from the flow data. Incorporation of retained earnings in the flow data is under preparation. Table 2 suggests that inclusion would significantly alter the data.

Table 2. Direct investment data corrected for retained earnings

	1990	1991	1992
Inward direct investment	6.4	-1.2	4.5
Retained earnings	3.9	4.2	-8.3
Inward direct investment (corrected)	10.3	3.0	-3.8
Outward direct investment	9.1	11.8	2.7
Retained earnings	-1.2	-1.6	-1.9
Outward direct investment (corrected)	7.9	10.2	0.8

Source: OECD, *International Direct Investment Statistics Yearbook 1993* and data provided by the Norwegian Delegation.

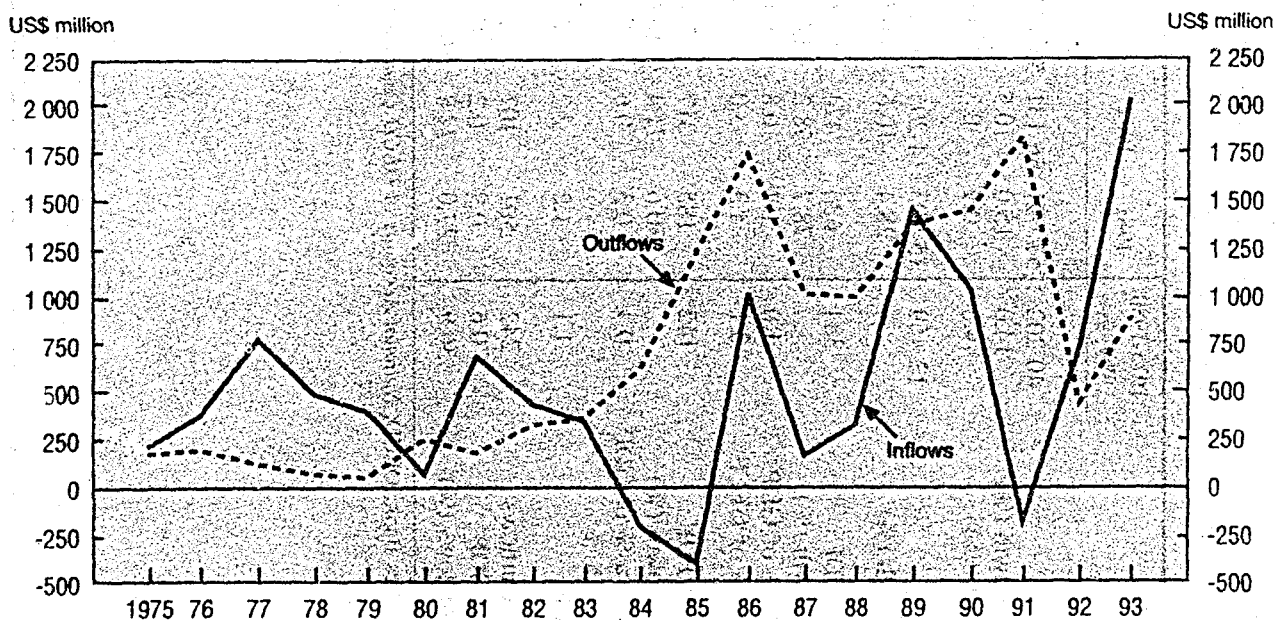
Table 3. Direct investment flows, 1975-1993<sup>1</sup>

US\$ million

	Inward	Outward
1975	212	171
1976	371	192
1977	771	125
1978	490	64
1979	400	44
1980	59	254
1981	686	185
1982	424	317
1983	336	360
1984	-210	612
1985	-412	1 228
1986	1 012	1 735
1987	153	1 003
1988	317	1 000
1989	1 438	1 365
1990	1 027	1 453
1991	-178	1 827
1992	721	427
1993	2 022	884

1. Balance of payments statistics.  
Source: Norges Bank.

Chart 2. Foreign direct investment flows to and from Norway  
1975-1993



Source: OECD/DAF. Based on balance of payments data.

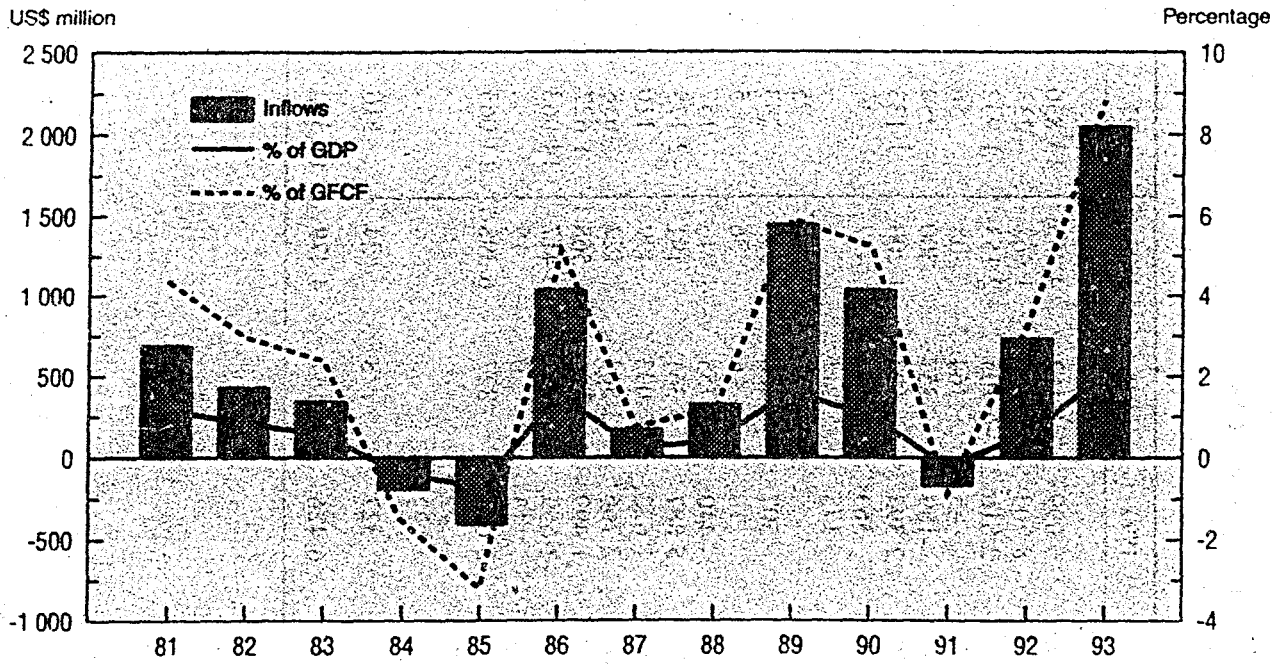
Table 4. Indicators of international direct investment, 1975-1993

US\$ million

	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993
GDP	57 091	56 131	55 123	55 445	58 181	69 471	83 337	89 501	89 997	105 524	105 922	112 906	103 427
Nominal growth (%)	15.0	10.5	11.0	12.5	10.6	2.7	9.4	3.9	6.5	6.3	4.0	2.2	3.9
Real growth (%)	0.9	0.3	4.6	5.7	5.3	4.2	2.1	-0.5	0.6	1.7	1.6	3.3	1.6
GFCF	15 993	14 295	14 178	14 405	12 800	19 682	23 356	26 139	24 547	19 832	19 598	21 608	22 951
GFCF growth (%)	28.4	-10.6	-0.8	1.6	-11.1	53.8	18.7	11.9	-6.1	-19.2	-1.2	10.3	6.2
Inflows of FDI	686	424	336	-210	-412	1 012	153	317	1 438	1 027	-178	721	2 022
Inflows growth (%)	78.7	-38.2	-20.8	-162.5	96.2	-345.6	-84.9	107.2	353.6	-28.6	-117.3	-505.1	180.4
Inflows as % of GDP	1.2	0.8	0.6	-0.4	-0.7	1.5	0.2	0.4	1.6	1.0	-0.2	0.6	2.0
Inflows as % of GFCF	4.3	3.0	2.4	-1.5	-3.2	5.1	0.7	1.2	5.9	5.2	-0.9	3.3	8.8
Outflows of FDI	185	317	360	612	1 228	1 735	1 003	1 000	1 365	1 453	1 827	427	884
Outflows growth (%)	30.6	71.4	13.6	70.0	100.7	41.3	-42.2	-0.3	36.5	6.4	25.7	-76.6	107.0
Outflows as a % of GDP	0.3	0.6	0.7	1.1	2.1	2.5	1.2	1.1	1.5	1.4	1.7	0.4	0.9
Outflows as a % of GFCF	1.2	2.2	2.5	4.2	9.6	8.8	4.3	3.8	5.6	7.3	9.3	2.0	3.9
Inflows - Outflows	501	107	-24	-822	-1 640	-723	-850	-833	73	-426	-2 005	294	1 138
As a % of GDP	0.9	0.2	0.0	-1.5	-2.8	-1.0	-1.0	-0.8	0.1	-0.4	-1.9	0.3	1.1
Outflows/inflows (%)	27.0	74.8	107.1	-291.4	-298.1	171.4	655.6	315.5	94.9	141.5	-1 026.4	59.2	43.7
1975-1980 average	40 202	14.0	4.8	12 459	384	1.0	3.1	142	0.4	1.1	242	0.6	36.9

Source: Norges Bank; OECD, National Accounts of OECD Countries; OECD Economic Outlook.

Chart 3. FDI inflows as a percentage of GDP and GFCF, 1981-1993



Source: OECD/DAF.



Table 5. Foreign direct investment flows by country, 1986-1993  
Nkr million

	1986	1987	1988	1989	1990	1991	1992	1993	% of total
<b>OECD AREA</b>									
Europe	7 011	1 092	2 444	9 916	6 099	-1 162	4 455	13 830	96.4
EEC	3 902	3 719	2 959	9 988	8 703	-344	-1 962	-233	-1.6
Belgium-Luxembourg	3 843	1 373	2 252	2 473	2 816	-6 705	-2 153	1 942	13.5
Denmark	11	78	37	262	-5	164	-38	56	0.4
France	906	190	191	154	-189	357	300	259	1.8
Germany	-576	122	52	-19	2 395	-692	-1 200	1 133	7.9
Ireland	142	344	105	350	363	408	437	-36	-0.3
Italy	..	..	..	..	175	11	-	-	-
Netherlands	..	104	728	..	..	76	25	75	0.5
Spain	34	..	-13	43	10	-268	233	293	2.0
United Kingdom	-	..	1 152	1 546	-440	-6 755	-1 946	5	0.0
Other Europe	3 326	535	707	7 515	5 887	6 361	191	157	1.1
Finland	59	2 346	304	526	1 622	1 093	-499	110	0.8
Sweden	62	1 801	942	6 767	2 766	3 563	122	-658	-4.6
Switzerland	-103	435	-539	222	1 499	1 705	568	-1 627	-11.3
<b>North America</b>	3 109	-2 627	-601	-278	-2 659	-818	6 417	14 063	98.1
Canada	14	-115	..	4	13	9	19	..	..
USA	3 095	-2 512	-601	-282	-2 672	-827	6 398	14 063	98.1
<b>Other OECD countries</b>	-	-	86	206	55	-	-	..	..
Japan	-	-	86	206	55	..	..	..	..
<b>NON OECD AREA</b>	470	-60	-377	13	327	8	24	510	3.6
<b>TOTAL</b>	7 481	1 032	2 067	9 929	6 426	-1 154	4 479	14 340	100.0

Source: Norges Bank, Annual Report, various issues.

