

# Regulatory Reform in Norway

Enhancing Market Openness through  
Regulatory Reform



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## FOREWORD

Regulatory reform has emerged as an important policy area in OECD and non-OECD countries. For regulatory reforms to be beneficial, the regulatory regimes need to be transparent, coherent, and comprehensive, spanning from establishing the appropriate institutional framework to liberalising network industries, advocating and enforcing competition policy and law and opening external and internal markets to trade and investment.

This report on *Enhancing Market Openness through Regulatory Reform* analyses the institutional set-up and use of policy instruments in Norway. It also includes the country-specific policy recommendations developed by the OECD during the review process.

The report was prepared for *The OECD Review of Regulatory Reform in Norway* published in 2003. The Review is one of a series of country reports carried out under the OECD's Regulatory Reform Programme, in response to the 1997 mandate by OECD Ministers.

Since then, the OECD has assessed regulatory policies in 16 member countries as part of its Regulatory Reform programme. The Programme aims at assisting governments to improve regulatory quality — that is, to reform regulations to foster competition, innovation, economic growth and important social objectives. It assesses country's progresses relative to the principles endorsed by member countries in the 1997 *OECD Report on Regulatory Reform*.

The country reviews follow a multi-disciplinary approach and focus on the government's capacity to manage regulatory reform, on competition policy and enforcement, on market openness, specific sectors such as telecommunications, and on the domestic macro-economic context.

This report was by Elisabeth Roderburg under the supervision of Anthony Kleitz of the Trade Directorate. It benefited from extensive comments provided by colleagues throughout the OECD Secretariat, as well as close consultations with a wide range of government officials, parliamentarians, business and trade union representatives, consumer groups, and academic experts in Norway. The report was peer-reviewed by the 30 member countries of the OECD. It is published under the authority of the OECD Secretary-General.

## TABLE OF CONTENTS

EXECUTIVE SUMMARY .....	5
1. MARKET OPENNESS AND THE POLICY ENVIRONMENT IN NORWAY .....	6
1.1 Trade policy and the economic environment.....	6
1.2 State ownership.....	8
1.2 International agreements as catalysts for change.....	9
1.3 Domestic regulatory reform with an impact on trade and investment.....	15
2. THE POLICY FRAMEWORK FOR MARKET OPENNESS: SIX EFFICIENT REGULATION PRINCIPLES .....	17
2.1 Transparency and openness of decision-making .....	17
2.2 Measures to ensure non-discrimination .....	23
2.3 Measures to avoid unnecessary trade restrictiveness.....	25
2.4 Use of internationally harmonized measures .....	31
2.5 Recognition of equivalence of other countries' regulatory measures and results of conformity assessment performed in other countries.....	33
2.6 Application of competition principles from an international perspective.....	37
3. DEVELOPMENTS IN SELECTED SECTORS .....	39
3.1 The telecommunications sector .....	39
3.3 Automobiles and components.....	41
3.4 Electricity.....	42
4. CONCLUSIONS AND POLICY OPTIONS FOR REFORM.....	43
4.1 General assessment of current strengths and weakness .....	43
4.2 The dynamic view: the pace and direction of change.....	44
4.3 Potential benefits and costs of further regulatory reform .....	44
4.4 Policy options for consideration .....	45

## EXECUTIVE SUMMARY

The reduction of barriers to trade and investment internationally has enabled Norway to take advantage of the expanding global market. At the same time a gradually more open market in Norway has provided benefits to consumers and contributed to economic growth and innovation. The progressive liberalization of the Norwegian market has been driven not only by domestic forces, but even more so by regulations that follow from agreements at the regional and international level.

This chapter assesses how regulations and the regulatory process in Norway have impacted on trade and investment, as well as the extent to which trade perspectives are incorporated into the general policy framework for regulations. The assessment is based on six efficient regulation principles developed by the OECD, namely: transparency, non-discrimination; avoidance of unnecessary trade restrictiveness; use of internationally harmonized standards; recognition of equivalence of foreign measures; and competition principles.

In Norway, subsequent to the entry into force of the European Economic Area Agreement in 1994, all regulations that affect the free flow of goods, services, capital and people, with the exception of those for fisheries and agriculture, are subordinate to the provisions of the Agreement. Many, if not most, regulatory processes in areas directly or indirectly affecting trade and investment are initiated in the EU or directed by decisions of the EU. Harmonization of requirements and common rules ensure non-discriminatory treatment within the EEA area. The Agreement has led to liberalization of the Norwegian market and to a more transparent regulation of the economy.

While trade is recognized as important for business and industry, trade concerns do not play a significant role in regulatory processes. To the extent that implications on trade and investment are reviewed prior to regulation, it is normally in the form of an assessment of whether or not there is a contravention of an international obligation. Norway, nevertheless, scores relatively well on the application of the six efficient regulation principles. Yet there is room for improvement, particularly in the design and use of impact assessments, and monitoring the implementation of regulations. There is also a need to continue to reduce burdens on business.

While the Norwegian market is basically open there are product markets that are restricted or distorted, for example agriculture and to some extent fisheries. There are also areas where state owned enterprises have a dominant market position, and where market participants may be unclear about the status and position of such companies.

There are continuing efforts to modernize and simplify the Norwegian regulatory framework and public sector; yet the expectation is that these efforts, as in the past, will mainly result in incremental and ad hoc improvements due to the consensus-based decision making system. The lack of a driving force in terms of a need to reduce deficits or unemployment has also made it difficult to promote comprehensive reform.

As traditional barriers to trade and investment have fallen, the impact of domestic regulations on international trade and investment has become more apparent. While regulations generally aim at improving the functioning of market economies in a range of fields, such as market competition, business conduct, the labor market, consumer protection, public health and safety or the environment, they may indirectly distort international competition and affect resource allocation and productive efficiency. Thus regulations should be designed in a way that is consistent with an open trading system and that supports international competition. This Chapter considers whether and how Norwegian regulatory regimes, processes and practices affect market access and presence in Norway. The reverse scenario - how trade and investment affect the fulfillment of legitimate policy objectives of regulations - is beyond the scope of this report.

## **1. MARKET OPENNESS AND THE POLICY ENVIRONMENT IN NORWAY**

### ***1.1 Trade policy and the economic environment***

Norway, while one of the richest countries in the world, measured in GDP per capita, is a relatively small and sparsely populated country<sup>1</sup>. It is well-endowed with natural resources such as oil and gas, hydropower, fish, and timber; and natural resources have been and continue to be a main backbone of the productive structure of the economy. Up until the 1950s Norway, besides having one of the world's largest merchant fleets, was almost exclusively an exporter of raw materials and semi-processed goods. Despite the intensive technological and industrial developments that have taken place since then, natural resources still account for the bulk of Norwegian exports.<sup>2</sup> Norway's extensive coastline has also contributed to a strong shipping and shipbuilding tradition. (See Table 1)

Given this productive structure, Norway is highly dependent on international trade, and has evolved into a very open economy with some notable exceptions. Measured as a share of GDP, gross trade flows are higher than in most other countries. Exports of goods and services accounted for 46 per cent of GDP in 2001, while imports accounted for around 30 per cent. The importance of shipping, which represents Norway's second largest source of export revenue, has also contributed to support for a liberal trade regime. As 90 per cent of the Norwegian fleet is engaged in cross trades, the Norwegian shipping industry depends on open market solutions and a well functioning multilateral trading system.<sup>3</sup>

The overriding objective of Norwegian trade policy is to provide for an open, liberal and predictable trading environment that also contributes to sustainable development. These policy objectives are pursued along two tracks: a closer European integration and through multilateral liberalization.<sup>4</sup> A liberal Norwegian trade regime has also consistently been perceived as an important means of promoting growth and structural adjustment domestically. The *policy environment* for market openness in Norway is thus basically positive; yet, as in many other OECD countries, the public debate on trade issues has in recent years increasingly focused on giving priority to health-, environmental- and food- and consumer safety-issues. Thus, while the importance of trade to the economy is recognized in government, vocal parts of the public appear to be increasingly wary of perceived detrimental spin-offs of an open trade regime on everything from social and environmental standards, to distribution of wealth and the quality of life.<sup>5</sup>

**Table 1. Product composition of Norwegian Trade (Million US\$)**

	1961	1990	2000	1961	1990	2000
	Imports			Exports		
Food and live animals	135	1 286	1 765	139	2 281	3 748
<i>of which:</i>						
<i>Fish, crustaceans, molluscs, preparations thereof</i>	3	198	434	102	2 027	3 435
Beverages and tobacco	14	165	252	1	23	24
Crude materials, inedible, except fuels	181	2 158	2 376	143	1 112	717
Mineral fuels, lubricants and related materials	135	1 113	1 206	17	16 237	38 275
<i>of which:</i>						
<i>Petroleum, petroleum products and related materials</i>	117	952	1 057	14	13 617	32 145
<i>Gas, natural and manufactured</i>	0	1	1	0	2 461	5 900
Animal and vegetable oils, fats and waxes	11	43	107	38	28	54
Chemicals and related products, n.e.s.	96	2 136	2 967	82	851	1 554
Manufactured goods classified chiefly by material	306	4 552	5 000	368	5 937	5 952
Machinery and transport equipment	629	11 326	15 302	116	4 711	5 526
<i>of which:</i>						
<i>Road vehicles (including air-cushion vehicles)</i>	88	1 533	2 850	5	367	524
Miscellaneous manufactured articles	101	4 077	4 949	22	854	1 351
Commodities and transactions not elsewhere classified	4	371	434	5	2 009	2 700
<b>Total</b>	<b>1 614</b>	<b>27 228</b>	<b>34 358</b>	<b>929</b>	<b>34 043</b>	<b>59 899</b>

Source: OECD

Norway has a liberal trade and investment regime, with the agricultural sector being a prominent exception. Agricultural tariffs are among the highest in the OECD and unpredictable temporary tariff reductions which tend to favor nearby suppliers are used. Budgetary support to the sector also remains high, amounting to around 70 per cent of all budgetary support in 2001, despite having been reduced by around 25 per cent in real terms the past ten years.<sup>6</sup> Some restrictions on foreign investments remain in the fisheries sector, which is also extensively regulated.

For almost all industrial goods (which includes fish and fish products), however, tariffs are zero, and non-tariff import restrictions are minor. Norway has consistently built down barriers to trade through participation in successive trade rounds in the GATT, and has a long-standing practice of providing market openings for the developing countries. It is the Government's expressed goal to **remove all tariffs on industrial goods**, in order to reduce costs for business and to save resources in customs treatment.<sup>7</sup>

Norway runs a wide ranging GSP-scheme granting almost all industrial imports from the developing countries duty free entry. Most agricultural products enter either duty-free or with reduced tariffs under the scheme. With effect from July 1 2002, all products from the least developed countries can enter free of duty and without quantitative restrictions. Norway has also dismantled all quantitative restrictions on textiles and clothing and has duty-free treatment of textiles.

Norway's WTO GATS schedule grants unlimited market access and national treatment in a large number of services. Norway has not taken recourse to anti-dumping or countervailing-duties, nor safeguard measures, since the mid 1980s. Norway has not participated as a defendant in a dispute since the inception of the WTO, and has only participated as a plaintiff on one occasion.<sup>8</sup>

A distinctive feature of Norway's economy is the size of the offshore petroleum sector. Norway is the third largest exporter of crude oil in the world after Saudi Arabia and Russia, and oil and gas production account for nearly one quarter of Norway's GDP. Oil and gas exports account for around 43 per cent of total export earnings (2001). High oil prices particularly since 2000 have contributed to an extremely large current account surplus which reached 15 per cent of GDP in 2001. It is projected at NOK 206.2 billion for 2002 (around 14 per cent of GDP).

Norway has used the substantial revenue generated by the offshore oil and gas sector to build up a Government Petroleum Fund for long-term investment in financial assets overseas. The Fund was established in 1990 and the first funds transferred to it in 1995. Overall capital in the Fund at the end of 2003 is estimated at about NOK 846 billion, compared with NOK 666 billion at the end of 2002.<sup>9</sup>

While income from the offshore sector has benefited the Norwegian economy and made it possible for Norway to maintain and strengthen an extensive welfare system<sup>10</sup>, it has also masked the need for structural reforms and has made their implementation more difficult. The traditional manufacturing industries are in decline, and rapid wage gains have caused a sharp deterioration in competitiveness since the mid-1990s.<sup>11</sup> The country is currently witnessing lower investments in the mainland business sector, and a weaker development in the exports of traditional goods, while consumption growth has been buoyant. Projected GDP growth for 2002 is, nevertheless, estimated at 2.0 per cent (2001 GDP = 1510.9 billion NOK) due to increased investments in the petroleum sector and stronger growth in petroleum production. Unemployment has increased significantly the last year, yet remains relatively low at around 4.4 per cent. The supply of labor can in the medium to long term become a serious constraint on growth.