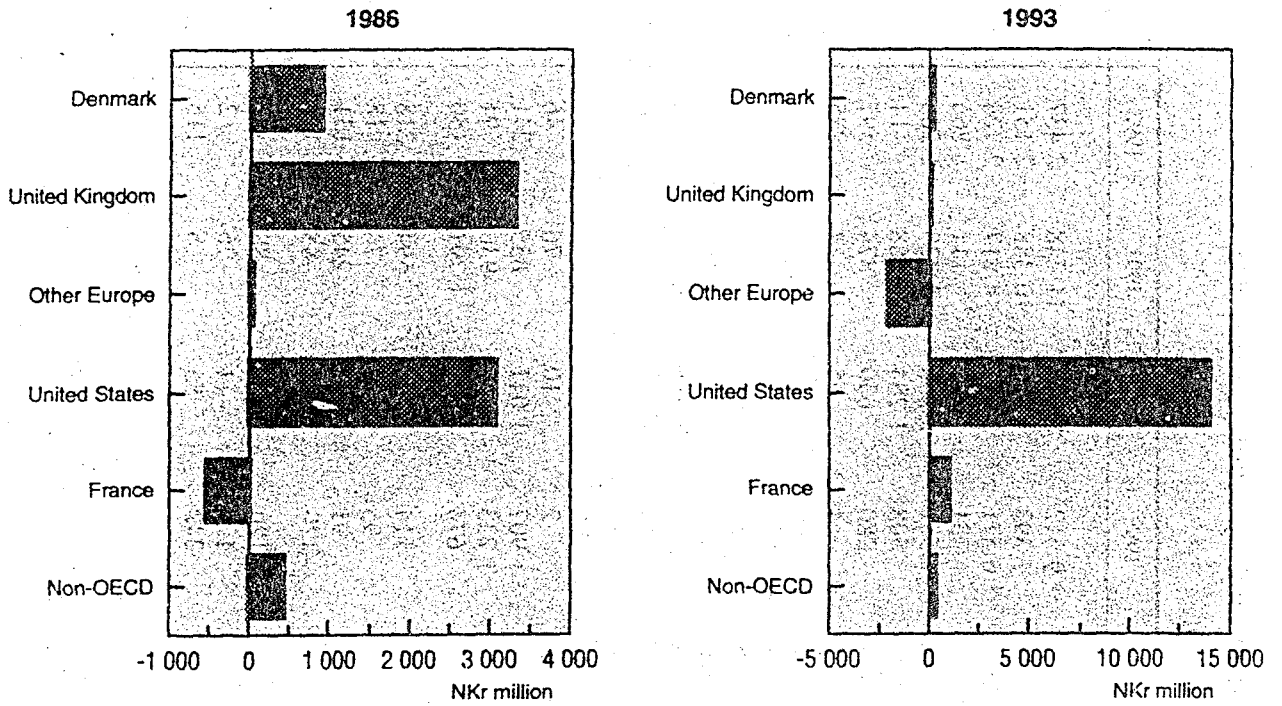
Table 6. Direct investment flows abroad by country, 1986-1993  
Nkr million

	1986	% of total	1987	1988	1989	1990	1991	1992	1993	% of total
<b>OECD AREA</b>										
Europe	7 247	56.5	2 876	6 206	9 312	8 239	11 248	2 437	5 040	80.4
EEC	6 175	48.2	4 395	1 622	7 393	7 111	10 388	2 151	4 199	67.0
Belgium-Luxembourg	4 352	33.9	3 878	1 617	6 571	5 355	4 217	2 724	2 692	42.9
Denmark	134	1.0	-5	154	31	-185	111	866	-150	-2.4
France	1 362	10.6	360	211	2 551	3 356	2 328	1 260	839	13.4
Germany	967	7.5	772	28	508	1 284	68	-14	775	12.4
Ireland	30	0.2	214	194	280	630	874	597	186	3.0
Italy	28	0.2	27	3	4	65	4	275	93	1.5
Netherlands	-38	-0.3	122	6	64	-27	-31	63	52	0.8
Spain	146	1.1	303	91	524	1 468	-407	-134	-86	-1.4
United Kingdom	87	0.7	393	315	1 956	-3 082	29	418	50	0.8
Other Europe	1 634	12.7	1 684	588	636	1 813	1 145	-614	934	14.9
Austria	1 823	14.2	517	5	822	1 756	6 171	-573	1 507	24.0
Finland	7	0.1	47	-2	24	664	196	-38	-11	-0.2
Sweden	75	0.6	15	199	117	114	831	366	174	2.8
Switzerland	1 607	12.5	241	-151	665	928	5 068	-962	1 382	22.0
North America	101	0.8	209	-40	2	10	76	46	-47	-0.7
Canada	1 072	8.4	-1 561	4 488	1 907	1 041	855	241	812	13.0
USA	76	0.6	91	2 827	1 233	-1 313	-936	91	128	2.0
NON OECD AREA	996	7.8	-1 652	1 661	674	2 354	1 791	150	684	10.9
Africa	5 576	43.5	3 883	310	114	852	594	218	1 229	19.6
Latin America-Caribbean	2 213	17.3	183	730	95	488	74	18	208	3.3
South and East Asia	2 488	19.4	3 524	-44	91	310	245	-131	792	12.6
DAEs	844	6.6	-23	-386	-120	11	-88	117	148	2.4
Hong Kong	844	6.6	-23	-386	-120	11	-88	117	148	2.4
Singapore	186	1.5	-209	70	122	-44	-96	2	85	1.4
TOTAL	658	5.1	186	-456	-242	55	8	115	63	1.0
	12 823	100.0	6 759	6 516	9 426	9 091	11 842	2 655	6 269	100.0

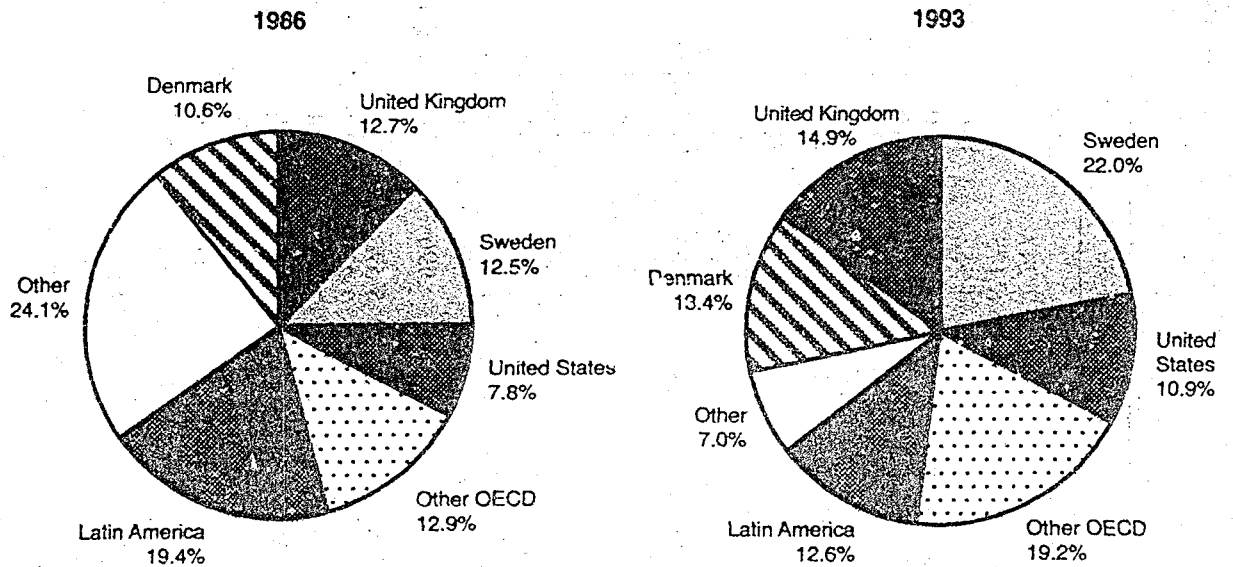
Source: Norges Bank, Annual Report, various issues.

Chart 4. Foreign direct investment flows  
Breakdown by country

Inflows



Outflows



Source: OECD/DAF.

Table 7. Foreign direct investment: position at year-end by industry, 1987-1992  
Nkr million

	1987	% of total	1988	1989	1990	1991	1992	% of total
<b>PRIMARY</b>	26 700	49.7	26 900	30 400	35 600	36 109	30 648	32.7
Agriculture	-	-	-	-	-	-	-	-
Mining and quarrying	-	-	-	-	-	110	127	0.1
Oil	26 700	49.7	26 900	30 400	35 600	35 999	30 521	32.6
<b>SECONDARY</b>	6 500	12.1	6 900	7 200	7 700	9 927	11 065	11.8
Food, beverages and tobacco	600	1.1	700	500	800	1 004	857	0.9
Textiles, leather and clothing	100	0.2	100	100	100	58	62	0.1
Paper, printing and publishing	500	0.9	500	700	800	1 201	1 063	1.1
Chemical products	800	1.5	800	900	800	903	974	1.0
Coal and petroleum products	..	..	..	..	..	..	..	..
Non-metallic products	700	1.3	1 100	1 500	1 500	1 743	1 968	2.1
Metal products	600	1.1	900	1 200	1 300	1 747	2 333	2.5
Mechanical equipment	1 800	3.4	1 400	600	800	1 453	1 690	1.8
Electric and electronic equipment	1 100	2.0	1 100	700	700	835	1 087	1.2
Motor vehicles	..	..	..	..	..	..	..	..
Other transport equipment	100	0.2	100	500	500	331	290	0.3
Other manufacturing	200	0.4	200	500	400	652	741	0.8
<b>TERTIARY</b>	20 500	38.2	23 100	26 700	30 000	48 573	51 428	54.9
Construction	900	1.7	1 100	1 400	1 100	2 508	1 316	1.4
Wholesale and retail trade	7 700	14.3	9 300	10 400	13 000	21 031	23 377	25.0
Transport and storage	600	1.1	700	1 000	700	1 808	2 177	2.3
Finance, insurance and business services	11 100	20.7	11 700	13 800	15 100	22 000	23 297	24.9
Communication	-	-	-	-	-	-	-	-
Other services	200	0.4	300	100	100	1 226	1 261	1.3
<b>UNALLOCATED</b>	-	-	-	-	-	165	525	0.6
<b>TOTAL</b>	53 700	100.0	56 900	64 300	73 300	94 774	93 666	100.0

Source: Norges Bank, Annual Report, various issues.

Table 8. Direct investment abroad: position at year-end by industry, 1988-1992<sup>1</sup>  
Nkr million

	1988	1989	1990	1991	1992	% of total
<b>PRIMARY</b>						
Agriculture	4 300	4 800	7 889	9 150	11 200	13.7
Mining and quarrying	-	-	226	201	..	..
Oil	4 300	4 800	7 632	8 925	11 200	13.7
<b>SECONDARY</b>						
Food, beverages and tobacco	11 900	15 800	36 954	42 051	49 200	60.4
Textiles, leather and clothing	300	500	1 093	2 289	..	..
Paper, printing and publishing	100	100	141	208	..	..
Chemical products	700	600	1 952	2 295	..	..
Coal and petroleum products	7 600	8 900	26 990	30 931	..	..
Non-metallic products	-	-	-	-	..	..
Metal products	600	700	1 607	427	..	..
Mechanical equipment	-	1 300	2 479	2 357	..	..
Electric and electronic equipment	800	1 600	1 854	2 659	..	..
Motor vehicles	100	200	555	598	..	..
Other transport equipment	100	100	47	74	..	..
Other manufacturing	1 600	1 800	236	213	..	..
<b>TERTIARY</b>						
Construction	9 300	12 600	18 517	22 584	19 800	24.3
Wholesale and retail trade	400	300	678	647	600	0.7
Transport and storage	800	900	4 358	6 502	5 500	6.7
Finance, insurance and business services	2 800	3 500	5 001	6 960	6 300	7.7
Communication	5 300	7 900	8 480	8 475	7 400	9.1
Other services	-	-	-	-	-	-
<b>UNALLOCATED</b>						
	600	500	1 831	1 721	1 300	1.6
<b>TOTAL</b>	26 100	33 700	65 191	75 506	81 500	100.0

1. Stock figures for 1988 and 1989 are confined to enterprises in which Norwegian investors are direct owners. As from 1990 stock data from indirectly owned foreign enterprises are also included in the total stock figures.  
Source: Norges Bank, *Annual Report*, various issues.

Table 9. Foreign direct investment: position at year-end by country, 1987-1992

NKr million

	1987	% of total	1988	1989	1990	1991	1992	% of total
<b>OECD AREA</b>								
Europe	53 675	100.0	56 623	63 328	72 289	89 825	86 037	91.9
EEC	24 621	45.9	25 752	27 841	35 129	61 385	57 629	61.5
Belgium-Luxembourg	15 747	29.3	15 019	14 531	15 904	29 785	26 221	28.0
Denmark	451	0.8	504	564	352	1 788	2 030	2.2
France	1 171	2.2	1 415	1 992	1 557	2 338	2 897	3.1
Germany	6 731	12.5	6 890	5 201	7 260	10 921	7 715	8.2
Ireland	1 117	2.1	1 513	3 031	3 284	4 163	3 673	3.9
Italy	-	-	-	89	56	496	181	0.2
Netherlands	909	1.7	10	89	63	26	-107	-0.1
Spain	1 881	3.5	2 921	3 473	3 621	5 006	6 182	6.6
United Kingdom	16	0.0	25	9	5	-66	-184	-0.2
Other Europe	3 471	6.5	1 741	172	-294	5 105	3 845	4.1
Austria	8 874	16.5	10 733	13 310	19 225	31 600	31 408	33.5
Finland	-196	-0.4	-195	5	5	35	25	0.0
Sweden	454	0.8	462	566	2 378	2 847	2 548	2.7
Switzerland	6 691	12.5	7 788	10 020	12 496	19 465	17 118	18.3
North America	1 925	3.6	2 678	2 719	4 346	9 165	11 717	12.5
Canada	28 997	54.0	30 814	33 300	33 891	24 538	23 497	25.1
USA	110	0.2	70	436	499	90	119	0.1
Other OECD countries	28 887	53.8	30 744	32 864	33 392	24 448	23 378	25.0
Japan	57	0.1	57	2 187	3 269	3 902	4 911	5.2
Japan	50	0.1	50	2 184	3 267	3 900	4 914	5.2
<b>NON OECD AREA</b>								
Africa	142	0.3	123	859	835	4 891	7 489	8.0
Latin America-Caribbean	1	0.0	1	8	16	52	84	0.1
South and East Asia	141	0.3	122	850	824	4 757	7 326	7.8
South and East Asia	-	-	-	1	-5	82	79	0.1
<b>TOTAL</b>	53 672	100.0	56 893	64 250	73 265	94 774	93 666	100.0

Source: Norges Bank, Annual Report, various issues.

Table 10. Direct investment abroad: position at year-end by country, 1988-1992<sup>1</sup>

NKr million

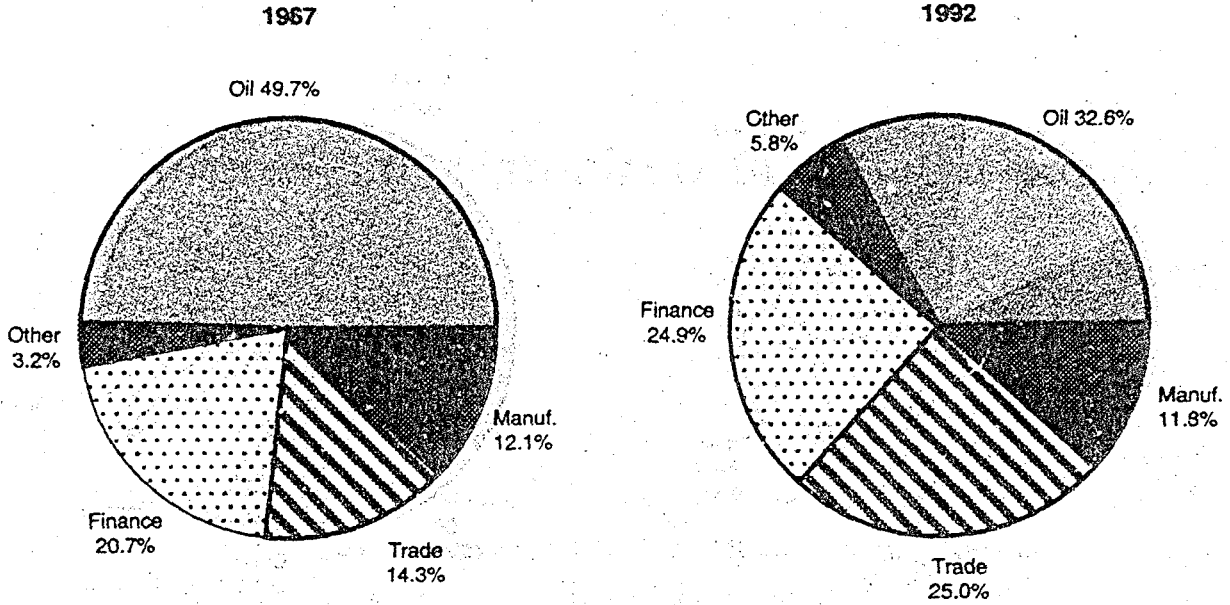
	1988	% of total	1989	1990	1991	1992	% of total
<b>OECD AREA</b>							
Europe	22 920	87.5	29 995	61 954	70 617	76 100	93.4
EEC	19 917	76.0	25 368	49 187	54 180	60 800	74.6
Belgium-Luxembourg	15 202	58.0	19 927	39 330	43 151	47 600	58.4
Denmark	1 103	4.2	908	2 627	2 654	..	..
France	2 721	10.4	5 081	11 358	12 624	12 700	15.6
Germany	515	2.0	569	4 728	4 348	..	..
Ireland	1 064	4.1	1 221	1 387	2 854	7 900	9.7
Italy	107	0.4	124	128	438	..	..
Netherlands	158	0.6	229	308	339	..	..
Spain	3 935	15.0	4 677	8 445	8 429	8 100	9.9
United Kingdom	734	2.8	875	517	485	..	..
Other Europe	4 802	18.3	6 180	9 738	10 877	8 500	10.4
Austria	4 715	18.0	5 441	9 857	11 029	13 200	16.2
Finland	7	0.0	28	486	539	..	..
Sweden	166	0.6	188	238	1 370	..	..
North America	4 500	17.2	5 224	8 953	8 942	11 000	13.5
Canada	2 835	10.8	4 450	12 479	16 180	15 300	18.8
USA	148	0.6	493	2 184	2 144	2 800	3.4
Other OECD countries	2 687	10.3	3 957	10 295	14 036	12 500	15.3
Australia	168	0.6	177	288	257	..	..
NON OECD AREA	161	0.6	167	281	228	..	..
Africa	3 237	12.4	3 616	3 042	4 557	5 400	6.6
Latin America-Caribbean	220	0.8	242	384	431	600	0.7
Brazil	2 198	8.4	2 748	1 882	3 231	2 500	3.1
Middle East	259	1.0	392	510	684	..	..
South and East Asia	23	0.1	58	257	320	..	..
DAEs	796	3.0	568	519	575	2 000	2.5
Singapore	628	2.4	383	519	575	..	..
TOTAL	475	1.8	155	398	453	..	..
	26 191	100.0	33 664	65 191	75 506	81 500	100.0

1. Stock figures for 1988 and 1989 are confined to enterprises in which Norwegian investors are direct owners. As from 1990 stock data from indirectly owned foreign enterprises are also included in the total stock figures.

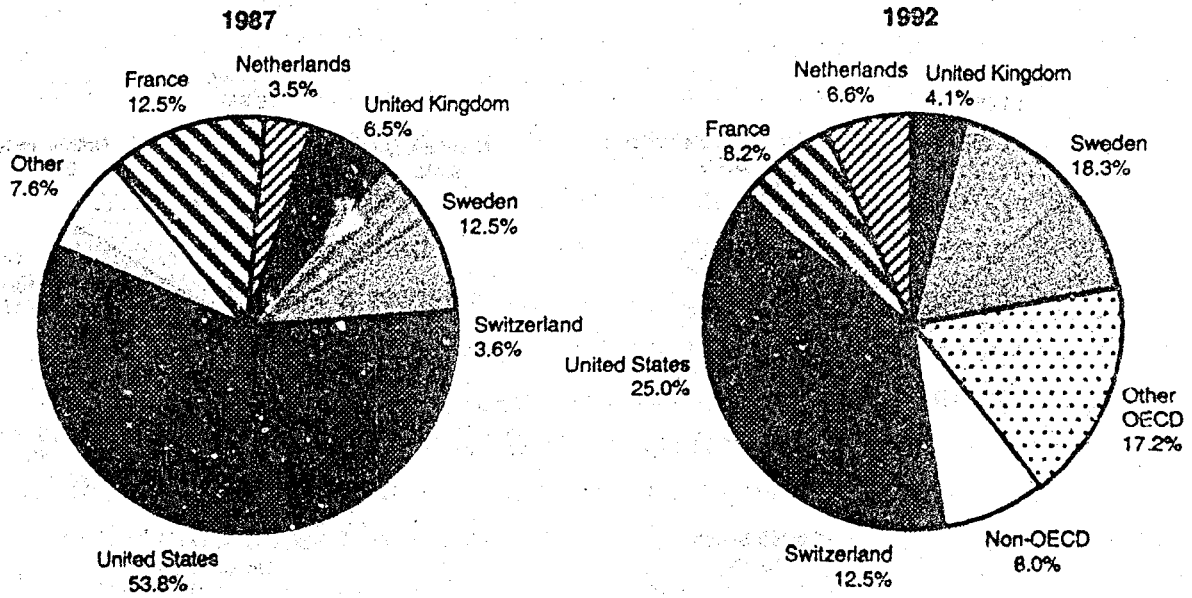
Source: Norges Bank, *Annual Report*, various issues.

Chart 5. Foreign direct investment stocks

Breakdown by industry



Breakdown by country

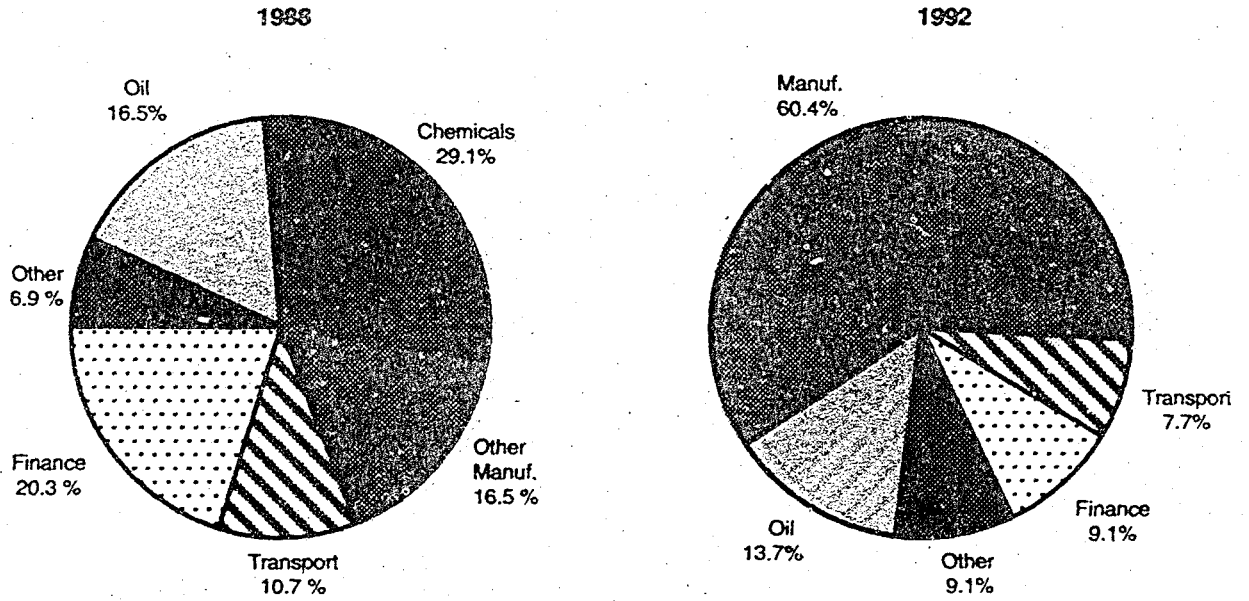


Source: OECD/DAF.

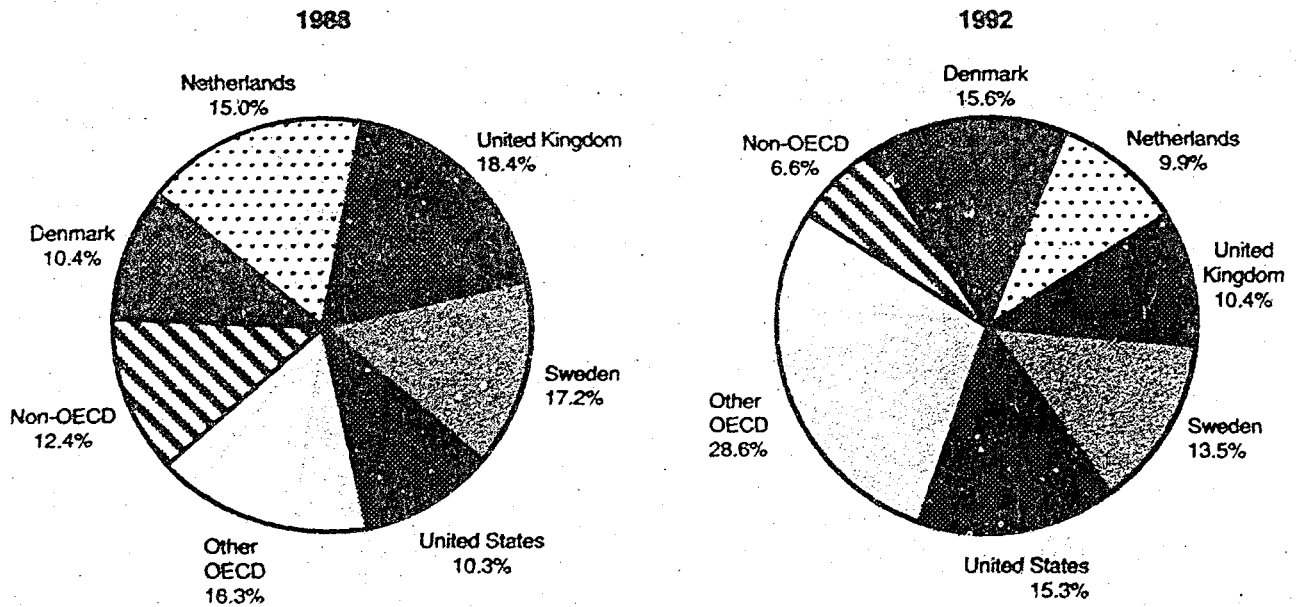


Chart 6. Direct investment stocks abroad

Breakdown by industry



Breakdown by country



Source: OECD/DAF.