Norway's public outlays are among the highest in the OECD.<sup>12</sup> The public sector is expanding and public expenditures exceed 40 per cent of GDP. The public sector employs around 30 per cent of the country's work-force.

In their book *Commanding Heights - The Battle Between Government and the Marketplace That is Remaking the Modern World*, Yergin and Stanislaw argued that the "wave of privatization" sweeping Western Europe in the late 1990s was driven by two factors: the need to reduce deficits, and unemployment.<sup>13</sup> Norway, until the recent surge in unemployment, has not been struggling with neither of these challenges, and has thus had the liberty to continue fine-tuning a mixed-economy welfare state model.

## **1.2 State ownership**

Another striking feature of the economy is the relatively high level of state ownership in Norwegian businesses. A large portion of government ownership is related to the use of natural resources, natural monopolies or regional policy considerations, but public ownership has also emerged due to other factors, for example as in the banking sector in response to the banking crisis in the late 1980s.<sup>14</sup>

The state ownership share of companies listed on the Oslo Stock Exchange was just below 40 per cent at the end of January 2002,<sup>15</sup> and today amounts to a little more than 40 per cent. While this concentration of state wealth has been made possible by oil revenue, it is also a reflection of a policy tradition emphasizing national ownership of strategic sectors.

"The Norwegian mixed economy has also stretched beyond its classic common functions in that the public and the private sectors work in close cooperation to achieve overall asset creation. Particularly since the war, the government has actively participated in financing all types of enterprise, for instance through the state banks, government funds and transfers."<sup>16</sup>

State ownership takes a number of forms ranging from portfolio investments by the National Insurance Fund or capital investments through the Regional Development Fund (SND) to direct ownership of AS Vinmonopolet (the national wine and liquor monopoly retailer) or to direct full or partial ownership in individual companies. A number of companies have been partially or fully privatized in recent years (19 in the period 1999-2002), notably Statoil ASA and Telenor ASA, which both have been partially privatized and listed on the Oslo Stock Exchange. The extent of companies that are partially state-owned is now larger than those that are fully owned.<sup>17</sup> Most of the state-owned companies with book values of equity



exceeding NOK 1 billion are listed on the Oslo Stock Exchange, with the exceptions being Statkraft SF (power generation), Statnett SF (main electricity grid), NRK AS (broadcasting), NSB AS (railways), Posten Norge AS (postal services), Norsk Tipping AS (lottery) and Cermaq ASA (fish feed and farming).

State ownership may lead to conflicts between the State's role as an owner and as a regulatory authority. The current Government has attempted to reduce such conflicts by allocating ownership responsibility to one Ministry and regulatory responsibility to another, for example for SIVA SF, SAS AF, Statkraft SF and Grødegaard AS. But this has not been done across the board, for example, ownership responsibility for Statoil ASA has remained with the Ministry of Oil and Energy.

In a survey of international business leaders conducted in connection with a Global Competitiveness Report (2000) the prevalence of state involvement in Norwegian business and industry was pointed to as a negative factor affecting foreign investment in Norway. "The level of state ownership sends a signal that the state will give priority to itself and that the country is not well developed from a capital markets perspective."<sup>18</sup>

In a White Paper presented to Parliament in the Spring of 2002 the Government carried out a broad review of some 40 companies that are wholly or partly state owned, and suggested reduced state ownership or complete withdrawal where there is no reason for state ownership.<sup>19</sup> The Government points out that state ownership is not a goal in itself and that "future state ownership should be limited to companies of an administrative nature and to companies where ownership is clearly and transparently politically motivated."<sup>20</sup> The majority in Parliament saw no impending need to reduce state ownership. Instead Parliament appears to be focused on how to "improve state ownership".<sup>21</sup>

In the debate on state ownership a majority requested that the Government return with an analysis of what constitutes improved state ownership. The Government has subsequently appointed a preparatory committee (Statseierskapsutvalget) which will address this issue and present recommendations on improving the organization and management of State ownership, including the possibility of transferring the administrative responsibility for individual companies out of the ministry to specialized administrative companies. While Parliament authorized further down-sales in some companies it also requested the Government to take an ad-hoc approach and insisted that the government return with specific proposals for future sales of State shares concerning other companies.<sup>22</sup> (See Chapter 5 for an extensive discussion of state ownership in Norway.)

## **1.2 *International agreements as catalysts for change***

Norway is party to a number of international agreements, global, regional and bilateral that underpin market-openness.<sup>23</sup> Norway was among the founding members of the GATT (General Agreement on Tariffs and Trade), subsequently the WTO, and the European Free Trade Association (EFTA). The EFTA countries have concluded a total of 19 free trade agreements outside of the EU. Norway also adheres to the OECD Code of Liberalisation of Capital Movements and the National Treatment Instrument. Norway, along with Iceland and Liechtenstein (the latter from May 1995), are also party to the European Economic Area (the EEA Agreement) which ensures that the three countries are an integral part of the EU's internal market, except for in fisheries and agriculture.<sup>24</sup> Given the extensive net of preferential trade agreements which provide duty free treatment, the current industrial tariffs have limited effects. The Government, as mentioned, has indicated that its goal is to remove all industrial duties.

Norway's trade flows are and have traditionally been dominated by trade with the EU countries. The economy is in many ways more closely integrated into the EU's single market than some EU members. Given that roughly three-quarters of Norwegian exports, in value terms, go to the EU and 60 per

cent of imports (also in value terms) originate in the EU, and around 70 per cent of the stock of Norwegian outward direct investment are in EU countries, the EEA Agreement is considered essential for safeguarding Norwegian export industries' market access to the EU's single market.

Even though Norway has no specific policy to promote foreign direct investments (FDIs), inward direct investments have more than tripled the past decade, and reached NOK 269 billion at the end of 2000. Norwegian outward direct investments have exceeded inward investments since 1994. The EU accounts for the largest share of foreign direct investments (FDIs) - around 77 per cent at the end of 2000. Traditionally FDIs have varied strongly over the years since annual data tend to be influenced by major single operations, particularly in the oil and gas sector since the early 1970s.

Towards the end of July 2002 around 27.5 per cent of the value of stocks on the Oslo Stock Exchange were foreign owned, this figure includes portfolio investments. The figure does, however, not give the full picture, as companies that are 100 per cent foreign owned are not listed on the Oslo Stock Exchange.<sup>25</sup>

**Table 2. Norway's Major trading partners (Million US\$)**

	1990	1995	2000	1990	1995	2000
	Exports			Imports		
United Kingdom	8 913	8 295	12 374	2 420	3 203	2 787
Netherlands	2 661	3 817	6 857	1 073	1 458	1 340
Germany	3 794	5 312	6 171	3 856	4 558	4 080
France	2 625	3 266	5 998	1 013	1 447	1 373
Sweden	3 954	4 131	5 042	4 243	5 074	5 047
United States	2 152	2 511	4 553	2 395	2 187	2 804
Canada	837	1 602	3 392	593	703	981
Denmark	1 649	2 113	2 293	1 798	2 488	2 189
Belgium-Luxembourg	730	1 340	2 113	634	947	652
Finland	934	1 153	1 299	843	1 291	1 221
Italy	890	1 095	1 119	863	1 155	1 081
Japan	566	741	989	1 174	1 254	1 774
Rest of the World	4 339	6 608	7 699	6 322	7 208	9 029
<b>Total</b>	<b>34 043</b>	<b>41 984</b>	<b>59 899</b>	<b>27 228</b>	<b>32 974</b>	<b>34 358</b>
<i>of which:</i>						
<i>EU 15</i>	27 039	32 401	46 018	17 878	23 421	21 486
<i>North America</i>	3 018	4 128	8 006	2 994	2 951	3 852

Source: OECD

The EU countries' share of FDIs in Norway has increased significantly since the EEA Agreement entered into force: it has gone up from a 50 per cent share in early 1994 to 77 per cent in 2000. Earlier the United States was the single largest investing country in Norway accounting for 25 per cent of foreign investment stocks in the early 1990s. Norway's growth in outward direct investments since 1994 have been stronger than inward FDIs. The greatest increases in Norwegian outward investments have taken place outside the EEA. Trade with the EEA countries has expanded significantly since the entry into force of the Agreement, yet both Norwegian exports and imports to and from countries outside of the EEA have grown more than trade with the EEA.

**Table 3. Foreign Direct Investments into and from Norway (Million US\$)**

Inward Position (year end)		Outward Position (year end)	
<b>1990</b>	<b>12 403</b>	<b>1990</b>	<b>10 889</b>
<i>of which :</i>		<i>of which :</i>	
<i>OECD area</i>	12 237	<i>OECD area</i>	10 388
<i>European Union</i>	5 211	<i>European Union</i>	8 139
<i>United States</i>	5 653	<i>United States</i>	1 781
<b>1995</b>	<b>19 836</b>	<b>1995</b>	<b>22 521</b>
<i>of which :</i>		<i>of which :</i>	
<i>OECD area</i>	18 319	<i>OECD area</i>	20 598
<i>European Union</i>	10 744	<i>European Union</i>	16 666
<i>United States</i>	5 104	<i>United States</i>	3 194
<b>1999</b>	<b>28 840</b>	<b>1998</b>	<b>31 577</b>
<i>of which :</i>		<i>of which :</i>	
<i>OECD area</i>	27 501	<i>OECD area</i>	29 601
<i>European Union</i>	20 569	<i>European Union</i>	22 444
<i>United States</i>	5 340	<i>United States</i>	6 021

*Source: OECD Financial Statistics Unit- Based on national Sources.*

The EEA Agreement entered into force 1 January 1994 while Norway, Sweden, Finland and Austria were negotiating membership with the European Union. Switzerland had participated in the negotiations on the EEA but had declined to join the Agreement after a national referendum in December 1992. Norway subsequently declined EU-membership after a national referendum in November 1994, and was left standing with the EEA-Agreement. The balance of the Agreement, however, had been significantly altered after Sweden, Finland and Austria became EU members, with the EFTA-side consisting of Norway, Iceland and Liechtenstein.<sup>26</sup> With the impending expansion of the European Union the balance of the Agreement will become even more altered.

**Table 4. Trends in trade in goods 1994-2001 with the EEA-countries. Average yearly growth in per cent. (Value terms.)**

	EEA-countries	Others	Total
Imports of goods	5.7	7.1	6.1
Exports of goods	11.2	12.3	11.4

Source: *St.meld. nr. 27(2001-2002)*.

Under the Agreement, Norway was obliged to implement into Norwegian law EU directives and regulations governing the free exchange of goods and the free movement of persons, capital and services, around 850 original acts with 650 amendment acts.<sup>27</sup> The Agreement itself was made into law in 1992, and a large number of Norwegian laws and secondary regulations were amended to bring them into conformity with EU regulations. Due to the subsequent incorporation of new EU acts, by the end of 2001, there was a total of 2681 binding acts (directives, regulations and decisions) applicable under the Agreement.<sup>28</sup>

The Agreement provides for common competition rules and rules for state aid and government procurement, as well as harmonization of rules and standards for goods and services for health, safety, environmental and consumer protection reasons. In addition the Agreement covers cooperation in a wide range of other areas, such as research and development, education, environmental policy, consumer policy, social policy, culture, gender equality, tourism and small and medium sized enterprises.

With regard to investment regulations, the Agreement led to a major change. Prior to 1994 Norway restricted foreign direct investment both by sector-specific and by horizontal measures.<sup>29</sup> The Industrial Concession Act specified that foreign ownership of Norwegian firms above one-third of voting share capital required government approval. Specific restrictions applied to fisheries and maritime transport. With effect from 1 January 1995 a new law was adopted relating to the acquisition of businesses in Norway. The act provides for a non-discriminatory reporting requirement when an investor or a group of investors acquires a number of shares that give them ownership of more than one-third, one half, or two thirds of a company's share capital or assets representing a business undertaking. The Act was based on the principle of equal treatment of all investors and replaced the industrial concession act which previously applied to foreign investors. This law was repealed with effect from 1 July 2002, and will reduce reporting costs for investors.

Norway also amended its legislation on market access for foreign financial institutions in accordance with the relevant EC Directives. The legislation on foreign acquisitions does not distinguish between EEA Contracting parties and non EEA countries. Establishment in Norway of a branch of financial institutions such as credit institutions and insurance companies is subject to the "single license" pursuant to Norwegian legislation implementing EEA relevant EC directives. Such market access for both EEA and non-EEA suppliers is granted on a national treatment basis. Non EEA institutions are, contrary to EEA institutions, only in certain situations allowed to conduct cross border supply of financial services into Norway.