## *Chapter 2*

# **Norway's foreign direct investment policies**

### **A. Introduction**

In view of the small size of Norway's economy and its geographical situation, the country has much to gain from openness to international trade and investment. In trade, Norway's policies have usually been liberal, with a number of exceptions, of which agriculture is the most important. Foreign investment, on the other hand, was long restricted both by sector-specific and by horizontal measures. The Industrial Concession Act specified that foreign ownership of Norwegian firms above one-third of voting share capital required government approval. Foreign investment in some sectors is also restricted, sometimes severely so. These include sectors which have traditionally played a dominant role in Norway's economy, in particular fisheries and maritime transport.

Since 1 January 1994, Norway has been part of the European Economic Area, a fact which has had far-reaching legislative consequences. Among the changes required was a revision of its Concession Act, which became effective on 1 January 1995. This revision, which put in place a uniform notification procedure for acquisitions of Norwegian enterprise by nationals and non-nationals, replaced the old application procedures for foreign investment. However, the authorities have not disposed of prior screening of intended investments; rather, the procedures have become similar for all investments, including those by nationals. Another area of reform prompted by the EEA Treaty is competition; a new Competition Act came into force in January 1994. The EC Directives governing the operations of financial institutions have become applicable in Norway. In addition to these changes brought about by the EEA Treaty, impor-

tant reform measures were pursued in other areas, notably tax reform and the deregulation of the electricity market.

In recent years, Norway has become more outspoken about the importance of attracting foreign investment. The EEA Treaty has been instrumental in this respect, but specific measures have been taken to attract foreign investment as well. A separate bureau, labelled INNOR (Investment in Norway Bureau) was created and started its operations on 1 January 1994. It has a mandate to stimulate foreign investment; the mandate includes reporting back on factors stimulating or discouraging FDI. Its main function is that of promoting Norway as an investment venue. It is part of the Industrial and Regional Development Fund.

This chapter discusses Norway's policy measures. First, a number of general issues will be taken up and, subsequently, the sectors where specific restrictions exist will be discussed one by one. The implications for Norway's position under the Capital Movements Code and the National Treatment instrument are analysed in Annex 1.

## **B. General issues**

### *i) Implications of the European Economic Area*

On 1st January 1994, the Treaty on the European Economic Area (EEA), concluded between the Member States of EC and EFTA (excluding Switzerland) became effective. Its implication has been that much of the EC legislation became applicable to Norway and the other EFTA Members involved, with a major impact on these countries' laws governing trade, investment and competition. Among the most important consequences for Norway's investment-related legislation has been the necessity to amend or replace:

- the Industrial Concession Act of 1917, by revoking the ceilings on foreign ownership of enterprises and the limits on purchases of real estate;
- the rules on government support of industries and public procurement;
- legislation on market access for foreign financial institutions in accordance with the relevant EC Directives;
- company law, including the residency restrictions for boards of directors and other decision-making bodies in enterprises; and
- the legislation on competition in accordance with the EC rules.

In some areas, such as company legislation and concession law, brief transitional periods applied – most of which for Norway ran until 1 January 1995 – to bring legislation up to the EEA standards. Some other areas have been excluded from the liberalisation under the EEA Treaty, notably agriculture and fleet-based fisheries.

Pursuant to its obligations under the Treaty, Norway has overhauled its legislation. Simultaneously with the EEA, a new Competition Act and a modification of the Companies Act have entered into force. The discriminatory provisions in the Industrial Concession Act were repealed effective 1 January 1995. These new laws will be discussed in greater detail below.

Some parts of the new legislation do not distinguish between residents and nationals of EEA States on one hand and those from non-EEA States on the other, whereas other parts do. Notable examples of the former are the new laws on industrial acquisitions and real estate and on establishment in the financial sector. In other areas, such as the corporate structure and transport, the new rules apply to residents from Contracting States to the EEA only. Like other Contracting Parties to the EEA, Norway has announced its general intention to apply any liberalisation of capital movements (including foreign direct investment) required by the EEA Treaty without discrimination among OECD Members (*erga omnes*). This has so far been achieved in many areas, but not in all.

## *ii) Acquisitions of enterprises and real estate*

Until 1 January 1995, policies regarding foreign direct investment were based on the stipulations concerning foreign acquisition of real estate in the Industrial Concession Act of 1917. The old legislation required concessions for the purchase of real estate by foreigners and foreign acquisition (above certain limits) of Norwegian enterprises owning real estate. In accordance with Norway's new obligations as a contracting party to the EEA Treaty, this system has been overhauled as from that date.

The new law provides for uniform regulations on industrial acquisitions by domestic and foreign investors. It has removed discrimination in the provisions for real estate purchases, with the exception of the purchase of secondary residences. Acquisitions of resident enterprises must be notified to the Ministry of Industry and Energy whenever the investor's share is increased beyond one-third,

50 per cent and two-thirds of total share capital or voting capital. The Ministry must report within 30 days after the notification whether a direct investment will be subject to closer examination. The new rules apply to acquisitions by both Norwegian and foreign investors. Table 11 compares the current regime with that under the new legislation.

Only stakes in enterprises beyond a given size, or having received substantial government support for R&D, require notification. The threshold for notification is at:

- a minimum of 50 employees; or
- a minimum annual turnover of 50 million NKr; or
- 5 million NKr in government subsidies for R&D during the previous eight years.

About 3 200 Norwegian enterprises qualify under this rule.

Table 11. Comparison of Concession Act with new legislation

	Norwegian investor	Foreign investor
1917 Concession Act. Concession required:	– None.	– For acquisition of > 20% of voting capital by single investor. – For acquisition bringing aggregate foreign ownership > 33⅓%.
New legislation. Notification required:	– For acquisitions > 33⅓%, 50% and 66⅔% by a single investor of enterprises meeting certain minimum conditions (see section Bii, 3rd para., above).	– For acquisitions > 33⅓%, 50% and 66⅔% by a single investor of enterprises meeting certain minimum conditions (see section Bii, 3rd para., above).

Source: OECD/DAF.

Although the new law replaced the concessions by a notification procedure, the present regime still has traits of an application procedure: there is a waiting period of 30 days and beyond this timeframe notified investments could still be scrutinised and rejected. A pure notification would imply that the authorities can test only after the event whether or not the laws and regulations have been

observed. In fact acquisitions may be rejected after screening. The notification and screening procedures are described by the Norwegian authorities in Annex 2.

Following the recent changes in Norway's foreign direct investment regime, restrictions in the field of real estate now apply only to the acquisition of secondary residences by non-residents, which is subject to authorisation. Special authorisation is also required for foreign acquisitions exceeding one-third, 50 per cent or two-thirds of the capital or voting capital of Norwegian enterprises owning or leasing secondary residences.

### *iii) Competition policies*

#### *a) Competition law*

The creation of the EEA implied that the EC's legislation against cartels and abuse by enterprises of dominant market positions (embodied in Articles 85 and 86 of the EC Treaty) became effective in Norway. Pursuant to the EEA Treaty, new legislation on competition was enacted as of 1 January 1994. The Price Act of 1953 was replaced by the Competition in Commercial Activity Act. The Act established the Norwegian Competition Authority, which replaced the Price Directorate and Price Inspection as guardians of effective competition. The Act encompasses prohibitions of collusion between enterprises with regard to prices, markups and discounts and collaboration on tenders and the prohibition of resale price maintenance. It introduces prohibitions of market sharing.

The Competition Authority has been given the power to act against restrictions considered harmful to competition. Enforcement provisions have been extended and include the seizing of evidence, periodical penal sums and the sequestration of unlawful profits. The Competition Authority is also able to intervene against mergers and acquisitions of enterprises, within six months after the conclusion of a final agreement on the operation. Moreover, it is required to call attention to the restraints on competition imposed by public sector measures. It may submit proposals aimed at strengthening competition and facilitate market access.

## *b) Monopolies and concessions*

A distinction must be made between "natural" monopolies, which emerge spontaneously from market imperfections, monopoly practices by private market parties, and monopolies stemming from concessions by public authorities. The prevention of private monopoly practices is a matter of competition policy, which

Table 12. Norway: monopolies and concessions

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### 1. At the level of national government

#### *a) Public monopolies*

- telephone, telegraphs and postal services;
- electricity distribution (high tension);
- railways;
- lotteries with money prizes and betting on sports events;
- import/export/distribution of: fresh mackerel (from 1990 EFTA countries are exempted from this import restriction); grains/concentrated foods; pharmaceutical productions (national); alcoholic beverages (sales and retailing subject to license form the local authorities).

#### *b) Private or mixed (public/private) monopolies*

- first-hand sales of the predominant part of the fish catch landing.
- ground-based broadcasting

#### *c) Concessions*

- broadcasting via satellite at national level (some licenses have been granted for radio and television to private companies);
- distribution of water, gas, electricity;
- bus transportation (on regular routes);
- air transportation;
- sale of fish products (according to the Act relating to export of fish and fish products of 1 July 1991, the authorities may decide to centralise the sale of specific fish products or the sale of fish products to a certain market if the market situation justifies such restrictions).

### 2. At the level of territorial subdivisions

#### *a) Public monopolies*

None.

#### *b) Private or mixed (public/private) monopolies*

- bait for fishing purposes (concerns only the three northern counties of Norway: Norland, Troms and Finnmark).

#### *c) Concessions*

- radio and television broadcasting;
- distribution of pharmaceutical products (local);
- sale and retailing of alcoholic beverages at the local level.

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Source: OECD/DAF.

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is discussed in the previous sub-section. However, the existence of public monopolies or concessions also raises obstacles to competition as well as to foreign investment. Sometimes such monopolies can be justified by considerations of public order and essential security (see the separate section on this subject). Other reasons may be political sensitivities (e.g. in the case of telecommunications, energy, broadcasting) or the public character of the services supplied (such as job placement services).

Table 12 presents a survey of public and private monopolies, and areas where suppliers require a government concession in Norway. In some areas, such as broadcasting, telephony, and railways, the public monopoly is not absolute and has been replaced by concessions. Some sectors, such as the pharmaceutical industry, have been opened up to suppliers from other EEA Contracting States. Foreign investment in the pharmaceutical industry is not restricted.

#### *c) Public procurement*

As a result of the EEA Treaty, Norway has had to bring its regulations on public procurement in line with those prevailing in the EEA. These regulations demand non-discrimination among suppliers from EEA Contracting States in public works and other forms of government procurement. There is differential treatment with non-EEA parties, but Norway will be subject to the rules on public procurement under the GATT rules, which will take effect on 1 January 1996.

#### *iv) State intervention in the economic process*

##### *a) State-owned enterprises*

At present, the Norwegian State has interests in 16 enterprises in the manufacturing, mining or energy sectors. Seven of these are fully owned by the State. The 16 enterprises together represent about 10-15 per cent of turnover and employment in the Norwegian industry, including mining. In principle, these enterprises are supposed to operate on the basis of commercial criteria and dividends will be paid whenever possible. In practice, this goal can be superseded by other considerations: some public enterprises support the maintenance of



economic activity in remote areas, in particular the Arctic regions, which may impair their capacity to generate profits.

A sector in which the Norwegian State has considerable interests is that of energy. The interests of the State, in the form of direct shareholdings, in the gas and oil sector, are managed by *Statoil*, which also receives a percentage in the oil and gas licences. Furthermore, two state-owned enterprises deal with the production and distribution, respectively, of electrical power. Another sector with a high proportion of State interest is the financial sector, although this is due to the special circumstances caused by the recent banking crisis (see separate section).

Unlike several other OECD Members, Norway has no programme for a systematic privatisation for State-owned enterprises. In the past, privatisation has occurred on an *ad hoc* basis, usually with the aim of strengthening the capital base of a SOE. Privatisations have been carried out in the form of private placements, of initial public offerings, or a combination of these two. No specific measures have been taken to attract, or discriminate against, foreign investors.

At the same time, the State's shareholdings in some companies have been *increased* in an indirect way, through state-owned banks and social funds. Among these is *Folketrygd*, a Government-administered pay-as-you-go pension fund, which presently runs a surplus in view of demographic factors.

#### b) *Government subsidies*

Compared to other OECD Members, Norwegian government producer subsidies are high. The main beneficiary is agriculture, which receives more than half of total subsidies: direct subsidies amount to 6 per cent of GDP, which is four times the OECD average. Among the manufacturing sectors, shipbuilding is the largest recipient, with 8 per cent of total (1992), representing one-third of value added in this sector. Producer subsidies have been used mainly to protect non-profitable industrial sectors. In some sectors, such as fisheries, subsidies have been largely phased out.

#### c) *Bailing out the banks*

An area where the State has substantially increased its interests is that of banking. Historically, Norway has had state-owned financial institutions, which do not take deposits and which were created to extend subsidised credit to

priority areas. A serious banking crisis, which started to raise its head in the late 1980s, has forced the Government to stage a public bail-out. The result has been that State ownership of bank assets in Norway evolved from one of the lowest to one of the highest in the OECD. Initially, a Government Bank Insurance Fund (GBIF) was set up to replenish the resources of the two industry-owned guarantee funds. However, when losses continued to accumulate, two large banks received direct equity injections from the State, while their existing capital was written down to zero by Royal decree. Another new institution was created (the Government Bank Investment Fund), with the aim of providing long-term capital to troubled banks. A third large bank was recapitalised with funds from both the GBIF and the Bank Investment Fund. A further step has been the restructuring of the Postal Savings Bank, which, under the name of Post Bank, has received more extended lending powers, thereby further boosting the State's direct interest in bank assets. State ownership only concerns commercial banks, not savings banks.