The EEA Agreement also resulted in new regulations on public procurement in 1994. The Agreement obliged Norway to apply certain procedures when procuring supplies, services and works with a value exceeding given thresholds. The regulation aims to provide equal treatment to all suppliers, service providers and contractors *established within the EEA*. In response to the amending *Public Procurement Directive (GPA) (97/52/EC)* and the amending *Utilities Procurement Directive (GP) (98/4/EC)*, Norway adopted comprehensive new national legislation in 2001 which also ensured implementation of the *Supply, Service, Works and Utilities Procurement Directives (93/36/EC, 92/50, EC, 93/38/EC)* as well as the corresponding *Remedies Directive (89/665/EEC, 92/13/EEC)*.

The Act on Public Support ensures that new support measures have since 1994 had to be approved by the EFTA Surveillance Authority (ESA) prior to enactment. The aim is to ensure that conditions of competition within the EEA for enterprises are equal and not distorted by State measures. The general rule is that State aid which distorts or threatens to distort competition and affect trade is prohibited, with certain exceptions.<sup>30</sup> The ESA continuously reviews and adopts guidelines for public support. For example, in May 2001, new guidelines were adopted for environmental support, covering not only traditional support measures, but also regulations for exemptions from or reductions in environmental surcharges. Norway is currently reviewing its environmental support measures in order to bring them into conformity with the new guidelines.<sup>31</sup>

The EU and the EEA Agreement have allowed state support for the shipbuilding industry under certain conditions. In Norway support for this industry has amounted to around 30 per cent of support for the industrial- and service sectors. The support was halved in 2001, and support for contracted ships was terminated for contracts entered into after January 1 2001 as a result of EEA-regulations. The EU, however, reintroduced support for the construction of container ships and product- and chemical tankers

after a failure to reach agreement with South Korea on restricting support for the sector. The Norwegian government has subsequently proposed a reintroduction of support for such shipbuilding contracts entered into from 15 March 2003 to 31 March 2004. The level of support available has been estimated at 6 per cent of the contract value.<sup>32</sup>

A number of changes to regulations also derive from the Agreements under the World Trade Organization, notably the change from quantity based import restrictions to a tariff based import regime for agriculture, and liberalization of the import regime for clothes and textiles. Norway bound its entire tariff schedule during the Uruguay Round, and in 1995 accelerated implementation of its commitments for tariff reductions on agricultural commodities by adopting the year 2000 bound tariff-rate targets.

The EEA Agreement has not only led to a significant liberalization of the Norwegian market, it has also had profound effects on the Norwegian regulatory framework and process. Since 1992 there has been a dramatic increase - an increase of around 70 per cent - in the number of regulations adopted in Norway on a yearly basis. Today the number of regulations adopted per year is more than two times the number adopted prior to 1992. In addition to the expanded number of regulations, the coverage of the regulations has also been broadened. According to the central web-site for laws and regulations, this increase is almost exclusively a reflection of the regulatory commitments that flow from the EEA Agreement.<sup>33</sup>

The EEA Agreement is dynamic - providing for *continuous transposition* of new Community acts adopted by the EEA Joint Committee. The last three years this has involved more than 220 regulations a year (excluding the veterinary sector). Around 6 per cent (on a yearly basis) of the EEA Joint Committee decisions require changes in laws - the rest are dealt with through secondary regulations or internal decisions. In order to ensure a well-functioning agreement, legislation within the EEA Area should be as uniform as possible and implementation of new regulations should be as rapid and effective as possible. Ideally new regulations should take effect at the same time throughout the EEA Area, but this depends on a timely adoption by the EEA Joint Committee. The large number of acts being incorporated into the EEA Agreement is a major challenge for the Norwegian public administration. Norway has had a transposition deficit for a number of years, but is now above the EU average. (See Table 1-5)

**Table 5. Transposition deficit of Internal Market directives** - denotes the proportion of internal market directives for which no national measures have yet been adopted, or which have only been partially implemented into national law. The EC average for May 2002 is 1.8 per cent.

	<b>NORWAY</b>	<b>LIECHTENSTEIN</b>	<b>ICELAND</b>
May 00	4.1%	2.2%	4.6%
Nov 01	1.7%	2.3%	1.4%
May 02	0.5%	1.6%	0.8%
Nov 02	1.0%	2.1%	1.4%

Source: *Internal Market Scoreboard - EFTA States*, EFTA Surveillance Authority Report, May 2002 - No 10.

Decision-making under the EEA can be divided into four phases: *the preparatory phase*, where the EU Commission prepares proposals for new regulations (the EU acquis encompasses Directives, Regulations and Decisions, the term “regulation” is here used to cover all three); *the adoption phase*, where the proposed regulations are adopted by the EU Council and Parliament; *the incorporation phase*, where the regulations are incorporated into the EEA Agreement; and finally *the transposition phase*, where incorporated regulations are transposed into Norwegian law or secondary regulation.

The EEA Agreement originally provides for participation from the EEA EFTA States in the regulatory formulation process. Such participation has, however, become more and more difficult, and it is characterized as limited by the Government.<sup>34</sup> One of the few opportunities Norway has to attempt to influence new regulations or directives is through experts in the European Commission’s preparatory stage, provided that there is prior knowledge of imminent regulation. Often proposals may be circulated immediately prior to an expert meeting or at the meeting itself, allowing an expert little or no time to consult with potentially affected parties. An increasing share of EU regulations are dealt with and updated by specialized committees, yet the EEA EFTA experts are precluded from participating in the formal parts of such meetings. Currently the EU is engaged in a number of strategies that the EEA EFTA countries are not party to despite their implication for the well-functioning of the single market, notably the Lisbon Strategy. Finally, the Norwegian Government has observed that the European Commission in recent years has shown less interest and effort in keeping the EEA EFTA States informed about EU developments and to find solutions that take into account EEA EFTA concerns.<sup>35</sup>

In reality Norway has little or no possibility to influence regulations once a proposal has been sent to the Council and Parliament. After EU approval of a regulation, Norway is, as mentioned, obliged to implement it into the Norwegian regulatory framework, provided that it is relevant to the EEA-Agreement.<sup>36</sup>

The Government has established a number of routines and committees to deal with EEA cooperation, yet the level of resources in the administration has not increased, despite the large workload entailed. The Government admits that it is a challenge to keep abreast of new regulatory initiatives from the Commission, to inform Norwegian actors about impending regulations, and to communicate Norwegian concerns to the Commission and experts in EU member countries, as well as to the other EU member states.<sup>37</sup>

On many issues Norwegian views and concerns will have a counterpart within the European Union. However, there are issues and sectors where Norwegian interests may diverge a great deal from EU concerns, For example given Norway’s productive structure. Norway’s interests as a major oil and gas exporter do not necessarily correspond to those of EU importers. Norway’s position as a major fish exporter is another example.

On the EFTA side, the EEA Agreement also led to the establishment of an independent surveillance authority, the EFTA Surveillance Authority (ESA), (See Box) and an EFTA Court which has jurisdiction in cases where the surveillance authority finds that an EFTA state has acted in contravention to the Agreement. In addition two advisory bodies were established that participate in EEA consultations, the EEA Parliamentary Committee, and the EEA Consultative Committee. The latter is comprised of members from the business and trade union communities.

### **Box 1. EEA and the EFTA Surveillance Authority**

The objective of the Agreement on the European Economic Area (EEA Agreement) is to establish a dynamic and homogeneous European Economic Area between the EC Member States and the EFTA States, which are parties to the Agreement (Iceland, Liechtenstein and Norway), based on common rules and equal conditions of competition. To this end, the four fundamental freedoms of the internal market of the European Community are extended to the EFTA States as are a wide range of accompanying Community rules and policies.

The Agreement contains basic provisions - which are drafted as closely as possible to the corresponding provisions of the EC Treaty - on the free movement of goods, persons, services and capital, on competition and other common rules, such as those relating to State aid and public procurement. The Agreement also contains provisions on a number of policies relevant to the four freedoms, such as labor law, health and safety at work, environment, consumer protection and company law. The Agreement contains both basic provisions and secondary Community legislation (EEA Acts). New EEA Acts are included in the Agreement through decision of the EEA Joint Committee.

The implementation and application of the EEA Agreement within the Community is monitored by the European Commission, whereas the EFTA Surveillance Authority (ESA) carries out the same tasks within the EFTA pillar. In order to ensure a uniform surveillance throughout the EEA, the two bodies cooperate, exchange information and consult each other on surveillance policy issues and individual cases.

A central task of the EFTA Surveillance Authority is to ensure that the EFTA States fulfil their obligations under the Agreement. In general terms this means that the Authority is to ensure that the provisions of the Agreements are properly implemented in the national legal orders of the EFTA States and correctly applied by their authorities. This task is commonly referred to as general surveillance.

In addition to general surveillance ESA has extended competence in three fields: public procurement, competition and State aid. With respect to public procurement ESA ensures that utilities, and central, regional and local authorities carry out their procurements in accordance with the relevant rules. In the competition field ESA carries out surveillance of practices and behavior of market players. The Authority is entrusted with wide powers of investigation, including powers to make on the spot inspections.

With regard to State aid, ESA keeps under constant review all systems of existing aid in the EFTA States and, where relevant, proposes appropriate measures to ensure compatibility with the Agreement. New aid or alterations to existing aid shall be notified to the Authority. If ESA has objections to a notified measure it may start an investigation procedure. If the aid is not in conformity with the Agreement, ESA may decide that the State must abolish or alter the measure.

Source: EFTA Surveillance Authority, *2001 Annual Report*

### **1.3 Domestic regulatory reform with an impact on trade and investment**

The extensive social welfare system has evolved concomitant with broad and detailed central regulations. In the course of the past twenty years, however, Norway has, as have most other OECD countries, periodically reviewed regulations with the aim of modernizing and simplifying the framework while also adapting it to changing public demands. These reviews have been ad hoc, though, rarely aiming at a comprehensive goal other than to weed out obsolete regulations or to simplify regulations.

“Today there is no general established procedure for systematic updating or renewed assessment of existing legislation. Existing primary and secondary legislation are subject to reviews in a relatively haphazardly manner and to various extent in different sectors.”<sup>38</sup>(*unofficial translation*)

As in many other OECD countries, a wave of regulatory reform took place in the mid 1980s which focused on **privatization** and **giving consumers greater choice**. The reform period resulted in inter alia expanded opening hours for banks and shops, alternative providers of broadcasting, deregulation of housing, credit and currency markets, and greater flexibility in regulations governing the workplace. While the focus on consumers continued, the focus on privatization was halted with the return of a social democratic government in 1986.

In recent years the focus has been on **simplifying the regulatory framework**, and presently the emphasis is on **modernizing the public sector**. There is, however, a general consensus in Norway “that the public sector must have a broad and comprehensive responsibility for developments in society, social security and individual welfare.”<sup>39</sup>

In 2001 a three year project aimed at cleaning up and simplifying secondary regulations was completed. The project resulted in a reduction in the number of secondary regulations – more than 420 regulations were eliminated - and in a number of proposals which are currently under review by the Ministry of Justice.

The efforts in the Modernizing the Public Sector program concentrates on four objectives: a less complex public sector; public services adapted to individual needs; an efficient public sector; a public sector that promotes productivity and efficiency, and an inclusive and motivating human resource policy. Simplification of the regulatory framework continues to be a part of the effort, as the *Action Plan for Simplifying Norway*, which was presented by the Minister of Trade and Industry on 23 October 2002, is an indication of. The key policy instruments for improving the public sector are decentralization and delegation, while using incentives to increase user-orientation and improved cost efficiency.

In addition to the measures that have been undertaken the past two decades to simplify, clarify, and make more user-friendly the whole regulatory framework, a number of new or amended regulations have been enacted that have directly contributed to market openings for trade and investment. While the most significant of these changes have emanated from the EEA agreement, notably changes to regulations governing investment policies, government procurement, harmonization of standards, competition policies and state aid, Norway has also enacted a number of unilateral regulatory changes.

One prominent example is the deregulation of the electricity market by the Energy Act of 1990. In addition to obligations deriving from the WTO Agreements, Norway has effectuated a number of tariff reductions and elimination. Since 1995 more than 3150 tariffs for industrial goods have been eliminated on an MFN-basis. After the most recent elimination in July this year, tariffs only remain on some 320 industrial tariff lines (out of a total of some 5871 industrial tariff lines). The Government has recently proposed eliminating some 130 tariffs for some agricultural products.<sup>40</sup>

These tariff cuts have been motivated by a wish to establish a simpler and more streamlined tariff structure. Given the plethora of free-trade agreements and the GSP, importers and business are faced with complex rules of origin in order to import on a duty-free basis. These measures thus represent cost-saving for business as well. The average Norwegian MFN rate on industrial products was 2.1 per cent in 2001 and has been further reduced in 2002 as a result of the tariff eliminations.



Norway also has recently (1 October 2002) abolished a surcharge on investments, *Investeringsavgiften*, which was levied on both Norwegian and foreign investments. The surcharge of 7 per cent (originally 13 per cent) which was introduced as a temporary measure for fiscal reasons in 1970 had been identified by the business community as an obstacle to investments in Norway. A total of fifteen secondary regulations were abolished as a consequence of the decision, and twelve others will be considerably simplified.<sup>41</sup>

## **2. THE POLICY FRAMEWORK FOR MARKET OPENNESS: SIX EFFICIENT REGULATION PRINCIPLES**

An important way to ensure that regulations do not unnecessarily reduce market openness is to build the “efficient regulation” principles into regulatory processes across the public administration for social and economic regulations, as well as administrative formalities. “Market openness” refers to the ability of foreign suppliers to compete in a national market without encountering discriminatory, excessively burdensome or restrictive conditions. These principles, which have been elaborated in the 1997 *OECD Report on Regulatory Reform* and developed further in the Trade Committee are:

- Transparency and openness of decision making;
- Non-discrimination;
- Avoidance of unnecessary trade restrictiveness;
- Use of internationally harmonized measure;
- Recognition of equivalence of other countries’ regulatory measures; and
- Application of competition principles.

These principles have been identified by trade policy makers as key to market-oriented and trade and investment-friendly regulation. They reflect the basic principles underpinning the multilateral trading system, concerning which many countries have undertaken certain obligations in the WTO and other contexts. The intention in the OECD country reviews of regulatory reform is not to judge the extent to which any country may have undertaken and lived up to international commitments relating directly or indirectly to these principles, but rather to assess whether and how domestic instruments, procedures and practices incorporate the principles and successfully contribute to market openness. Similarly, the OECD country reviews are not concerned with an assessment of trade policies and practices in Member countries.

### **2.1 *Transparency and openness of decision-making***

Transparency in the regulatory process is important to ensure that all parties affected by regulations have an opportunity to provide input and feed-back as regulations are developed. In the stage of implementation, transparent regulations can minimize information costs and facilitate market access by any market player. It can also enhance confidence in regulations among the public. Transparency can be ensured by providing full opportunities for comments on draft regulations, by giving the general public full access to detailed updated information concerning regulations, as well as by contestable appeal procedures. Transparency and openness of regulatory procedures are particularly important for foreign parties since they are often newcomers and can easily be disadvantaged by the different administrative tradition and lack of access to the informal consultation process.

Transparency can be achieved through a variety of means, including systematic publication of proposed rules prior to entry into force, use of electronic means to share information (such as the Internet), dialogue with affected parties, including well-timed opportunities for public consultation and comment,

and rigorous mechanisms for ensuring that resulting feedback is given due consideration prior to the adoption of a final regulation. At the same time, parties wishing to voice concerns about the application of existing regulations should have appropriate access to appeal procedures. Such approaches introduce opportunities for concerns to be vetted and addressed before they escalate, helping to avoid trade frictions later on.

Norway's regulatory framework is basically very transparent. Laws and secondary regulations are easily accessible, free of charge, at a central web-site [www.lovdata.no](http://www.lovdata.no). The database contains existing acts of law and subordinate regulations which have been furnished for publication in the *Law Gazette*. Laws and regulations are continuously consolidated; that is amendments are built into existing regulations, making the texts comparatively user friendly. There are a total of around 715 laws and 11500 secondary regulations.

A notable exception is the regulatory framework for the agricultural sector, which is perceived as highly non-transparent both by Norwegians and foreign market actors. The Norwegian Ministry of Finance has characterized the "*Farm Agreement*" (*Jordbruksavtalen*), which inter alia establishes support levels and market prices for agricultural products on a yearly basis, as "extremely complex, covering around 100 individual schemes."<sup>42</sup>

### 2.1.1 *Transparency in the rule-making process*

Norway has a strong tradition of consultation in decision-making. Consultation procedures prior to enactment of laws and regulations are mandatory. Section 37 of the Public Administration Act of 10 February 1967 ensures public participation in the decision-making process. Public and private institutions and organizations for enterprises, professions and skilled trades or interest groups which the regulation concern or will concern, or whose interests are particularly affected, shall be given an opportunity to express their opinions before the regulations are issued, amended or repealed.

As in many other OECD-countries special interests or affected parties are drawn on in decision-making processes in order to ensure a consensus based collective effort.<sup>43</sup> This type of decision-making reduces friction and conflict, yet often makes it more difficult to pursue comprehensive and consistent policy strategies. Given the importance of building a consensus, small steps and incremental solutions are often what characterize efforts to promote change.

Normally the period for consultation is three months, and no less than six weeks. The general review process is open for any institution, organization or person who wants to submit comments, opinions or statements, and not only those who receive a formal invitation to participate. It is not uncommon, especially in cases where a new regulation has media coverage, that a larger number of parties take part in the review than those invited by the authorities.

Foreign entities or nationals are not precluded from participating in the consultation process. If they are established in Norway they will, as a rule, be invited to participate in the consultations along with domestic entities. As an example, foreign oil companies established in Norway are currently participating in consultations on proposals for new regulations governing gas sales after the suspension of the gas negotiating committee (Gassforhandlingsutvalget, GFU).

A recent internal survey by the Ministry of Labour and Government Administration revealed that more than 75 per cent of consultations were carried out within a shorter time frame than 3 months, and around 25 per cent were carried out in less than six weeks. The Ministry has subsequently issued reminders on consultation requirements. (See the Draft Report on Government Capacity to Assure High Quality Regulation – Regulatory Reform Report on Norway (GOV/PUMA/REG(2002)2).

Norwegians generally regard the regulatory process as transparent. The process may be less transparent to foreign partners, including foreign traders and investors, unless they participate in Norwegian business organizations which routinely are included in the regulatory process. All regulatory decisions are published in *The Norwegian Law Gazette (Norsk Lovtidend)* which while available internationally by subscription, is only published in Norwegian. There is no obligation to publish proposed legislation or secondary regulations in a language other than Norwegian.

The Norwegian Public Administration Act<sup>44</sup> specifically provides for the publication of all new legislation and sub-ordinate regulations. Such regulations cannot be invoked against any person until they have been published as prescribed. An exception is made if it can be established that the administrative agency has in some other effective manner made the regulations known to the public or to the enterprises, professions or skilled traders or interest groups concerned. While the commitment to publish regulations is there, a recent review of existing regulations has revealed that new regulations are not always published. The working group reviewing regulations has recommended that regulations that are not published in [www.lovdato.no](http://www.lovdato.no) should be repealed automatically within a specific time limit.

There have been few formal changes to the established consultation procedures in recent years, although increasingly “electronic reviews” are used. New regulations under the EEA Agreement are in principle subject to the same consultation procedures referred to above. However, the Norwegian tradition of close cooperation and consultation with concerned parties has come under strain as a result of the EEA regulatory process. As mentioned, it is a major challenge for the Norwegian government to keep abreast of proposals for new EEA regulations. The same goes for business and industry. Unless Norwegian businesses have offices or close contacts in Brussels, they are often not aware of pending regulations until they are under discussion in the European Council or its Committees or in the European Parliament.<sup>45</sup> By this time it is often too late to attempt to impact the formulation of the regulation.

On the other hand, the EEA Agreement may be deemed to have increased transparency for foreign market actors. To the extent that a foreign business is familiar with developments within the EU - transparency can be said to have increased.

Business and industry have an opportunity to attempt to influence the formulation of Norwegian regulations transposing EU Directives into the Norwegian legislative framework, but most often the leeway for national adjustments is minor or non-existent. Particularly New Approach directives, because of their technical character, are often transposed without any national adjustments. The private sector has voiced a wish to have access at the earliest possible stage in the government’s assessment of suggested EU regulations. Access to the so-called framework documents, which form the basis of the Government’s assessment of new regulations, has been pointed to as a priority concern for the business community. For business, it is important that implementations costs for business are also borne in mind, and they wish to have access to the framework documents to ensure that Government is cognizant of such costs.

The Government has indicated that it will intensify its efforts to improve all processes relating to EEA cooperation within the administration, including specific efforts to improve information flows to the general public and to increase the opportunities to influence regulations which will be introduced in Norway. It has recognized that it is essential that access to information as early as possibly in the regulatory process is provided. The Ministry of Foreign Affairs has established a web site, *Møteplass Europa*, with broad-based information on the EEA Agreement and also on regulations adopted in the EEA. Such a web site will be developed on all the ministries’ web sites.

The Government is also currently reviewing how to improve transparency for individual economic actors that may be affected by new regulations, which often will be of less interest to the broader public. The establishment of reference groups or networks for continuous information flows are among the alternatives being looked into.

Norwegian regional governments (municipalities) have established offices in Brussels in order to keep informed of developments within the European Union that may have impacts on them as a consequence of the EEA. Currently three regions, Oslo, the Stavanger area and the Trondheim area, have established a presence in Brussels. In addition a number of municipalities and counties are members of the Council on European Municipalities and Regions.

### 2.1.2 *Transparency in technical regulations and standards*

As part of its EEA obligations Norway complies with the notification procedures for technical regulations and standards established in EU Directive 98/34/EC. (See Box)

Norway has also established five Euro Info Centres one of which specializes in technical standards. All the centers can provide business with information on the application of standards, conformity procedures, CE-marking or quality initiatives in Europe. A new web site established in cooperation with the European standardization bodies and the European Commission and EFTA provides information on the European New Approach directives and harmonized standards. (<http://www.newapproach.org/>).

#### **Box 2. Notification obligations of prospective technical regulations and standards under Directive 98/34/EC (formerly Directive 83/189)**

In order to avoid erecting new barriers to the free movement of goods which could arise from the adoption of technical regulations at the national level, European Union Member States and EEA EFTA member States are required by Directive 98/34 to notify all draft technical regulations on products, to the extent that these are not a transposition of European harmonized directives. This notification obligation covers all regulations at the national or regional level, which introduce technical specification, the observance of which is compulsory in the case of marketing or use; but also fiscal and financial measures to encourage compliance with such specifications, and voluntary agreements to which a public authority is a party. Directive 98/48/EC recently extended the scope of the notification obligation to rules on information-society services. Notified texts are further communicated by the Commission to the other Member States and are in principle not regarded as confidential, unless explicitly designated as such.

Following the notification, the concerned Member State must refrain from adopting the draft regulation for a period of three months during which the effects of these regulations on the Single Market are vetted by the Commission and the other Member States. If the Commission or a Member State emit a detailed opinion arguing that the proposed regulation constitutes a barrier to trade, the standstill period is extended for another three months. Furthermore, if the preparation of new legislation in the same area is undertaken at the European Union level, the Commission can extend the standstill for another twelve months. An infringement procedure may be engaged in case of failure to notify or if the Member State concerned ignores a detailed opinion. The EEA member states have an adaptation text limiting a further extension of the standstill period to a total of six months. This six month standstill will only occur if another EFTA state or ESA emit a detailed opinion. Norway does not have to take note of the detailed opinion and can adopt the regulation after the standstill period and thus end the 98/34 procedure.

Similarly as far as standards are concerned, Directive 98/34 provides for an exchange of information concerning the initiatives of the national standardization organizations (NSOs) and, upon request, the working programs, thus enhancing transparency and promoting cooperation among NSOs and the European Standardisation Bodies (CEN, CENELEC, and ETSI). Private parties can indirectly become part of the standardization procedures in countries other than their own, through their country's NSOs, which are ensured the possibility of taking an active or passive role in the standardization work of other SOS.

While there was a public fear that increased integration into the European market would lead to a reduction in Norwegian standards of protection of health, safety and the environment, experience shows that the EEA Agreement has resulted in increased protection of the environment, public health, safety and consumers in Norway.<sup>46</sup>

### 2.1.3 *Transparency in public procurement*

Norway has had regulations governing public procurement since the 1950s. The regulations today emanate from the Government Procurement Agreement under the WTO, and the EEA Agreement. These agreements contain mandatory and detailed procedures for allocation of public contracts above certain thresholds.

As an EEA Member State Norway has incorporated all EC directives regarding public procurement into Norwegian regulations. The regulations secure equal treatment of all suppliers, service providers and contractors established within the EEA. Both the central government and its agencies, sub-central government departments and agencies, and municipalities are subject to the regulation.

The implementation and application of the EEA procurement regulations is monitored by the EFTA Surveillance Authority (ESA). The Authority carries out monitoring activities both on its own initiative and on the basis of complaints. In 2001 twelve complaints were filed against Norway.<sup>47</sup>

The total amount of public procurement in Norway constitutes around 15 per cent of GDP. There is no available data on what portion of public procurements comes from foreign suppliers, however, experts believe that the greater portion is supplied by domestic economic actors. The government administration's share of overall public purchases was 70 per cent, while 30 per cent were purchases by publicly owned businesses. Regional governments and municipalities account for approximately half of the total of government administration purchases.