Total support by the Government and the central bank to the banking system has amounted to about 2.8 per cent of GDP over the period 1988-1992. The strong increase of State involvement resulted from a crisis situation rather than from an established policy purpose to nationalise the banking system. Hence, it is not the intention to keep the State's stakes at their current level.

#### v) *Tax reform*

In 1992, a comprehensive reform of Norway's tax system was accomplished, which led to tax rate reductions and curbed the tax distortions between different sources of investment financing and different investment projects. The main elements of this reform were: *i)* a reduction of the taxation rate in the top bracket; *ii)* a progressive limitation of the tax deductibility of interest payments, thereby reducing the advantageous treatment of debt financing over equity financing; *iii)* an overhaul of corporate taxation, resulting, *inter alia*, in a reduction of the statutory tax rate on corporate profits from 50 to 28 per cent; *iv)* the introduction of a single flat tax rate of 28 per cent for all types of capital income, including capital gains; and *v)* a phase-out of tax credits for specific investment projects. Furthermore, tax measures were taken to promote the capitalisation of

enterprises, in particular a reduction of the wealth tax top rate from 2.3 to 1.3 per cent and a change in the valuation of shares for tax purposes.

Although the tax reform was aimed at diminishing the tax deductibility of interest payments, it created a loophole which enabled oil companies invested in Norway to make deductions of 78 per cent on their interest payments. Foreign companies thereupon repatriated unusually high dividends to their parent companies while increasing their borrowings from these parents at the same time. The Government has tried to close this loophole by reducing the rate of reduction retroactively to 28 per cent. The State budget for 1994 also included proposals to raise the top marginal income tax rate and the wealth tax (from 1.3 to 1.8 per cent), undoing part of the reductions included in the tax reform of the previous year.

#### *vi) Corporate organisation*

After the amendment of the Industrial Concessions Act as per 1 January 1995, restrictions on board members have been governed by the Companies Act. This Act stipulates that at least half the number of members of the board of directors, including the managing director, should be permanent residents of Norway and have been so for at least the previous two years. Exceptions can be granted and, reportedly, this is frequently done. Legislation for some sectors extends this requirement to other bodies, such as the committee of representatives and the corporate assembly in commercial banks. Moreover, some sectors require that at least half the seats in these bodies be filled by Norwegian nationals. The EEA Treaty has changed these requisites to the extent that nationals of EEA Contracting States who are also permanent residents of one of these States are included in the nationality criterion.

However, restrictions have remained for nationals of non-EEA States. The principal reason given by the Norwegian authorities is a matter of jurisdiction, namely the fact that non-EEA States are not parties to the Lugano Convention. This convention governs international co-operation in the enforcement of rulings by civil law courts within the EEA (and as such extends the Brussels convention which applies to EC Member States). In particular, Article 5 makes it possible to bring a civil lawsuit against persons resident in other contracting States in courts of the jurisdiction in which the allegedly unlawful act has occurred, whereupon

the court's ruling can be enforced in another contracting State (*i.e.* the country of residence). This would not be possible in countries that are not parties to the Lugano Convention.

### *vii) Private practices*

Reportedly, private discriminatory practices are little used as a means of restricting foreign ownership. According to the Norwegian authorities, no restrictions of foreign ownership have been registered until now. This may be due to the fact that the Concessions Act provided substantial scope for such restrictions. It cannot be excluded that private restrictions would gain in importance now that the legislative barriers have been rescinded, since similar developments have occurred in other OECD Member countries.

Whether or not this will be so will also depend on the freedom that enterprises have to prevent acquisitions by certain investors. According to the Norwegian Companies Act, "the articles of association (of a company) may provide that any share acquisition by assignment shall be subject to the company's consent, and that the assignee shall have certain qualifications (...)". The articles of association may also create different classes of shares, with different voting rights. Restrictions of voting rights to a certain class are valid only if the number of shares in this class is less than 20 (unless an exception is granted). However, the Stock Exchange has requested its listed enterprises to refrain from issuing shares that discriminate against foreigners.

### *viii) Public security issues*

Norway has reported a few restrictions under the National Treatment Instrument (see Annex 1) that are motivated by public order and essential security considerations. Contracts or sub-contracts involving classified information may normally not be granted to foreign-controlled enterprises operating in Norway, except under special arrangements determined on a case-by-case basis. Furthermore, restrictions apply to the transportation of classified military-sensitive goods.

## C. Sectoral issues

### i) Mining

Nationality requirements in Norway's mining legislation differ for exploration and extraction, respectively. Historically, exploration rights have been reserved to Norwegian citizens and to resident enterprises with an entirely Norwegian board of directors. Under the EEA Treaty, this requirement has been waived for nationals and enterprises resident in any of the EEA Contracting States.

On the other hand, no nationality restrictions exist for the extraction of minerals. These activities require a concession, which enables the Government to enforce its regulation aimed at containing undesirable social and environmental effects. Such concessions are granted without regard to the nationality of the applicant. Nevertheless, it is arguable that the limitation of exploration rights to EEA nationals gives the latter an advantage over others: exploration would not seem to be a profitable activity unless the benefits from extraction can be reaped. This may mean that exploration will be undertaken only if the mining rights are also assured and, hence, that access by non-EEA investors to mining activities may be hampered.

Norway's mining law is under study by a working group. It is envisaged that draft legislation to revise the law will be presented in 1995. It is expected that the revision will encompass the current prohibition of mineral exploration by non-EEA nationals.

### ii) Energy

Concessions are needed for the acquisition or leasing of waterfalls and for the acquisition of enterprises that have rights to such acquisitions or leases, without prejudice to nationality. These restrictions are maintained in order to ensure the socially beneficial use of waterfalls, which are a vital source of energy in Norway. However, this requirement does not seem to preclude liberalisation of waterfall rights *erga omnes*.

In 1991, the Energy Act was adopted. This Act seeks to enhance efficiency in the energy sector, in particular with respect to electricity. It provides for a

separation of production and distribution and was based on the assumption that producers of electricity can compete freely, provided that there is open access to the distribution network. The State Power Board, which owned the network and produced about 30 per cent of electrical energy, was split into two State-owned enterprises, one of which is responsible for the distribution network, while the other took over the production of electricity hitherto taken care of by the State Power Board. Producers of electricity, most of which serve a region, are now free to compete among each other via the national network. Foreign producers can get access on the same terms as domestic producers.

Foreign investment in the oil sector has been strong; however, the Norwegian State, through its company *Statoil*, receives a certain percentage of oil and gas licences and also takes direct shareholdings, which could be majority holdings. According to the Act relating to petroleum activities of 22 March 1985, No. 11, the right to subsea petroleum deposits is vested in the State. Norway has been anxious to keep sovereignty over its oil reserves. This was stipulated in a separate protocol to its agreement (rejected by referendum) on accession to the EC.

### *iii) Financial institutions*

Financial liberalisation in Norway gained momentum at a later stage than in most OECD Member countries. This was particularly true with regard to foreign participation in financial institutions. Until 1984, no foreign bank establishment was permitted. Since that date establishment has been possible under rather restrictive conditions. Draft legislation aimed at liberalising foreign establishment in the financial sector altogether was submitted to the Norwegian parliament in early 1995. Pursuant to the EEA Treaty, the restrictions discussed in this section apply to non-EEA nationals only, unless stated otherwise. The regulations differ for banks, finance companies, collective investment institutions, securities firms and insurance companies, each of which will be discussed separately.

#### *a) Banks and finance companies*

A 10 per cent ownership limit in banks and savings banks applies to individual investors. This limit does not apply to the ownership of banks by a holding company of a financial group. The limit has been introduced to avoid

market domination by a single owner and to counter cross-ownership. Exemptions can be granted, but this happens only in rare events, for example if major cash injections are needed to stem a financial crisis. The regulation does not distinguish between Norwegian and foreign investors. Nevertheless, a practical effect may be that foreign take-overs are discouraged, especially since the ceiling applies also to co-ordinated groups of investors. However, foreign banks are exempted from the 10 per cent ownership limit if they establish a new commercial bank in Norway of which more than 50 per cent of the share capital is owned by a single foreign bank.

Furthermore, functional nationality restrictions apply: in any bank, at least half the number of members of the board of directors, of the committee of representatives and (in the case of commercial banks) the corporate assembly, have to be nationals and permanent residents of an EEA State. Exemptions can be granted by the Ministry of Industry and Energy, or – in case of a finance company – by the Crown.

Permission to foreign banks to establish a subsidiary can be made subject to a reciprocity test. The application of this rule in practice has been lenient, although the rule is not dormant. The Norwegian authorities do not undertake action on this point until the conclusion of the General Agreement on Trade in Services (GATS), where the possible repeal of reciprocity clauses is among the key issues under discussion. Norway's current reciprocity rule does not require that Norwegian banks abroad are accorded the same treatment as they receive in Norway (mirror-image reciprocity), but only that Norwegian banks are accorded national treatment abroad.

Draft legislation to reform the financial sector further is pending in Norway's parliament. If adopted, the residual restrictions on foreign investment in banking would be abolished, including the prohibition on direct foreign branches (*i.e.* branches owned directly by the bank abroad). Foreign-owned banks would be given the same rights and obligations as Norwegian ones.

*b) Securities brokers and collective investment institutions*

*De novo* establishment of foreign-owned securities brokers or management companies for collective investment funds has been possible in Norway since 1 January 1995. The same is true for foreign acquisitions and for the establishment of branches of collective investment funds established in other EEA States.

Branches of securities firms from other EEA States will be permitted as part of the new legislation on the financial sector. Foreign-owned banks are treated like Norwegian ones as regards the ownership of Norwegian securities firms and collective investment institutions. The nationality requirements for securities brokers and collective investment institutions are similar to those for finance companies.

*c) Insurance companies*

Establishment in Norway of a subsidiary or a branch of a foreign insurance company is permitted, but a reciprocity condition may apply. The reciprocity condition is based on the Insurance Activities Act of 1988 and is applicable to branches as well as subsidiaries.

There appears to be a form of differential treatment concerning the establishment of subsidiaries by two or more foreign financial institutions. A partly owned subsidiary may only be established if the other owners are foreign insurance companies or Norwegian financial institutions. This suggests that foreign non-insurance financial institutions are not permitted to own an insurance subsidiary in Norway, whereas their Norwegian counterparts do have that option. But the legal situation is uncertain, since no case has been brought to court. The decision in particular cases may depend on the supervisory regime in the home country of the investor. The formation of financial conglomerates is permitted in Norway, and supervision of banking, securities and insurance has been consolidated in a single institution.

As in the banking sector, total foreign ownership in a Norwegian insurance firm used to be limited to one-third of the voting share capital. This ceiling was lifted effective 1 January 1995. Insurance firms within a financial group are exempted from this limit and other exemptions may be granted by the Ministry of Finance, which, however, is a rare event.

There are several other exigencies which are specific for foreign (*i.e.* non-EEA) insurance firms: a separation requirement, a minimum capital deposit for branches, and, finally, nationality requirements for members of decision-making bodies that are similar to those for commercial banks.

Separation of life insurance, non-life insurance and credit risk insurance is obligatory for all insurance companies, with the exception of branches in Norway



of companies established in an EEA Contracting State other than Norway itself. The exemption of insurance firms from EEA States follows from relevant EC Directives. The regulation implies that insurance firms from other EEA States where no such separation exists are free to set up branches that combine two or more of the above-mentioned activities, but not subsidiaries, since that would violate the separation requirement for locally incorporated firms. Insurance companies from other OECD Member countries would have to create a separate branch (or subsidiary) for each activity.

Direct branches of insurance firms established outside the EEA need to put up a minimum capital deposit. This deposit requirement is in conformity with the capital adequacy requirements for insurance firms established in Norway. Hence, it does not constitute a restriction in the sense of the Code.

#### *iv) Fisheries*

Norway's fisheries sector is largely fenced off against non-Norwegian interests and, indeed, foreign participation is very limited. The restrictions that are specific for this sector are all related to the fleet-based activities; land-based activities are governed by horizontal concession legislation. The main reason for this restrictive regime is that Norway has historically been anxious to preserve its renewable, but limited, fish stocks, which are the basis of one of its main export industries. The restriction seeks to ensure that fishing vessels are owned by active fishermen. In principle, the prevention of over-fishing would not require protectionist measures, but it is considered that non-discriminatory policies would have a negative impact on communities and employment. Nevertheless, the relative importance of employment in the fisheries and other primary sectors has dropped dramatically over the past 30 years (from more than 19 per cent of total in the early 1960s to about 6 per cent at present). Furthermore, the Government has cut its financial support to the sector sharply, and an almost complete phase-out of subsidies is foreseen by 1997.