Norway adopted a new law and new regulation in the field of public procurement July 1 2001 which significantly expanded the coverage of public procurement regulations. The new regulations aimed at simplifying the structure of regulations governing public procurement, but also expanded the regulations to cover contracts not covered by the EU directives. The rules require public authorities **to publish** the invitation for all contracts above 200.000 NOK in one specific public medium (a national database called **DOFFIN**). All interested suppliers, regardless of nationality, have open access to the DOFFIN database through the web site <http://norsk.lysningsblad.no/offentlig/index2.html>. Contracts above certain threshold values must be published internationally in the *Official Journal of the European Communities (OJEC)* and in the database *Tender Electronic Daily (TED)*. Public agencies must also publish general annual plans for purchases of goods and services, as well as general information on any major building and construction projects to be undertaken. Awards must be published no later than two months after taking place. The new regulations have improved transparency in the process by making it mandatory for the contracting authority to notify all contestants in a tender **before signing a contract** with the winner. The purpose is to allow reasonable time for possible complaint before signing and closing of a contract.

Norwegian regulations leave it up to the potential providers in a public contract to uncover breaches. However, if a public purchase is not transparent and published, it is difficult, if not impossible, for providers to identify contracts where they have not had a chance to participate. In such cases it is also difficult for a provider to pursue the matter in the courts, as the courts will have difficulty determining both the size of a contract and whether and what size loss a provider has suffered. A review of notices in the DOFFIN subsequent to the entry into force of the new law showed that almost half of the municipalities had not published tender announcements.

A review of existing procurement practices by *Riksrevisjonen*, The Office of the Auditor General, the controlling agency of the Norwegian Parliament,<sup>48</sup> uncovered that a number of public purchases were being made without due recourse to national and EEA regulations.<sup>49</sup> Contracts were not being published as prescribed; contracts were being expanded or altered after they had been published; and contracts for other purchases were being used by purchasers not covered in the original contract. Parliament underlined that it expected measures to be taken to rectify the situation.

The Ministry of Trade and Industry has subsequently established a Working Group to assess sanctions against illegal direct purchases and breaches of regulations. The Working Group, which is led by the Ministry of Trade and Industry, includes representatives from the Ministry of Administration, the Ministry of Justice, the Parliament's auditor, the National Authority for the Investigation and Prosecution of Economic and Environmental Crime (Økokrim), the Competition Authority, the State Attorney, and business and industry organizations and the Confederation of municipalities. The group is mandated to make its report with assessments and proposals by 31 March 2003.

These experiences with the new public procurement regulations have emerged despite intense information efforts by the Ministry of Trade and Industry, and demonstrate the problems that may arise when regulations are not accompanied by sufficient measures for monitoring and enforcement. Efforts are underway to increase information flows on the regulations and to school particularly purchasers at the regional and municipal levels in the regulations.

Norway has also established a public procurement dispute resolution agency, the Complaint Board on Public Procurement, effective 1 January 2003, as a supplement to the courts in order to make it easier and less expensive for a complainant to file complaint. The Board is an independent and impartial review body for bid challenges. It consists of 10 members (judges and attorneys) appointed by the Government, but the Government will have no competence to instruct the board, neither in matters of substance nor proceedings. Contracting authorities will be obliged to participate in the handling of complaints. Use of the body by a complainant is not supposed to preclude nor prejudice use of the courts. Decisions by the body will take the form of "non-binding reasoned opinions" which will only review the legality of the procurement in question. The Complaint Board cannot award compensation nor pass interlocutory injunctions. A complainant will still have to apply for an injunction from the courts to prevent a contracting authority from concluding a contract under complaint. The Board has already received a large number of complaints (more than 70 in 4 months), indicating that there has been a need for such a complaint body.

Norway has since 1999 been a participant in the Pilot Project on Public Procurement (PPPP) which was established among a number of EEA countries<sup>50</sup> in order to, among other things, simplify and facilitate the recourse to an alternative complaint procedure and to find rapid informal problem solutions without involving the legal apparatus.

**Table 6. Government Procurement in Norway. Million NOK.**

	1996	1997	1998	1999	2000
Total	175 474	190 121	211 361	213 944	213 380
Public Administration					
Central	59 954	62 735	69 753	71 865	74 930
Local	55 408	64 019	67 087	72 361	73 976
% of GDP	17.2	17.5	19.1	17.9	15.0

Source: *Statistics Norway*

## 2.2 Measures to ensure non-discrimination

The application of non-discrimination principles in making and implementing regulations aims to provide effective equality of competitive opportunity between like products and services irrespective of country of origin. Thus, the extent to which respect for two core principles of the multilateral trading system - Most Favoured Nation (MFN) and National Treatment (NT) - is actively upheld when developing and applying regulations is a helpful gauge of a country's overall efforts to promote trade and investment-friendly regulation. The following subsection examines Norway's commitment to non-discrimination.

Norway, through its membership in the WTO, subscribes to the MFN principle and the national treatment principle. The Ministry of Foreign Affairs supervises the observance or inclusion of the MFN principle or national treatment principles in domestic regulations. Furthermore, the ministries responsible for formulating regulations have a responsibility to ensure that they are consistent with Norway's trade agreements. If a proposed regulation is seen to contravene international obligations the Ministry of Justice or the Ministry of Foreign Affairs are expected to point this out in the hearings prior to a formal proposal being made or adoption of a regulation.

Norway adopted a new general trade law in 1997<sup>51</sup> which in essence stipulates that trade in all goods is freely permitted unless otherwise provided for by specific regulations. This Act, while not having any specific impact on trade practices, nevertheless, fundamentally changed Norwegian trade regulations. Prior to this Act the general trade law environment consisted of two Provisional Acts dated 1946 that expressly prohibited imports or exports unless otherwise provided for in regulations. The Act is important, moreover, as it specifically prohibits the introduction of restrictions *contrary to Norway's international obligations*.

The *Instructions for EEA matters* from the Prime Minister's Office specifically require that when assessing proposed EEA regulations an assessment also be made of the proposal in relation to WTO rules. The "framework" papers are also required to include such an assessment. There is no explicit reference to multilateralizing market openings, yet that has been the result in some areas, for example, when the ownership regulations for public broadcasting were liberalized, the market opening was not restricted to EEA market actors. Moreover, new regulations governing allocation of production licenses in the petroleum sector do not distinguish between EEA and non-EEA entities.

Norway's WTO commitments apply to all countries, irrespective of whether or not countries are actually WTO members. In the services area Norway undertook sector-specific commitments under the General Agreement on Trade in Service (GATS) in all broad categories of services, except for health-related and social services. A wide variety of subsectors are covered in business services, telecommunications, construction and related engineering services, financial services, tourism and related services among others. Norway maintains few market access or national treatment limitations on cross-border supply, consumption abroad and commercial presence.

Norway's horizontal limitations under the GATS relate to provisions on the establishment and general authorization procedures for acquisitions, residence requirements pursuant to the Companies Act and the Joint Stock Public Companies Act, and restrictions on availability of subsidies. National treatment is accorded only to subsidiaries of companies that are formed in accordance with the law of an EEA member state and have their registered office, central administration or principal place of business within an EEA member state; Norwegian commitments do not extend this treatment to branches or agencies established in an EEA member state by a third-country company.

Norway's list of GATS Article II MFN exemptions covers road transport services, air transport services and audio-visual services, and certain Nordic investment banks and funds.

Norway's government procurement regulation contain non-discrimination and national treatment provisions to govern the procurement of goods, services, and building and construction projects contracts for EEA members and parties to the GPA.

Norway subscribes to *OECD's Code of Liberalisation of Capital Movements* which stipulates that a Member shall not discriminate between other Members in authorizing the conclusion and execution of transfers which are subject to any degree of liberalization. Norway has stated its intention to extend any liberalization to its EEA partners on an *erga omnes* basis. Norway does not maintain any reciprocity requirements.

Financial liberalization 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.<sup>52</sup> Since that date the EEA Agreement and the WTO Financial Services Agreement (particularly the Second Protocol to the GATS) have spurred a deregulation of financial services.

Market access through commercial presence is subject to certain establishment conditions, including a non-discriminatory 10 per cent ownership limit for individual investors in commercial and savings banks. Exemptions are made for ownership in a conglomerate, and for foreign banks establishing or acquiring commercial bank subsidiaries. In a Reasoned Opinion in October 2001, ESA indicated that the Norwegian ownership regulations in the sector were not in conformity with EEA regulations. Subsequently the Government has commissioned a study into the matter, and proposals for amending the regulations are currently being considered. Any new regulations will be based on the system for ownership control in the EEA directives, which presuppose concrete assessments in each particular case

The *concept* of non-discrimination has become well embedded into the Norwegian regulatory mindset as a consequence of the EEA Agreement – yet, in many areas it is limited in its implementation to economic actors from the EEA Area. This has been pointed to as a distortion that needs addressing by the WTO:



“Undertaking such liberalization on an MFN basis and securing it in the WTO would prevent over-reliance on the EEA market, and trade or investment diversion.”<sup>53</sup>

The apparent dilemma that regional agreements pose for the multilateral trading system has been addressed by Norway in the following manner:

“Norway recognizes the primacy of the multilateral regime for trade established by the WTO. At the same time Norway is party to several regional trade agreements, i.e. as a member of EFTA (the European Free Trade Association), and thereby party to several Free Trade Agreements, as well as a party to the EEA Agreement. Norway sees regional trade and inter-regional arrangements as instruments to complement the global regime and accommodate the need for deeper economic integration. Regional agreements promote trade and economic development at regional level, and will in the longer run pave the way for multilateral and broad trade liberalization. Consequently, Norway will continue to pursue regional and bilateral agreements, in conformity with Article XXIV of the GATT and Article V of the GATS, in order to expand trade and economic cooperation with our partners in Europe, the Mediterranean area and further afield, and thus safeguard Norwegian business opportunities.”<sup>54</sup>

The abundance of State owned enterprises has been pointed to as a potentially discriminatory element in the Norwegian economy. Although State owned companies are to operate as any other commercial company, the fact that the owner – the Government - may instruct the company to behave in a certain fashion through informal channels, and may fashion regulations with the interests of a company in mind, may raise issues of transparency and allegations of discrimination. For example, while there are no formal standardized performance requirements imposed on foreign investors, the US Trade Representative notes that “in the offshore petroleum sector, Norwegian authorities encourage the use of Norwegian goods and services....”<sup>55</sup> The USTR makes reference to statistics showing that Norwegian sources have consistently the past decade accounted for more than 50 per cent of goods and services supplied to the sector. Yet this may very well be a function of Norwegian suppliers’ competitiveness.

In a recent significant supply contract entered into by Statoil ASA, the contract was awarded to a Spanish offshore construction company in competition with a major Norwegian supplier. The resulting public outcry, particularly from workers at the Norwegian supplier, including demands for the Government to involve itself in investigating the winning bid and to do something, is no different from reactions that can be seen in other OECD countries. However, given state ownership there is concern that political pressure may be brought to bear on the company in relation to future contracts.

State involvement in business has also led to allegations about unfair competition practiced by public companies. According to the Norwegian Competition Authority a large number of complaints have been received from the business community alleging that certain public companies were practicing cross-subsidizing by subsidizing a part of its business subject to competition using income from a part of the business that was regulated.<sup>56</sup>

### **2.3 *Measures to avoid unnecessary trade restrictiveness***

Among the alternatives available for reaching a particular objective, policy makers should favour regulatory measures that have the least restrictive effects on trade. This principle is enshrined in several WTO agreements, and is thus fully applicable in Norway. While most governments like to believe that they have chosen the least trade restrictive approaches to regulation, the fact that many are in the process of simplifying or cleaning up regulations to make them more business friendly is an indication that the success rate in the first instance perhaps was limited, or that what at one stage did not appear trade restrictive can become so under changed circumstances.

Implementing the principle into the domestic regulatory system requires appropriate mechanisms. In this respect, assessing ex ante the impact of planned regulations on trade and investment and consulting trade experts and foreign business can help integrate an international dimension into the rulemaking process and prevent the creation of barriers to trade and investment. Reviewing regulations after a certain period of time may also be useful in ensuring that older regulations do not become restrictive.

The Norwegian Minister of Trade and Industry presented a broad action plan for a simplification of the regulatory framework for business and industry, *Simplifying Norway Action Plan*, on 23 October 2002. The goal is to make the regulatory environment and the quality of public services so attractive that they become a competitive advantage for businesses located in Norway. The plan's focus is on

- easily accessible regulation
- improving the basis for decision making for public measures, reforms, and regulations
- reduction of reporting obligations for business
- improved regulations in specific areas
- a business-friendly public sector.

The Plan recognizes that measures to simplify are not sufficient. It is also essential to **ensure that the implementation of the measures actually results in real improvements** for the business sector. The Plan contains a list of more than 120 efforts at simplification and improvement of the regulatory framework and public services across the whole administration. Some measures/efforts are new, others are already on-going. Strengthening the system of business impact assessments is highlighted as a priority area. As such the Plan is an illustration of the broad efforts at regulatory change that have been initiated in recent years.

The plan does not focus on regulatory effects on international trade or foreign investments in Norway, but to the extent that the focus is on improving the business environment it will also have the potential of reducing restrictions on foreign businesses operating in Norway.

The Government's *Action Plan for Competition*, adopted in November 2001, may also contribute to reduced trade restrictiveness. In addition to strengthening the Competition Authority the plan aims to increase competition in the public sector and remove regulations that may restrict competition, and ensure that state owned companies do not contribute to anti-competitive behavior or monopolies.<sup>57</sup>

One of the areas where the Government is reviewing sector specific regulation is in the fisheries area. As mentioned the sector is characterized by a high level of regulation – something that is not unnatural given the need to prevent inter alia over-utilization of stock. A total of seven projects focusing on new or revised regulations for the sector are listed in the *Simplifying Norway Action Plan*. Among the ongoing reviews is a series of proposals to simplify the regulations governing ownership-restrictions in the sector. Current regulations limit ownership in order to ensure that the fishing fleet is owned by active fishermen, and to limit capacity. The new proposals are currently subject to consultation. The regulations will be simplified, yet the emphasis will still be on limiting ownership mainly to active fishermen.

### 2.3.1 *Impact Assessments*

Regulatory impact assessments, if carried out systematically and consistently, may ensure that the most efficient and effective policy option is chosen. Norway, as most other countries, does not have a set of specific trade or investments impact assessment procedures. Impacts on trade and investment **commitments** are, however, normally considered by the Ministry of Foreign Affairs in the interdepartmental consultative process prior to adoption of decisions or regulations. There is, nevertheless a system of impact assessments in place.

All proposals for regulations are required to include an assessment of their financial and administrative implications. This is a fairly longstanding requirement, having been incorporated into the *Instructions for Official Studies and Reports* in 1985. Assessment requirements have subsequently been expanded to cover a range of areas including impact assessments for the business sector. This latter requirement was introduced in 1995 and made mandatory in the Royal Decree on Official Studies and Reports of 18 February 2000. The Ministry of Trade and Industry has formulated *Guidelines for Business Impact Assessment*. (See Box below.)

While the *Instructions* include a formal obligation to assess impacts on business, there is no obligation relating to form or substance. The *Guidelines* themselves are not binding.

Experience with these business impact assessments has so far been mixed at best. The assessments that have been made have not been considered good enough. According to the Ministry of Trade and Industry this reflects a lack of competence and insufficient time to carry out such assessments. A lack of acknowledgement of the importance of such assessments has also contributed to the poor quality. The result has thus often been that the effects of new or amended regulations on business often have not been made apparent prior to adoption.

The business community has been critical of these impact assessments. The guidelines are insufficient. They are not explicit enough in terms of indicating what sort of assessment has to be made. There has been no obligation to consult affected parties in the preparation of such assessments, and critics have pointed out that often they are based on guesstimates within the Ministry or at best based on information gleaned from informal contacts. There are no sanctions if an assessment is not made, and the business community has pointed out that often ministries are making regulations either not being aware of or paying attention to the impact assessment guidelines.

In order to remedy this situation, the Ministry of Trade and Industry has recently established a *Business Impact Unit*. The Unit will be involved in the regulatory process from an early stage, and give advice and support throughout the administration. It will, in theory, evaluate all new regulations that may affect the business sector. In its work the Unit will cooperate closely with the business sector and will, inter alia, use business test panels in its work. (See Box) The use of test-panels is a welcome development for the business community, which has advocated establishing such panels since 1998.

Special focus will be on consequences for small and medium sized businesses. There is no specific obligation to assess impacts on market openness as such. The intention is for these reviews to be carried out prior to the regular consultative hearing of new regulations. The Unit is intended to respond in the course of one week (7 days), if no comments have been made by the Unit in this time period, the regulation will be sent out for regular hearing.

### **Box 3. Business Impact Assessments**

The Business Impact Unit will use the following check-list when reviewing proposed regulations:

- Is government action necessary?
- If yes - why and in which form? Have all alternative solutions been assessed?
- Which costs (time/money) will the regulation confer to business?
- Will the regulation be particularly costly for small businesses?
- Will the regulation - directly or indirectly - affect conditions of competition for business?
- Is it possible to monitor if the regulation is abided by?
- Is there a need for special measures to inform about the regulation?
- Does the timing for implementation present business with particular problems?

Source: The Ministry of Trade and Industry, *Business Impact Assessments*, October 2000.

The Norwegian Competition Authority has participated in the elaboration of the guidelines, and has formulated a checklist of questions that should be asked in connection with the question on conditions of competition:

- Can increased costs and more stringent requirements for expertise prevent new companies from starting up, or lead to unfair competition?
- Can regulation contributed to certain companies, such as market leaders, being given an advantage because they are asked for advice when the regulation is formulated?
- Will the regulation affect companies competing in the same market differently?
- Will the regulation affect existing, or potential competitors differently?
- Will the regulation reduce the number of companies in the respective market?
- Will the regulation lead to a change in the general condition for Norwegian companies, compared to the conditions for foreign companies?
- Does the regulation lead to unfair competition in other municipalities?<sup>58</sup>

The *Business Impact Assessments* are at the outset not restricted to any type of regulatory measures. However, in practice such assessments are not made with respect to EEA regulations, as it is taken as a given that such regulations will be implemented more or less regardless of impact. Nor is the Assessment Unit collaborating with the regulators preparing the so called framework documents that form the basis of the Government's assessment of potential EEA regulations. While these may be practical considerations, the result is that impacts on business for a large part are concealed in the regulatory process. Moreover, given that there are limited resources in the Unit, there appears to be a focus on primary regulations, or on regulations that prima facie appear of importance for business.

The *Guidelines* leave it up to the regulating ministry to decide if a measure will have implications for business and industry, and thus decide whether to send it to the Unit for assessment. Given the low level of awareness of business' concerns outside the Ministry of Trade and Industry in the administration, there is a danger that important regulatory initiatives will not be assessed. The Unit can, however, on its own initiative address other ministries' and agencies' regulatory initiatives, and has done so since its inception the summer of 2002.

In addition to the Business Impact Unit the Ministry of Trade and Industry has also established a *Forum for simplification for business*. The forum is intended to provide for a two-way communication between the Ministry and business concerning regulations and measures that are deemed to adversely affect the Norwegian business environment. While such a forum is important, inter alia as a vent for frustration with existing regulations, and to identify in an ad hoc manner specific problem areas, it is essential that comprehensive measures are undertaken to ensure that routine assessments of implication for trade and industry, including on market openness, become integrated into the regulatory process. For the business community continuous contact with the Administration on regulatory issues is crucial.

Of major concern to Norwegian business and industry are the so-called "framework papers" drawn up in connection with new EU regulations that may become EEA regulations. Such documents are prepared by the regulator responsible for the subject matter and form the basis for the government's assessment of whether new regulations are relevant to the EEA, and what their impact on inter alia Norwegian business and industry might be. While being the basis for internal government policy deliberations on EEA regulations, these papers are not published and distributed to business and industry, or other parts of the public.<sup>59</sup> The government has recently considered whether these paper should be published and has decided against it. The government has pointed out that the documents are formatted for preliminary internal evaluation among government agencies, and emphasizes that other measures aimed at informing affected parties will be pursued instead.

A new development within the EU may lead to broader knowledge of the impact on business. The EU Commission has initiated a process which will lead to the establishment of European business test panels comprising some 2500 business enterprises of varying size and sector. Norway has been invited to participate in these test panels with some 85 companies. Around six test-consultation will be held yearly via and electronic base. The first round of consultations originally scheduled to take place in March 2003, is expected to start in May 2003.

### 2.3.2 *Trade advocacy*

The trade policy community in Norway is very small and large parts of it are engaged in EEA related issues. The trade administration is divided: the **Minister of Foreign Affairs** is responsible for trade policy in the WTO, EEA and OECD; the **Minister of Trade and Industry** is responsible for relations with business and industry, shipping trade, bilateral trade relations, EFTA Free Trade Agreements, government procurement, standards and technical barriers to trade, and export promotion; the **Minister of Finance** is responsible for the customs and tariffs administration and for the regulations on anti-dumping, safeguards, and countervailing duties. In addition sector ministers also take responsibility for trade regulations in their sectors, for example oil and gas, fisheries or agriculture.

Trade advocacy in the regulatory process does not appear to be a major concern or goal. Regulatory proposals are distributed to the various ministries and the trade policy community has an opportunity to comment on proposals. There is, however, no checklist used for such vetting. The extent of comments is left up to the discretion, background and time of the individual case-handler set to the task of vetting a proposal. The direct trade policy involvement in the regulatory process thus tends to be more ad hoc than systematic.

The Norwegian Competition Authority has employed advocacy to focus decision-makers' attention on competition issues. This has contributed to broadening awareness of the efficiency gains that can be derived from competitive markets in the general public and also in municipalities.

The small size of the trade community does make it easier to keep all parts of it informed of regulatory initiatives that may represent a problem from a trade policy perspective. There is, however, no proactive goal of attempting to instill a market opening or investment friendly principle into regulations - the main check is to make sure it does not contradict or contravene international obligations.

### 2.3.3 *Business simplification initiatives*

As part of the Norwegian government's efforts to modernize the public sector efforts have also been undertaken to reduce the administrative burdens on business, particularly for small and medium sized enterprises (SMEs). These efforts have focused on simplifying the legal framework and establishing and streamlining the technological infrastructure, including the register infrastructure.

As in many other OECD countries, reporting obligations are among the most burdensome administrative formalities for businesses. A recent report concluded that at the start of 2001 a total of 7,358 man years were expended annually in the completion/filling out of around 669 mandatory forms. This has been estimated to represent an average yearly burden per business of around 41.9 hours.<sup>60</sup> The government is currently reviewing legislation and regulations with a view to eliminate the reporting obligations that are no longer required and simplifying those that are deemed necessary. Three principles are guiding these efforts:

- The public sector shall never ask for more information than strictly necessary

- Business shall never report the same information more than once
- There shall be proportionality between the use of the reported information and the burden on the business.

A special project, *Altinn*, has been launched by the Government in order to reduce the number of paper-forms for reporting obligations and to increase coordination between public bodies. The Altinn-project is a cooperative effort between Statistics Norway, the Brønnoysund Register Centre and The Directorate of Taxes. The aim is to establish, starting the third quarter of 2003, and completing by 2004, an internet-based reporting channel for business. The reporting channel will include about 80 of the most burdensome forms. Efforts are also underway to induce other public bodies to use this reporting channel. This effort is part of the government's goal to ensure that all business reporting to the public sector should be available electronically by the end of 2004.

The Government is also in the process of assessing the use of sunset-clauses in regulations. It has indicated that it needs experience with the use of such a mechanism. In a new secondary regulation on electronic communication with the Administration which entered into force in July 2002, it is explicitly stated that the regulation will transpire in July 2004 unless specifically renewed.

Recently, as mentioned earlier, reporting obligations for both Norwegian and foreign investors were reduced by repealing the Law of acquisition of Norwegian Business Undertakings, *Ervervsloven*, the 1st of July 2002. The law had required that investors notify the Government when their ownership in a large company exceeded specific thresholds. This measure is expected save business 15 million NOK yearly in direct costs tied to producing such notifications. In addition the measure is expected to save business costs related to delays resulting from the notification process. (Some 2000 notifications had been dealt with since 1995 without any acquisitions being denied or seriously opposed.)

#### 2.3.4 *Trade facilitation through customs procedures*

Within an integrated world economy, many sectors are operating on a just-in-time delivery basis and rely on a steady stream of imported products to achieve efficiency gains in production. Significant direct cost overruns and production schedule delays are incurred when shipments are held in customs warehouses as a result of inefficiencies in customs procedures. As customs tariffs are generally low within OECD countries, cumbersome customs procedures are increasingly perceived by traders as major trade obstacles and are often seen as non-tariff barriers. Lack of transparency or uneven application of customs regulations and procedures across various ports of entry can encourage traders to engage in port shopping to exploit most favorable conditions. Inconsistency and lack of transparency undermine the trade policy framework and provide competitive advantages to traders that have benefited from more favorable treatment. One of the key challenges for any customs administration is to reconcile the need for high compliance and protection standards with that of assisting stakeholders in reaping the benefits of freer trade and taking advantage of modern technology.