Regulations of foreign participation in fisheries within the EEA are not part of the EEA Treaty itself, but are dealt with in a separate protocol. Among the stipulations is that Norway will retain the right to restrict ownership by non-nationals of fishing vessels indefinitely.

With respect to establishment, a 60 per cent minimum Norwegian ownership is required for any foreign investment in a Norwegian fishing vessel. Consequently, the maximum foreign share is 40 per cent.

Involvement of foreigners in fleet-based activities is prevented by a prohibition for foreign-controlled enterprises to fish with trawls from Norwegian vessels. Moreover, inside the fishing limits or the Norwegian Exclusive Economic Zone, the processing, packing or re-loading of fish, crustaceans and mollusc or parts and products of these is not permitted on foreign vessels without authorisation.

v) *Transport*

a) *Air transport*

As in most OECD Member countries, foreign investment in Norwegian airline companies is restricted by bilateral and multilateral aviation agreements, which also govern international air links. Restrictions on foreign ownership go back to the Chicago Convention, which demands that a "genuine link" exists between the owner of an airline and the country whose flag it flies. In Norwegian airline companies, foreign ownership is limited to one-third of the capital in a joint stock company, the other two-thirds being in the hands of Norwegian natural or legal persons or Norwegian governmental bodies. An aircraft can be registered in Norway only if it is owned by a Norwegian airline company or otherwise for at least two-thirds by a Norwegian natural or legal person or governmental body.

The situation in Norway differs from that of many other Members in that it shares its national air carrier (SAS) with Denmark and Sweden. The situation is complicated further by the fact that Denmark and Sweden, unlike Norway, are EC Member States. For this reason, Norway concluded an agreement with the EC in 1992, implying that EC regulation in the field of civil aviation applies in Norway (Sweden, not yet an EC Member in 1992, was also a party to this agreement). By virtue of the supplementary protocol to the EEA, the agreement has been supplanted by the EEA regulation. This means, *inter alia*, that, as far as Norway's relations with other EEA States are concerned, the Norwegian nationality clauses in Norway's aviation legislation have been replaced by EEA clauses. In treaties with OECD Members outside the EEA, the present nationality requirements continue to apply.

As is almost common practice among OECD Member countries, cabotage is reserved to national airline companies. It will continue to be so until April 1997, when it will be opened up to airline companies from other EEA States. Norway has a large domestic airline network, which, in addition to SAS, is served by several privately owned airline companies, for which cabotage is the main activity.

In spite of restrictions posed by the Chicago Convention, air transport is being progressively liberalised, also outside of the EEA. To confront the intensified competition, national airline companies have sought strategic alliances with other airlines, including far-reaching mergers of activities. Among these was the alliance negotiated by SAS, Austrian Airlines, KLM Royal Dutch Airlines and Swissair. Negotiations were not successfully concluded, and SAS may be looking for alternatives.

#### *b) Maritime transport*

Norway has two ship registers. The oldest is the Norwegian Ship Register (NOR), which is open only to ships that satisfy Norwegian nationality conditions. The other one, Norwegian International Ship Register (NIS), was established in 1987 and is open to foreign-owned ships, under certain conditions. The NIS, which was created to stem an outflow of ships to foreign flags, has proven to be effective: indeed, statistics of outward investment in ships show a sudden drop in 1987, the year when the NIS became operational. Despite the choice of registers, it is still possible for Norwegian ships to be flagged out with permission of the Ministry of Foreign Affairs.

The main condition for incorporation in the NOR is that the ship is at least 60 per cent owned by a Norwegian natural or legal person, or by a government body. A joint stock company owning a NOR-registered ship should also have a minimum Norwegian ownership of 60 per cent of the voting capital. Limited liability companies owning an NOR ship should have their headquarters in Norway. Furthermore, at least half the board of directors, including the chairman, should be Norwegian citizens. Finally, the employment of foreign nationals is restricted, and their labour conditions have to be negotiated with Norwegian trade unions. Exemptions from the 60 per cent national ownership requirement can be granted by the Ministry of Foreign Affairs. This is done, in particular, if the ship is foreign-owned but used for businesses in Norway or linked with Norway, for

example by a foreign enterprise located in Norway or a foreign national who is a permanent resident in the country.

The NIS was created for ships that, unlike those registered in the NOR, normally do not sail in Norwegian waters (which is the case for the largest part of the Norwegian fleet) and hence, do not need to fulfill requirements, such as working conditions, that are applicable to NOR registered ships. Registration in the NIS is possible for ships that are more than 40 per cent owned by foreign nationals. The main condition is that the ship is operated by a Norwegian shipping company or by a Norwegian management company with its headquarters in Norway. A Norwegian representative has to be appointed if the ship is registered directly in the NIS by a foreign company.

Unlike NIS ships, NOR-registered ships are permitted to be engaged in cabotage and in regular passenger service between domestic and foreign ports. They merely need a licence to undertake scheduled transport of persons. Foreign ships, other than those in the NIS, are not excluded from maritime cabotage.

#### *c) Rail transport*

Pursuant to the Railway Act of June 1993, a provisional regulation on the allocation of the national railway network entered into force effective 1 January 1995. The network is still publicly owned, *i.e.* by the State and municipalities. Authorisation can be granted for railway operations by others, provided, *inter alia*, that a single legal person is responsible for these activities. There are no specific nationality restrictions for applicants.

#### *d) Road transport*

Commercial transport of passengers or goods requires a licence. Furthermore, a physical business presence in Norway is demanded for anyone carrying out non-scheduled passenger transport on a commercial basis. Cabotage is largely restricted to Norwegian hauliers, but limited cabotage rights can be granted by virtue of the EEA Agreement on cabotage rights for lorries. The EEA Agreement will also liberalise non-scheduled passenger service.

#### *vi) Post and telecommunications*

The Norwegian Postal Administration has a monopoly on the reception and delivery of closed letters and postcards. Free competition exists for other postal activities.

The monopoly position of (Government-owned) *Telenor A/S* has been narrowed in recent years. Apart from GSM mobile telephony, *Telenor A/S* retains a monopoly on the construction and operation of the telecommunications infrastructure and public telephones. Foreign operators have established and started to offer services on the Norwegian market. Provision of mobile telephone services is limited to two suppliers, in view of requirements such as the effective use of the frequency spectrum. There is free and non-discriminatory access to the infrastructure provided by *Telenor A/S*.

#### *vii) Culture*

Up to one-third of the share capital in Norwegian broadcasting corporations can be owned by foreigners, a limit set for reasons of cultural protection. If the ownership structure is not in accordance with this requirement, a company has time to amend its structure until mid-1995. Local broadcasting corporations should be owned for at least two-thirds by permanent residents of the concession area. The Norwegian authorities are considering to lift this restriction for non-residents.

There are no specific restrictions on foreign ownership in the film sector. However, the operation of cinemas and the sale and rental of videocassettes are subject to municipal licensing. Most cinemas are owned by municipalities, but some concessions to operate cinemas have been granted to private parties.

Foreign participation in press and publishing is not restricted by law, but some newspapers have internal rules that restrict foreign ownership.

#### *viii) Job placement services*

Job placement is largely a governmental activity in Norway. Commercial job placement activities are restricted; in particular, receiving payment from a job applicant is prohibited. Job placement activities are permitted to foreign institutions on the same terms as apply to Norwegian institutions, provided that they are registered in Norway.

### *Chapter 3*

## **Conclusions**

Pursuant to its integration into the European Economic Area, Norway has made significant efforts to liberalise its foreign direct investment regime. The discriminatory provisions of the 1917 Concessions Act were repealed. Accordingly, uniform procedures have been introduced for the review of intended acquisitions notified by Norwegian and foreign investors alike. The restrictions on foreign investment in real estate were largely eliminated; an exception remains only for foreign purchases of secondary residences. Ceilings on foreign ownership, which notably existed in the financial sector, have been abolished. The prohibition of the establishment in Norway of branches by foreign banks, securities brokers and management companies of collective investment funds is expected to be abolished soon.

The Norwegian authorities have undertaken not to discriminate between foreign and Norwegian investors when reviewing intended acquisitions of Norwegian enterprises. This endeavour is a welcome break with the past. However, the transparency of the new regulation and the discretion left to the authorities in their implementation are points of concern. The new regime still has some traits of an application procedure: there is a waiting period of 30 days and intended investments could still be scrutinised and rejected. Screening systems create a degree of uncertainty among potential investors. This is so especially if approval criteria are phrased in general terms or otherwise not transparent. A point of consideration is also that Norway's new regulations have introduced notification procedures for acquisitions by domestic investors which did not exist before. It is in the spirit of the Code that discriminatory measures are repealed not by imposing a more burdensome treatment on domestic investors, but only by

removing obstacles for foreign investors. Consequently, the Norwegian authorities should be encouraged to avoid arbitrariness and to ensure transparency in the implementation of the new legislation on the acquisition of enterprises and to see to it that the legislation achieves non-discriminatory procedures only by a removal of the old obstacles.

A source of concern is that Norway's greater openness to foreign investors has been accompanied by a more favourable treatment of EEA investors, as compared to non-EEA nationals. This raises a serious problem in view of article 9 of the OECD's Code of Liberalisation of Capital Movements, which stipulates that a Member shall not discriminate as between other Members in authorising the conclusion and execution of transfers which are subject to any degree of liberalisation. Norway has stated its intention to extend any liberalisation to its EEA partners on an *erga omnes* basis. It would indeed be very welcome if the benefits of Norway's liberalisation were extended to all OECD Members.

Another point of concern is Norway's retention of the option to apply reciprocity in approving investment applications in the financial services sector. The Norwegian authorities stress that the rules governing reciprocity are implemented in a lenient manner. However, the rules are not dormant, hence their desire to keep the entry in Annex E to the Code (which lists Member countries' reciprocity measures and practices concerning the right of establishment of foreign enterprises). Reciprocity measures raise problems in view of the Code's principle of non-discrimination. It would, therefore, be welcome if Norway excluded the option of applying reciprocity.

The liberalisation accomplished in recent years is not universal: several sectors have remained at least partly closed to foreign participation. A conspicuous example is fleet-based fishing, where restrictions on foreign ownership will remain, also under the EEA Treaty. The restriction is aimed at preserving Norway's fishing stock, which is the basis of one of its main export industries. It is important to note that the OECD's Codes of Liberalisation do not question the legitimacy of such an objective. Rather, their purpose is to ensure that such objectives are accomplished by non-discriminatory measures. Hence, Norway could set the progressive liberalisation of foreign investment in fisheries as a goal to be achieved over time, in accordance with the obligations under the Code of Liberalisation of Capital Movements to which it has subscribed.

Partly closed sectors are mining, transport, securities and broadcasting. The restriction on exploration of minerals by foreigners is under review and its repeal would be welcome. The prohibition of the establishment of direct branches by foreign (non-EEA) securities firms would also warrant consideration. The reasons for this restriction do not seem to be compelling, given also the fact that a similar prohibition in banking was recently abolished. The restrictions in transport are for a part imposed for reasons related to international agreements to which Norway is a party. However, liberalisation has also made some headway in this sector. Finally, broadcasting has been among the traditionally closed sectors in Norway; a certain degree of liberalisation has been achieved and Norway may wish to contemplate ways to continue this process, while paying due regard to the desire to protect its culture.



## *Annex I*

# **Norway's current position under the Code of Liberalisation of Capital Movements and the National Treatment Instrument**

## **Introduction**

As a signatory to the OECD Code of Liberalisation of Capital Movements (the Code) and the National Treatment Instrument (NTI), Norway has undertaken a number of obligations in the foreign direct investment field. This annex highlights the main provisions of these instruments as well as Norway's position under them.

## **The OECD commitments**

The Code and the NTI are the two main instruments for co-operation among OECD member countries in the field of foreign direct investment.

The Code, which has the legal status of OECD Council Decisions and is binding on all Member countries, covers the main aspects of the right of establishment for non-resident enterprises and requires OECD members to progressively liberalise their investment regimes on a non-discriminatory basis and treat resident and non-resident investors alike.

The NTI is a "policy commitment" by Member countries to accord to established foreign-controlled enterprises treatment no less favourable than that accorded to domestic enterprises in like situations. While the NTI is a non-binding agreement among OECD Member countries, all measures constituting exceptions to this principle and any other measures which have a bearing on it must be reported to the OECD.

Member countries need not, however, liberalise all their restrictions upon adherence to the above instruments. Rather, the goal of full liberalisation is to be achieved progressively over time. Accordingly, members unable to fully liberalise are permitted to maintain "reservations" to the Code of Capital Movements and "exceptions" to the NTI for outstanding foreign investment restrictions. These limitations to the liberalisation obliga-

tions may be lodged at the time a member adheres to the Codes, whenever specific obligations begin to apply to a member, or whenever new obligations are added to the instruments.

The investment obligations of the Code and the NTI are, in fact, complementary, both dealing with the laws, policies and practices of Member countries in the field of direct investment. However, the Code addresses the subject from the point of view of non-resident investors in an OECD host country, while the NTI is concerned with the rights of established foreign-controlled enterprises. Limitations on non-resident (as opposed to resident) investors affecting the enterprises' operations and other requirements set at the time of entry or establishment are covered by the Code. The investment operations of foreign-controlled enterprises after entry, including new investment, are covered by the National Treatment Instrument.