The advent of information technology has contributed to relatively straightforward import procedures in Norway. All import declarations are handled by the TVINN electronic clearance system, established in 1994, which is operational 24 hours a day. More than 95 per cent of customs declarations (single administrative declarations, SADs) are submitted electronically to the Regional Customs Administration by importers or their agents. The remaining declarations are presented manually but processed electronically.

The electronic clearance systems include checks to detect declarations that contain errors or may warrant closer examination by customs officials. If the declarations are not stopped by these control mechanisms, the goods are cleared within 3-5 minutes.

Importers are linked on-line to the customs authorities and declare goods electronically. Prior checking of declared values is carried out for 5 per cent of all declarations. In addition, post audit controls are performed by the local customs authorities. Importers may challenge customs decisions by lodging a complaint with the Directorate of Customs and Excise. Out of a total of nearly 5 million declarations, some 3000 have been challenged the past years.

Norwegian Customs and Excise (NCE) which sorts under the Ministry of Finance has also launched a project to simplify customs procedures for trade and industry. A strategic business plan for NCE for the period 2001-2004 emphasizes establishing customs procedures that satisfy customer expectations regarding service and flexibility. Another goal is for all customs procedures to be based on electronic information exchange. The NCE has estimated that their new simplification and customer orientation measures will result in savings for trade and industry of around 100 million euro per year. The savings will inter alia come from reduction of bounded time in customs procedures, more effective carriage of goods enabled by authorizations, more correct assessment of duty and taxes, and simplified electronic registration of declaration data.

The Customs and Excise Directorate has its own central web-site at [www.toll.no](http://www.toll.no) with extensive information also in English. The Norwegian tariff schedule and information on import regulations can be accessed at this web-site.

Current customs regulations are found partly in the Customs Act, partly in the annual Parliamentary budget resolution and partly in different sets of instructions. Consequently, the Government has seen a need to reform the structure of this legislation, in particular the technical placing of the material law and policies that currently can be found in the Parliamentary budget resolution. The Ministry of Finance established a Working Group in the fall of 2001 in order to reform this legislation. By collecting and restructuring the legislation, the reform aims to achieve exhaustive legal information, and better legal protection and availability. This in turn will improve processing delays. The project group is to finish its work by July 2003.

The Government has also decided to reduce the number of customs clearance centers from twelve to ten in order to increase efficiency.

#### **2.4 Use of internationally harmonized measures**

Compliance with different standards and regulations for like products in different countries can present firms wishing to engage in international trade with significant and sometimes prohibitive costs. Use of internationally harmonized standards is seen as a way for regulatory systems to reduce barriers to trade, and for authorities to simplify technical regulations, when such standards are perceived as a high quality response to public concerns at national levels in the areas of health, safety and the environment. Such use has achieved greater prominence in the world trading system with the entry into force of TBT and SPS Agreements at the WTO that encourage the use of international standards. National efforts to encourage the adoption of regulations based on harmonized measures, procedures for monitoring progress in the development and adoption of international standards, and incentives for regulatory authorities to seek out and apply appropriate international standards are thus important indicators of a country's commitment to efficient regulation.

Norway has acceded to the WTO Agreement on Technical Barriers to Trade (WTO TBT) and subscribes to the WTO TBT Code of Good Practices, and thus gives priority to international standards as a means to avoid unnecessary barriers to trade. Formal instructions advocating harmonized or international standards are based on the WTO TBT Agreement, the EEA Agreement and the membership conditions in the European standardization organizations.

The Norwegian standardization organizations are members of the European standardization organizations, CEN, CENELEC and ETSI, as well as the international bodies ISO, IEC and ITU. There are currently around 10 700 Norwegian Standards. All standards developed in the European organizations are **automatically implemented** in Norway, and more than 95 per cent of the Norwegian standards adopted today are common European Standards.<sup>[61]</sup> Global international standards, as opposed to European standards, are in use in the petroleum sector and the information technology sector. National standards are mainly in use in the construction sector and for contractual obligations.

Norway has a total of seven different standardization bodies. *The Norwegian Standards Association (NSF)* is responsible for the overall management and coordination of standardization work. NSF adopts and publishes some 1,500 new Norsk Standard (voluntary Norwegian Standards) annually. NSF represents Norway in the European Committee for Standardization (CEN), and the International Organization for Standardization (ISO). Norwegian Standards (NS) are adopted by NSF based on recommendations from five Norwegian sectoral bodies and on European and International Standards.<sup>[62]</sup> NSF is a legally independent entity which is partially financed (30 per cent) from the Government. The Government funding (from the Ministry of Trade and Industry) is meant to financially contribute to the running of a national standardization infrastructure and to offset costs related to international standardization efforts. Norwegian standardization organizations participate in more than 40 per cent of the standards groups active internationally.

To some extent various regulatory agencies in Norway also contribute financially to the work of the different standardization bodies, and also participate on an ad hoc basis in some standardization work. This is the case for standards work carried out by the Norwegian Electrotechnical Committee (NEK) and the Norwegian Post and Telecommunication Authority (PT) which are respectively partially financed by the Directorate for Fire and Electrical Security and the Ministry of Communications and Transport. The agriculture regulator, Landbrukstilsynet, also participates in the funding of individual projects in standards for food.

The Ministry of Trade and Industry is responsible for the national policy on standards and certification. It does, however, not take a role in overseeing or ensuring implementation of the policy. The national standardization organizations are responsible for qualifying and adopting standards. The Norwegian Accreditation Service is responsible for accrediting certification systems, including accreditation of certification bodies.

According to the Government, the EEA Agreement and particularly the New Approach Directives have had the most profound effect on Norwegian standardization work.

The Ministry has recently taken an initiative to streamline standardization work in Norway. The rationale behind the initiative is that increasingly standardization work either takes place internationally or is based on international standards. While the setting of Norwegian standards in some areas is still important, most resources are used internationally. The fragmentation among the Norwegian standardization organizations is in this respect seen as inefficient. The various organizations have difficulty coordinating their efforts and pooling resources. The fragmentation also leads to conflict of interests between the various organizations and often makes it difficult for businesses that need to address several various standards from the various organizations in a production process for example.



The Government has consequently recommended that four of the seven organizations' resources be pooled, by gathering all standardization work in one organization or merging the existing organizations. The reduced government funding to the standardization organizations is promoting such a reorganization, (Government funding has been reduced from 36 per cent to 24 per cent from 2000 to 2001.) which is expected to take place by mid 2003.

Norway has adopted the ISO 9000 standards for quality assurance (QA) and quality control (QC).

The Norwegian Standards Association has its own web site, with information also published in English, all Norwegian standards are available either on the net through Pronorm AS, which is an organization responsible for marketing and sales of standards and related products.

The US Commercial Service states that there are few technical standards where enforcement has raised significant trade barriers for US suppliers, although some obstacles have been encountered in the case of specialized electrical equipment.<sup>63</sup>

The European Union has increasingly made use of standards in its regulations in order to deregulate. I.e. instead of detailed technical specifications in regulations, reference is instead made to a European standard. If such regulations are EEA relevant (as most are- when relating to trade in goods or services) Norway is obliged to incorporate the same regulation (and standard) into Norwegian legislation. This approach to "deregulation" may be seen as a barrier to trade by third-country businesses. The United States has repeatedly expressed annoyance with European standardization efforts, claiming that "the European standardization regulatory development processes lack adequate transparency, and remain generally closed to US stakeholders' direct participation at critical points in the regulatory development process."<sup>64</sup> The practice is not altogether unproblematic for Norwegian business either, if Norwegian standardization organizations have not participated in developing the standard. NSF makes the point that the reduced funding for Norwegian standardization work has significantly reduced Norway's participation in international standardization efforts and consequently Norway's ability to influence standards has been significantly reduced.<sup>65</sup>

## **2.5 *Recognition of equivalence of other countries' regulatory measures and results of conformity assessment performed in other countries***

Conformity assessment of regulatory requirements is crucial in implementing any kind of regulations. With a view to promoting optimal market openness, recognition of equivalence of foreign regulatory measures such as technical requirements by foreign authorities, and conformity assessment such as certification by foreign bodies, is increasingly seen as a significant step for regulatory reform. Such measures can reduce administrative burdens on the part of firms engaged in trade. Firms, being subject to duplicative regulatory requirements in multiple countries, can save substantial costs if the assessment made in one country can be recognized as equivalent in another country.

Such measures can contribute to market openness even when harmonization of standards of a particular product is not feasible between trading partners, although can be and often are also mutually supportive of harmonization efforts.

Within the EEA, technical regulations have in many sectors been harmonized with regard to essential requirements relating to health, safety and the environment. However, in a number of sectors national technical regulations still exist. A lack of mutual recognition of conformity assessment procedures and the abundant number of national markings create barriers to trade.

In the non-harmonized areas Norway notifies the EFTA Surveillance Authority of draft technical regulations and national standards in accordance with the procedures established in the EEA Agreement. (See box 2) Notifications are examined to establish whether they contain provisions which might create barriers to trade, for example by referring to national standards or national testing bodies, or by requiring national certificates. Norway has approximately 20 -30 such notifications on a yearly basis.

Norway has concluded Mutual Recognition Agreements (MRAs) on conformity assessment procedures with Australia, Canada, New Zealand and Switzerland. These agreements are based on the mutual acceptance of test reports, certificates and marks of conformity issued by the conformity assessment bodies of one of the Parties of the Agreement in conformity with the legislation of the other Party. Agreements have been negotiated with some of the candidate countries to the EU. These agreements are called ECAAs (European agreement on Conformity Assessment and Acceptance of industrial products). The ECAAs have in substance the same content as the agreements negotiated by the EU with the candidate countries, called PECAs (Protocol to the Europe Agreement on conformity assessment). The PECAs/ECAAs are based on EU harmonized legislation and therefore differ from the traditional MRA, since the candidate countries will align their legislation with the Community acquis. The MRAs/ECAAs are concluded in parallel with, or subsequent to similar agreements between the EU and the countries mentioned, in accordance with Protocol 12 of the EEA Agreement. Norway is precluded by the Agreement from entering into bilateral MRAs where the use of a mark is provided for in EC legislation (the CE mark). Mutual recognition under these agreements applies only to products covered by the New Approach Directives. Negotiations with the candidate countries have been halted pending their accession to the EU, when MRAs no longer will be needed.

The European Union has negotiated two MRAs which the EFTA countries have yet to duplicate, an MRA with the United States and Japan. Negotiations on an MRA with the US have been initiated, yet according to the EEA Agreement the goal is for parallel agreements and protocols to have the same date for entry into force. The EU MRA with the United States entered into force in December 1998 - thus it is apparent that this goal is not always easily achieved. There are several reasons for this. Firstly, the EEA EFTA States do not start to negotiate a parallel agreement before the negotiations between the EU and relevant third country have been concluded. Secondly, the national process requires hearings with regulatory authorities concerning the product sectors involved, translations and identification of control bodies, etc. Thus even though the EEA EFTA MRAs are duplicates of the EU MRAs the process takes time and specialized resources, which at the outset are limited. A third explanation relates to the interest of third countries in entering into such parallel agreements. There appears to be inadequate understanding of the importance of such parallel agreements in some third countries for the well-functioning of the single market within the whole European Economic Area. For example, several obstacles have been raised by the candidate countries, wishing to deviate from the original text of the PECA.

**Figure 1. Norway's MRA Agreements**

<b>Partner</b>	<b>Partner</b>	<b>Sectors</b>	<b>Effective date</b>	<b>Type</b>
Australia	EEA EFTA	Telecom equipment Low voltage equipment Electromagnetic compatibility Machinery Pressure equipment Medical devices Pharmaceutical GMP Motor vehicles	1 July 2000	CERT
Canada	EEA EFTA	Pharmaceutical GMP Medical devices Telecom equipment Electrical equipment Electromagnetic compatibility Recreational craft	1 January 2001	CERT
EEA EFTA	New Zealand	Telecom equipment Low voltage equipment Electromagnetic compatibility Machinery Pressure equipment Medical devices Pharmaceutical GMP	1 March 2000	CERT
EEA EFTA	Switzerland	Machinery Personal protective equipment Toys Medical devices Gas appliances Pressure vessels Telecom equipment Electromagnetic compatibility Equipment and protective systems Electrical equipment and EMS Construction plant and equipment  Measuring instruments Pharmaceutical GMP  Motor vehicles Tractors  Good laboratory practice	1 June 2002	CERT
OECD OECD		Chemicals		Guidelines and Good Laboratory Practices Mutual acceptance of data

Partner	Partner	Sectors	Effective date	Type
EEA EFTA	Latvia	Electrical safety Electromagnetic compatibility Toys Construction products	Signed	CERT
EEA EFTA	Lithuania	Machinery Lifts Personal protective equipment Electrical safety Electromagnetic compatibility Simple pressure vessels	Signed	CERT
EEA EFTA	Hungary	Machinery Electrical safety Electromagnetic compatibility Hot water boilers Gas appliances Medical devices Pharmaceutical GMP Good laboratory practice	Signed	CERT
EEA EFTA	Slovenia	Electrical safety Electromagnetic compatibility Machinery Gas appliances	Signed	CERT

The EEA EFTA States have embarked on negotiations of parallel agreements to the EU PECAs with the applicant countries of Central and Eastern Europe, to ensure the extension of the internal market for the relevant product sectors. So far agreements have been signed with Latvia, Slovenia, Hungary and Lithuania, and an agreement between the EFTA EEA and the Czech Republic is being negotiated...