Measures pertaining to subsidiaries fall under the purview of the Code or the NTI, depending on whether they set conditions on entry/establishment or concern the activities of foreign-controlled enterprises already established. As to branches, the 1991 *Review of the OECD Declaration and Decisions on International Investment and Multinational Enterprises* introduced a distinction between "direct" branches of non-resident enterprises and "indirect" branches, that is branches of already established foreign-controlled enterprises. The latter are subject to all the five categories of measures covered by the NTI (investment by established enterprises, government procurement, official aids and subsidies, access to local financing and tax obligations). The investment activities of "direct" branches of non-resident enterprises, which concern the category of measures covered by the NTI, fall however, exclusively under the purview of the Code.

The Committee on Capital Movements and Invisible Transactions and the Committee on International Investment and Multinational Enterprises together conduct country examinations of Member country measures covered by these OECD commitments. These examinations involve a face to face discussion between representatives of the two Committees and experts from the country being examined. The discussion is based on submission by the Member concerned and a document prepared by the Secretariat. The objective is to clarify the nature and purpose of remaining restrictions and to identify possible areas for further liberalisation. The examinations usually conclude with modifications to the Member country's position and recommendations by the OECD Council to the Member's authorities concerning the future direction of the country's foreign direct investment policies.

### **Norway's position under the Capital Movements Code and the National Treatment Instrument**

Norway's position under the relevant OECD instruments is presented in this annex: its reservation to item I/A of the Capital Movements Code, the entry in Annex E to this

Code, the exceptions reported under the National Treatment instrument, as well as the measures notified under the NTI for transparency reasons. As a result of the examination carried out by the two above-mentioned OECD Committees, Norway's position has changed in several respects. The acceptance of liberalising legislation made it possible to narrow down the reservation against item I/A and to remove, or narrow down, a number of exceptions to the National Treatment instrument. No horizontal restrictions against foreign direct investment have remained. Sectoral ones still exist concerning secondary residences, mining, securities, fisheries, transport and broadcasting.

Norway keeps an entry in Annex E to the Code of Liberalisation of Capital Movements, an annex that lists Members' reciprocity measures and practices concerning foreign enterprises' right of establishment. This entry governs establishment in the banking and insurance sectors.

Restrictions maintained exclusively against Members outside the European Economic Area are not reflected in Norway's position, since such restrictions violate the principle of non-discrimination enshrined in the OECD's instruments. Norway has stated its intention to extend the benefits of liberalisation on an *erga omnes* basis and, in particular, to terminate discrimination between Contracting States to the EEA Treaty and other Members.

*a) Norway's reservation on inward direct investment under the Code of Liberalisation of Capital Movements*

1. List A, Direct investment:

I/A

– In the country concerned by non-residents.

*Remark: the reservation applies only to:*

- i) acquisitions exceeding one-third, one-half or two-thirds of the shares or the voting share capital of an enterprise owning or leasing secondary residences, unless authorisation is granted;*
- ii) investment in enterprises engaged in the exploration of minerals unless all members of the board of directors are Norwegian nationals;*
- iii) establishment of branches of foreign banks;\**
- iv) establishment of branches of securities brokerage firms or management companies for collective investment funds;\**
- v) investment in air transport, except through a limited liability company in which at least two-thirds of the capital is Norwegian;*

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\* Draft legislation to terminate these restrictions was submitted to Parliament in early 1995.

- vi) ownership of Norwegian flag vessels, except: a) through a partnership or joint stock company where Norwegian citizens own at least 60 per cent of the capital, b) by registering the vessel in the Norwegian International Ship Register under the applicable conditions;
- vii) investment in a registered fishing vessel bringing foreign ownership of the vessel above 40 per cent;
- viii) investment in a nationally operating broadcasting corporation bringing foreign ownership above one-third of the corporation's share capital.

2. Norway's position in Annex E to the Capital Movements Code (reciprocity)

- i) establishment of subsidiaries of foreign banks may be subject to a reciprocity requirement;
- ii) establishment of branches or agencies of foreign insurance companies may be subject to a reciprocity requirement.

*b) Norway's exceptions to the National Treatment Instrument*

**A. Exceptions at national level**

**I. Investment by established foreign-controlled enterprises**

*Real estate*

Acquisition of, and certain leasing rights to secondary residences by enterprises registered in Norway in which non-residents have a dominating influence, is subject to authorisation.

*Mining*

The right to explore minerals is reserved to Norwegian nationals and enterprises with an entirely Norwegian board and registered office in Norway.

*Fishing*

As a general rule, processing, packing or re-loading fish, crustaceans and mollusc or parts and products of these, is not allowed on a foreign-controlled vessel inside the fishing limits or the Norwegian Exclusive Economic Zone.

*Authority:* Fishing Limit Act of 17 June 1966; Economic Zone Act of 17 December 1976.

### ***Fishing***

To obtain ownership, or part in, registered fishing vessel, a 60 per cent Norwegian ownership is required.

*Authority:* Regulation of participation in fishing Act of 16 June 1972; Fishing Limit Act of 17 June 1966.

### ***Fishing***

Foreign-controlled enterprises may not fish with trawls from Norwegian vessels.

*Authority:* Trawling Act of 20 April 1951; Fishing Limit Act of 17 June 1966.

### ***Banking***

Establishment of subsidiaries of foreign-owned banks may be subject to a reciprocity requirement. The establishment of branches of foreign banks is not permitted.\*

### ***Insurance***

Reciprocity conditions may apply for the granting of authorisation to foreign insurance companies.

*Authority:* Insurance Activities Act of June 1988.

### ***Air transport***

Cabotage reserved to national airlines.

*Authority:* Civil Aviation Act of 11 March 1993.

### ***Maritime transport***

As a general rule, 60 per cent Norwegian ownership is required for ship registration in the ordinary Norwegian Ship Register. A limited company must also be headquartered

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\* Draft legislation to terminate the prohibition of foreign bank branches was submitted to Parliament in early 1995.

in Norway. In the Norwegian International Ship Register, a ship with more than 40 per cent foreign ownership must be operated by a Norwegian ship-owning company, or by a Norwegian management company, with head office in Norway. If the ship is registered directly in the NIS by a foreign company, a Norwegian representative is required.

*Authority:* Maritime Act of 20 July 1893; NIS Act of 12 June 1987.

### ***Maritime transport***

Licensing requirement for scheduled maritime transport of persons.

*Authority:* Transportation Act of 4 June 1976, para. 3.

### ***Road transport***

In general, cabotage reserved to national hauliers.

*Authority:* Transportation Act of 4 June 1976, Ch. 63, para. 9.

### ***Broadcasting***

Foreign ownership of nationally operating Norwegian broadcasting corporations is limited to one third of the corporation's share capital.

*Authority:* Broadcasting Act of 4 December 1992.

## **II. Official aids and subsidies**

None.

## **III. Tax obligations**

None.

## **IV. Government purchasing**

None.

**V. Access to local finance**

None.

**B. Exceptions by territorial subdivisions**

None.

**c) Norway's measures reported for transparency under the National Treatment Instrument**

**A. Transparency measures at the level of national government**

**I. Measures based on public order and essential security considerations**

**a) Investment by established foreign-controlled enterprises**

***Manufacturing – Defence***

Foreign-controlled enterprises operating in Norway may not be granted a contract or sub-contract involving classified information, except under special arrangements to be determined on a case by case basis.

*Authority:* Instructions regarding security, Law of defence Secrets, Royal Decrees, March and September 1972.

***Transport***

Restrictions on the transport of classified military-sensitive goods.

**b) Corporate organisation**

None.

**c) Government purchasing**

None.

d) *Official aids and subsidies*

None.

**II. Other measures reported for transparency at the level of national government**

a) *Investment by established foreign-controlled enterprises*

None.

b) *Corporate organisation*

***Trans-sectoral***

Certain Norwegian laws, notably the Companies Act, require that the manager and at least one-half of the board members shall be domiciled in the country and have resided there for at least two years. Certain operations require that the corporation must have an executive board where the board members are Norwegian citizens (acquisition of water falls and mines, prospection and mining of ores and metals).

*Authority:* Companies Act, and other laws.

***Broadcasting***

To obtain a local broadcasting licence, the holder of the licence and at least two-thirds of the broadcasting company's shareholders must be resident in the area for which the licence is granted.

*Authority:* Broadcasting Act of 4 December 1992.

c) *Government purchasing*

None.

d) *Official aids and subsidies*

None.

**B. Measures reported for transparency at the level of territorial subdivisions**

None.



## *Annex 2*

### **The acquisition of Norwegian business undertakings**

(Note by the Norwegian authorities)

In December 1994 the Norwegian Parliament enacted a new law on acquisitions of business undertakings in Norway (Act on the Acquisition of Norwegian Business Undertakings of 23 December 1994, No. 79). This act establishes a non-discriminatory reporting requirement when an investor or a group of investors acquires shares to such an extent that they become the owner of more than one-third, half or two-thirds of a company's share capital or assets representing a business undertaking. The new act is based on the principle of equal treatment to all investors, irrespective of whether they are foreign or not.

This reporting requirement, however, only applies to the acquisition of companies that have a minimum turnover of more than NKr 50 million or more than 50 employees or have received more than NKr 5 million in government support for R&D during the previous eight years. Furthermore the act does not apply to, amongst others, the acquisition of shares in insurance companies, banks and other financial institutions regulated by special legislation.

#### **Reporting formalities**

The investor is obliged to report to the Ministry of Industry and Energy within 30 days after the acquisition has taken place. The report must contain all the information listed under article 8 of the Act.

Should, however, the Ministry find the report to be incomplete, it will ask for additional information within 30 days. A request for further information cancels the start of the period allowed for assessing the report.

Based on the report received, the Ministry will decide within 30 days after the report is considered complete whether the acquisition should be subject to a closer examination. If this is not the case, the acquisition is considered approved.

## **Decisions to initiate a closer examination**

A closer examination could be initiated if the Ministry has reasons to believe that the acquisition could have a substantial negative effect on the target company, the trade or the public interest, including the effect on employment. *E.g.* that the object of the acquisition is to close down the target company, or an effect of the acquisition would be to bring down the number of employees. However, the intention of the act is not to put up obstacles to reorganisations which are justified on rational economical and industrial grounds.

The decision to initiate a closer examination is without prejudice to the final decision which may still be to find that the acquisition is compatible with the functioning of the law. One of the purposes of opening a closer examination is to ensure an examination of the case by giving employees and local authorities the right to be heard.

## **Final decision**

If the acquisition is not contrary to the general interest, the acquisition shall be authorised. An acquisition could, for example, be refused if the intention of the acquirer is to close down and strip the company. However, it is not the intention of the new act to be an obstacle against well-founded restructuring of companies, even if a consequence could be a reduction of production sites and number of employees.

Accordingly, the Ministry may take a positive or a negative decision. A positive decision is a decision to authorise the acquisition. Such a decision may or may not impose conditions. A negative decision means that the acquisition is not authorised and that the acquirer will be given a time-limit to sell the shares.

The Ministry will communicate the decision to the person or company responsible for the notification. If it is a negative decision, it will state the reasons on which it is based. Such a decision could be subject to an administrative appeal and, further on, challenged in court.

## **Coming into force**

This new act is accompanied by the repeal of the discriminatory provisions in Chapters III and V of the Industrial Concession Act of 1917, relating to the acquisition of real property and companies which own or hold leases on real property.

The amendments in the Industrial Concession Act and the new Act came into force on 1 January 1995.

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*Annex 3*

**Statistics on direct investment flows in OECD countries**

Table 1. Foreign direct investment in OECD countries: inflows 1971-1993<sup>1</sup>  
US\$ million

	Cumulative flows		Flows of foreign direct investment												
	1971-1980	1981-1990	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	
Australia	11 295	40 369	2 286	2 994	428	2 099	3 457	3 873	7 936	7 887	7 060	4 904	5 286	2 460	
Austria	1 455	3 274	207	219	116	169	181	402	437	578	647	359	940	982	
Belgium-															
Luxembourg <sup>2</sup>	9 215	28 182	1 390	1 271	360	957	631	2 338	4 990	6 731	8 162	8 919	10 956	10 458	
Canada <sup>2</sup>	5 534	33 699	-831	2 003	4 754	1 298	2 781	8 038	6 456	5 018	7 852	2 913	4 576	5 930	
Denmark	1 561	3 388	136	64	9	109	161	88	504	1 084	1 133	1 530	1 015	1 684	
Finland	376	2 838	-4	84	158	110	340	265	530	489	787	-247	396	593	
France <sup>2</sup>	16 908	43 194	1 563	1 631	2 198	2 210	2 749	4 621	7 204	9 552	9 040	11 073	15 928	12 142	
Germany	13 969	18 029	819	1 775	553	587	1 190	1 901	1 203	7 131	2 529	4 263	2 422	-286	
Greece	..	6 145	436	439	485	447	471	683	907	752	1 005	1 135	1 144	977	
Iceland <sup>2</sup>	..	12	..	..	14	23	8	2	-14	-27	6	35	17	..	
Ireland	1 659	1 212	241	168	119	159	-43	89	91	85	99	97	102	88	
Italy <sup>2</sup>	5 698	24 888	605	1 200	1 329	1 071	-21	4 144	6 882	2 181	6 344	2 481	3 210	3 751	
Japan <sup>2</sup>	1 424	3 281	439	416	-10	642	226	1 165	-485	-1 054	1 753	1 368	2 728	86	
Mexico	..	24 418	1 901	2 192	1 542	1 984	2 400	2 634	2 879	3 174	2 634	4 762	4 393	4 901	
Netherlands	10 822	28 203	974	688	610	740	1 497	2 486	3 903	6 648	9 167	5 002	6 994	5 651	
New Zealand	2 598	3 945	275	243	119	227	390	238	156	434	1 686	1 695	1 089	2 376	
Norway	3 074	4 831	424	336	-210	-412	1 023	184	285	1 511	1 004	-291	720	2 058	
Portugal <sup>3</sup>	535	6 918	145	150	194	273	241	465	925	1 740	2 608	2 451	1 914	1 311	
Spain <sup>2</sup>	7 060	46 000	1 801	1 647	1 773	1 945	3 442	4 548	7 016	8 433	13 681	10 423	8 115	6 746	
Sweden	897	8 612	361	223	290	396	1 079	646	1 661	1 809	1 965	6 322	-139	3 786	
Switzerland	..	12 432	..	286	520	1 050	1 778	2 044	42	2 254	4 458	2 613	411	64	
Turkey <sup>4</sup>	228	2 340	55	46	113	99	125	106	354	663	684	810	844	1 016	
United Kingdom	40 503	130 469	5 286	5 132	-241	5 780	8 557	15 450	21 356	30 369	32 889	15 826	16 448	14 536	
United States	56 276	359 650	12 464	10 458	24 748	20 010	35 623	58 219	57 279	67 737	47 916	26 086	9 888	21 366	
TOTAL	188 249	836 329	30 973	33 665	39 951	41 973	68 286	114 629	132 497	165 179	165 109	114 529	99 397	102 676	

1. Data updated in May 1995. Including data for Mexico who became a Member of OECD on 18 May 1994.

2. Reinvested earnings are not included in national statistics.

3. Figures for Portugal are only available from 1975 onward.

4. Cumulated inflows since 1954.

Source: OECD/DAF - Based on official national statistics from the balance of payments converted in US\$ at daily average exchange rate.

Table 2. Foreign direct investment in OECD countries: inflows 1982-1993<sup>1</sup>  
As a percentage of GDP

	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993
Australia	1.4	1.8	0.2	1.3	2.1	2.0	3.2	2.7	2.3	1.6	1.7	0.9
Austria	0.3	0.3	0.2	0.3	0.2	0.3	0.3	0.5	0.4	0.2	0.5	0.5
Belgium-Luxembourg <sup>2</sup>	1.6	1.5	0.4	1.1	0.5	1.6	3.2	4.2	4.1	4.3	4.7	4.9
Canada <sup>2</sup>	-0.3	0.1	0.4	-0.6	0.3	0.8	0.7	0.3	1.2	1.1	0.9	1.1
Denmark	0.2	0.1	0.0	0.2	0.2	0.1	0.5	1.0	0.9	1.2	0.7	1.2
Finland	0.0	0.2	0.3	0.2	0.5	0.3	0.5	0.4	0.6	-0.2	0.4	0.7
France <sup>2</sup>	0.3	0.3	0.4	0.4	0.4	0.5	0.7	1.0	0.8	0.9	1.2	1.0
Germany	0.1	0.3	0.1	0.1	0.1	0.2	0.1	0.6	0.2	0.3	0.1	0.0
Greece	1.1	1.3	1.4	1.3	1.2	1.5	1.7	1.4	1.5	1.6	1.5	1.3
Iceland <sup>2</sup>	0.0	0.0	0.5	0.8	0.2	0.0	-0.2	-0.5	0.1	0.5	0.3	0.0
Ireland	1.3	0.9	0.7	0.8	-0.2	0.3	0.3	0.2	0.2	0.2	0.2	0.2
Italy <sup>2</sup>	0.2	0.3	0.3	0.3	-0.0	0.5	0.8	0.3	0.6	0.2	0.3	0.4
Japan <sup>2</sup>	0.0	0.0	-0.0	0.0	0.0	0.0	-0.0	-0.0	0.1	0.0	0.1	0.0
Mexico	1.9	1.8	1.0	1.9	2.8	3.0	1.7	1.7	1.1	1.7	1.3	1.4
Netherlands	0.7	0.6	0.5	0.5	1.0	1.1	1.8	2.8	3.1	1.7	1.8	1.8
New Zealand	1.2	1.0	0.5	1.0	1.4	0.7	0.4	1.0	3.9	4.0	2.6	5.9
Norway	0.8	0.6	-0.4	-0.7	1.5	0.2	0.3	1.7	1.0	-0.3	0.6	2.0
Portugal	0.6	0.7	0.9	1.1	0.6	1.0	1.7	3.5	4.3	4.6	3.6	1.5
Spain <sup>2</sup>	1.0	1.0	1.1	1.2	1.5	1.6	2.0	2.2	2.8	2.0	1.4	1.5
Sweden	0.4	0.2	0.3	0.4	0.8	0.4	0.9	0.9	0.9	2.6	0.1	2.0
Switzerland	0.0	0.3	0.6	1.1	1.3	1.2	0.0	1.3	2.0	1.1	0.2	0.0
Turkey	0.1	0.1	0.2	0.2	0.2	0.2	0.5	0.8	0.6	0.7	0.8	0.2
United Kingdom	1.1	1.1	-0.1	1.3	1.5	2.2	2.6	3.6	3.4	1.6	1.7	1.5
United States	0.4	0.3	0.7	0.5	0.9	1.3	1.2	1.3	0.9	0.5	0.1	0.3

1. Data updated in May 1995. Including data for Mexico who became a Member of OECD on 18 May 1994.

2. Reinvested earnings are not included in national statistics.

Source: OECD/DAF - Based on official national statistics from the balance of payments.

Table 3. Direct investment abroad from OECD countries: outflows 1971-1993.  
US\$ million

	Cumulative flows		Flows of direct investment abroad											
	1971-1980	1981-1990	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993
Australia	2 510	22 261	693	518	1 402	1 887	3 419	5 096	4 985	3 267	260	3 105	41	900
Austria	578	4 132	142	190	68	74	313	312	309	855	1 663	1 288	1 871	1 404
Belgium-														
Luxembourg <sup>2</sup>	3 213	21 454	-77	358	282	231	1 627	2 680	3 609	6 114	6 600	6 062	10 953	11 409
Canada <sup>2</sup>	11 335	41 847	709	2 633	3 685	3 862	3 501	8 538	3 848	4 583	4 732	5 856	3 688	7 176
Denmark	1 063	6 292	77	159	93	303	646	618	719	2 027	1 509	1 851	2 225	1 379
Finland	605	12 132	85	143	493	352	810	1 141	2 608	3 108	3 263	1 049	406	1 831
France <sup>2</sup>	13 940	85 618	3 063	1 841	2 126	2 226	5 230	8 704	12 756	18 137	26 920	20 501	19 097	12 167
Germany	24 846	86 573	2 481	3 170	4 389	4 804	9 616	9 105	11 431	14 549	23 168	22 879	17 745	11 673
Iceland <sup>2</sup>	..	27	..	..	..	..	2	7	1	8	9	10	27	..
Italy <sup>2</sup>	3 597	28 707	1 025	2 133	2 012	1 820	2 652	2 339	5 554	2 135	7 612	7 326	5 948	7 231
Japan <sup>2</sup>	18 052	185 826	4 540	3 612	5 965	6 452	14 480	19 519	34 210	44 130	48 024	30 726	17 222	13 714
Netherlands	27 829	52 940	2 582	2 267	2 392	2 847	3 021	6 954	4 422	11 373	13 589	12 270	14 096	10 079
New Zealand	375	4 563	87	404	31	174	87	562	615	135	2 365	1 472	391	-1 455
Norway	1 079	8 995	317	360	612	1 228	1 605	890	968	1 352	1 478	1 840	434	885
Portugal <sup>3</sup>	21	374	9	17	8	15	-2	-16	77	85	165	474	687	148
Spain <sup>2</sup>	1 274	8 196	505	245	249	252	377	754	1 227	1 470	2 845	3 574	1 273	2 599
Sweden	4 597	47 820	1 237	1 459	1 506	1 783	3 947	4 789	7 468	10 189	14 588	7 008	237	1 328
Switzerland	..	31 858	..	492	1 139	4 572	1 461	1 274	8 696	7 852	6 372	6 543	5 673	6 539
Turkey <sup>4</sup>	..	-7	..	..	..	..	..	9	..	..	-16	27	133	175
United Kingdom	55 112	185 674	7 145	8 211	8 039	10 818	17 077	31 308	37 110	35 172	18 729	15 597	19 444	25 697
United States	134 354	170 041	4 675	4 889	10 948	13 401	17 089	27 182	15 448	36 835	29 950	31 294	41 004	57 871
<b>TOTAL</b>	<b>302 306</b>	<b>1 005 323</b>	<b>29 295</b>	<b>33 101</b>	<b>45 439</b>	<b>57 101</b>	<b>86 958</b>	<b>131 765</b>	<b>156 061</b>	<b>203 376</b>	<b>213 825</b>	<b>180 752</b>	<b>162 595</b>	<b>172 750</b>

1. Data updated in May 1995. No data available on outflows for Mexico.

2. Reinvested earnings are not included in national statistics.

3. Figures for Portugal are only available from 1975 onward.

4. Includes cumulative investment since 1954.

Source: OECD/DAF - Based on official national statistics from the balance of payments converted in US\$ at daily average exchange rate.

Table 4. Direct investment abroad from OECD countries: outflows 1982-1993<sup>1</sup>  
As a percentage of GDP

	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993
Australia	0.4	0.3	0.8	1.2	-2.0	2.6	2.0	1.2	0.3	0.7	-0.1	0.3
Austria	0.2	0.3	0.1	0.1	0.3	3.3	0.2	0.7	1.0	0.8	1.0	0.8
Belgium-Luxembourg <sup>2</sup>	-0.1	0.4	0.4	0.3	1.4	1.8	2.3	3.8	3.3	2.9	4.7	1.9
Canada <sup>2</sup>	0.2	0.8	0.7	0.8	1.1	1.7	1.1	0.8	0.7	0.9	0.7	1.3
Denmark	0.1	0.3	0.2	0.5	0.8	0.6	0.7	1.9	1.2	1.4	1.6	1.0
Finland	0.2	0.3	1.0	0.7	1.2	1.3	2.5	2.7	2.4	0.9	0.4	2.2
France <sup>2</sup>	0.6	0.4	0.4	0.4	0.7	1.0	1.3	1.9	2.3	1.7	1.4	1.0
Germany	0.4	0.5	0.7	0.8	1.1	0.8	1.0	1.2	1.5	1.4	1.0	0.6
Iceland <sup>2</sup>	0.0	0.0	0.0	0.0	0.1	0.1	0.0	0.1	0.1	0.2	0.4	0.0
Italy <sup>2</sup>	0.3	0.5	0.5	0.4	0.4	0.3	0.7	0.2	0.7	0.6	0.5	0.7
Japan <sup>2</sup>	0.4	0.3	0.5	0.5	0.7	0.8	1.2	1.5	1.6	0.9	0.5	0.3
Netherlands	1.9	1.5	2.0	2.2	1.8	3.3	1.8	5.0	4.7	4.1	4.0	3.3
New Zealand	0.4	1.7	0.1	0.8	0.3	1.5	1.4	0.3	5.4	3.5	0.9	-2.8
Norway	0.6	0.7	1.1	2.1	2.3	1.1	1.1	1.5	1.4	1.7	0.4	0.9
Portugal	0.0	0.1	0.0	0.1	0.0	-0.0	0.2	0.2	0.3	0.7	0.9	0.2
Spain <sup>2</sup>	0.3	0.2	0.2	0.2	0.2	0.3	0.4	0.4	0.6	0.7	0.2	0.5
Sweden	1.2	1.6	1.6	1.8	3.0	3.0	4.1	5.3	6.3	2.9	0.5	0.7
Switzerland	0.0	0.5	1.3	4.9	1.1	0.7	4.7	4.4	2.8	2.8	2.0	2.8
Turkey	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.1	0.0
United Kingdom	1.5	1.8	1.9	2.4	3.0	4.5	4.4	4.2	1.9	1.5	1.6	2.7
United States	0.0	0.2	0.3	0.3	0.4	0.6	0.4	0.7	0.5	0.6	0.6	0.9

1. Data updated in May 1995. No data available on outflows for Mexico.

2. Reinvested earnings are not included in national statistics.

Source: OECD/DAF - Based on official national statistics from the balance of payments.



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