A separate law regulates the designation of conformity assessment bodies performing assessment procedures in accordance with the EEA Agreement or with MRAs.<sup>66</sup> It is the task of the ministry responsible for the relevant product regulations to designate conformity assessment bodies. In practice, the responsible ministries have delegated the task to underlying departments. Each Ministry is obliged to provide information about designated bodies to the Ministry of Trade and Industry which forwards the information to the EFTA Secretariat.

There is no single government body responsible for supervising the enforcement of the provisions of the MRA Agreements. The general principle is that the *importer* is responsible for the product and must be able to prove to the sectoral authorities<sup>67</sup> its conformity with the relevant requirements.

Norway has no regulations or requirement for “country of origin” marking. Norway has adopted the EU’s CE mark/label signifying that the product conforms to EU standards. The CE mark eliminates the need for each EU or EEA country to “certify” the product by its own testing laboratories.

*Norwegian Accreditation* (NA) is the only Norwegian body for accreditation of laboratories, certification bodies, inspection bodies, notified bodies, environmental verifiers and attestation bodies. NA is also the Norwegian monitoring unit for Good Laboratory Practice (GLP) inspections in all areas, according to OECD’s principles.

NA is a signatory to European cooperation for Accreditation (EA’s) multilateral agreements for accreditation of calibration laboratories, testing laboratories, certification bodies for production certification, system certification and personnel certification. NA also represents Norway in the International Laboratory Accreditation Cooperation (ILAC) and the International Accreditation Forum (IAF).

NA has a central web site – [www.justervesenet.no](http://www.justervesenet.no) - with information also posted in English, about all accredited calibration laboratories, testing laboratories, certification bodies, environmental verifiers, inspection bodies, notification bodies, attestation bodies that are accredited by NA and laboratories in NA’s GLP inspection program.

At the regional level, NA has signed a number of multilateral agreements (MLAs) with countries in Western European on mutual recognition. These agreements entail that the accreditation bodies that have signed, accept the accreditation bodies and services of the other signatories as equal to their own accreditation services or bodies. Some countries outside of Western Europe are associated members of the agreements

At the international level the two global organizations International Accreditation Forum (IAF) and International Laboratory Accreditation Cooperation (ILAC) have established a multilateral agreement for accreditation of certification bodies for quality certification (IAF) and a multilateral agreement for accreditation of laboratories, respectively.

## **2.6 *Application of competition principles from an international perspective***

The benefits of market access may be reduced by regulatory action condoning anti-competitive conduct or by failure to correct anti-competitive private actions that have the same effect. It is therefore important that all regulatory institutions - not just the competition authority - make it possible for both domestic and foreign firms affected by anti-competitive practices to present their position effectively. The existence of procedures for hearing and deciding complaints about regulatory or private actions that impair market access and effective competition by foreign firms, the nature of the institutions that hear such complaints, and adherence to deadlines (if they exist) are thus key issues from an international market openness perspective. These issues will be the focus of this sub-section, while a wider discussion of the role of competition policy in the context of regulatory reform can be found in Chapter 3.

Both domestic and foreign firms established in Norway have access to lodge complaints with the regulatory authorities directly, with **the Norwegian Competition Authority (NCA)**, or to pursue complaints, if they entail a breach of regulations in the civil courts. With the advent of the EFTA Surveillance Authority (ESA) a new avenue of complaint was opened – for EEA market actors - which has resulted in increased transparency regarding complaints, and apparently an increased number of complaints.

The EEA Agreement, as mentioned, also led to changes in Norwegian competition regulation. The Price Act of 1953 was replaced by the Competition Act and Price Policy Act<sup>68</sup> in 1994. The Norwegian Competition Authority was subsequently established, replacing the earlier Price Directorate.

The NCA pursues investigations on its own accord or on the basis of complaints, and has wide investigative powers, including access to search property after prior grant from the court of examination and summary jurisdiction. The NCA has established an 800-number for complaints by the general public if they know of any harmful restriction on competition. Appeals of decisions by the NCA are dealt with by the Minister of Labour and Government Administration.

There are two alternative forms of sanctions under the Norwegian Competition Act: criminal sanctions (fines or imprisonment) or relinquishment of gain. The prosecutor or the courts may impose criminal sanctions for violation of competition rules. The NCA is not empowered to impose administrative fines, that must be done by the police/prosecutor, but may order an undertaking which may have made gains as a result of infringement of the Competition Act to wholly or partly relinquish such gains.

As a result of the EEA Agreement, two sets of competition rules have existed in Norway since 1994. The purpose of both sets of rules is to ensure that commercial undertakings do not restrict or distort competition. Norwegian authorities cannot sanction breaches of EEA regulations concerning misuse of market dominance and anti-competitive cooperation.

A governmental committee to review the Norwegian competition legislation submitted its proposal on April 9, 2003. The first report of the committee recommended giving the Norwegian Competition Authority responsibility for enforcing Article 53 of the EEA Agreement prohibiting anti-competitive practices and Article 54 prohibiting abuse of a dominant position. The final and major report proposes prohibitions in accordance with the EU and EEA competition rules (Articles 81 and 82/53 and 54). The current possibility to grant individual exemption from the prohibitions will, in general be abolished. Some minor changes are proposed to the rules on merger control, for instance, a possibility to issue a regulation imposing a notification procedure for mergers above a certain size. Decisions made by the NCA may be appealed to an independent Competition Tribunal, not to the Ministry of Labour and Government Administration as today. According to the proposal, the NCA may issue fines addressed to companies violating the prohibitions. Criminal sanctions will remain a possibility for enforcing the law. Investigative powers are kept on the same strong level as today. A leniency program is included in the proposal giving companies or individuals that cooperate in uncovering violations the possibility of reduced sanctions or immunity.

As mentioned, one of ESA's tasks is **general surveillance** to ensure that the provisions of the Agreement are properly implemented in national regulations and correctly applied by the authorities. General surveillance cases are either initiated by the Authority itself (own-initiative cases) or on the basis of a complaint. In the five year period 1997-2001, ESA registered 664 cases, of which 478 were own-initiative cases and 186 complaints. Norway's share of these cases was 36 per cent and 72 per cent respectively.<sup>69</sup> The share of complaints has risen, and 97 per cent of the complaints received in 2001 concerned Norway. Most complaints concern free movement of goods and persons and public procurement.

The number of complaints concerning Norway is certainly a reflection of the enormous difference in sizes of the three economies dealt with: Norway, Iceland and Liechtenstein. But it is probably also an indication of the fact that the ESA is perceived to be an efficient channel of complaint. According to ESA's own records, 85 per cent of cases are closed as a result of the EFTA State concerned having taken the measures necessary to remedy the breach in question.

The EEA Agreement has also opened for complaints to the European Commission. ESA and the Norwegian Competition Authority cooperate closely as the following example indicates:

#### **Box 4. An ESA competition complaint**

In September 2001, the Authority carried out *unannounced inspections* at the premises of Tomra ASA and its subsidiaries in Norway with the assistance of the Norwegian Competition Authority. The purpose of these inspections was to uncover evidence of suspected practices by Tomra concerning the supply of reverse vending machines and related products and services which could constitute abuses of a dominant position in the sense of Article 82 EC and Article 54 of the EEA Agreement, or evidence of agreements or concerted practices in conflict with Article 81 EC and Article 53 of the EEA Agreement. The Authority may undertake inspections on its own initiative or at the request of the European Commission, depending on the circumstances and on the possible allocation of jurisdiction under the EEA Agreement in each case. In this instance the Authority carried out inspections in Norway at the request of the Commission, the latter being the competent authority under the EEA Agreement to review the evidence gathered in this case. Information obtained in Norway was thus transmitted to the Commission thereafter.

Source: EFTA Surveillance Authority, Annual Report 2001.

The ESA as an avenue of complaint is significant for those economic actors in a position to make use of it. Third country actors (coming from countries not party to the EEA) must take recourse directly with Norwegian authorities, for example the Norwegian Competition Authority, the regulatory authorities or through the Norwegian courts. Complaints may of course also be addressed through the WTO dispute settlement mechanism if they concern WTO obligations. Notably, as mentioned, Norway has not been a defendant in the WTO since its inception.

### **3. DEVELOPMENTS IN SELECTED SECTORS**

This section examines the implications for international market openness arising from current Norwegian regulations in four sectors: telecommunication sector; automobiles; electricity and the financial sector. For each sector an attempt has been made to draw out the effects of **sector specific regulations** on international trade and investment and the extent to which the six efficient regulation principles are explicitly or implicitly applied in practice.

Particular attention is paid to product standards and conformity assessment procedures where relevant, including efforts to adopt internationally harmonized product standards; use of product standards by regulators as the basis of regulation; and openness and flexibility of conformity assessment systems.

#### **3.1 *The telecommunications sector***

Norway commenced a gradual deregulation of the telecommunications market in the early 1980s. Since 1994 Norway has generally adhered to the schedule for deregulation laid down in the EEA Agreement. With effect from January 1st 1998, the remaining exclusive rights pertaining to general telecommunications infrastructure and speech telephony in the established transmission line network were removed, and additional providers were authorized to offer telephone services.

So far, the incumbent, Telenor ASA, has maintained a strong market position in most market segments. Except for the market for GSM mobile telephony, competitors have only won small market shares in the market for private customers, while competition is somewhat stronger in the market for

corporate customers.<sup>70</sup> The mobile market also has limited competition; Telenor Mobil and NetCom GSM together hold an 89 per cent market share the first half of 2002. The Government has characterized the competitive situation as **unsatisfactory**.

As of June 1, 1999, carrier pre-selection was introduced in the Norwegian fixed-telephony network. As of November 1, 2000, two pre-selected carriers were allowed for national and international calls respectively. Number portability was introduced for subscribers to fixed telephone at the same time.

Telenor was partially privatized in December 2000 and listed on the Oslo and New York Stock Exchanges. The State has retained an ownership share of 77 per cent, yet has been given a mandate by Parliament to reduce the state-owned share to 34 per cent.

In December 2000, four nationwide licenses were awarded for the establishment and operation of a third-generation mobile communication system in Norway. One of the licenses were revoked after the owner was declared bankrupt in August 2001, and another was revoked in September 2002 after the operator decided to become a virtual operator instead of building its own network. The Ministry of Transportation and Communications, in cooperation with the Norwegian Post and Telecommunications Authority, will work on a reallocation of the available license, most likely through an auction.

Norway participated in the WTO Negotiations on Basic Telecommunications and The Fourth Protocol on Basic Telecommunications has been ratified by the Parliament.

The liberalization of the telecommunication sector has resulted in a need to update and revise regulations in the sector. The Ministry of Transportation is preparing a proposal for a new law on electronic communication. The aim is that the regulation is based on technology neutral criteria, enabling the market actors to increasingly decide on optimal technology. The law, which is expected to be proposed to Parliament in the Spring of 2003, follows EU regulations of the sector which were adopted in February 2002. The new law is expected to enter into force in July 2003 in parallel with enactment of the EU regulations.

The proposed new law suggests continued use of sector specific regulations to address market imperfections and inadequate competition. The Telecommunications Authority is expected to utilize a series of measures to regulate actors with a significant market share.

### *3.1.1 Regulations, Standards and Conformity Assessments*

The Norwegian Post and Telecommunication Authority, *Post- og Teletilsynet*, is the regulatory authority for telecommunications. It is also the standardization organization for telecommunications and participates in the harmonization of standards both regionally within the **ETSI**, European Telecommunications Standards Institute, and internationally within the **ITU**, the International Telecommunications Union. As a regulator the PA also uses references to standards in its regulations.

Nearly all standards within the sector are harmonized either at the EEA level or internationally. There are no national standards being developed and previous national standards have been done away with. In the course of 2000-2001 around 116 secondary regulations were eliminated in the sector. According to its own estimates around 98 per cent are European standards. The PA does not use resources to transpose European standards into Norwegian standards. ETSI standards can be acquired free of charge over the Internet, and there is no apparent need to “make them Norwegian” by translating them and adding on two letters. Norwegian regulations in this sector refer directly to the European standards.



The propensity for regional standards is a reflection of the hierarchy of standardization work. The regional standardization process has often gone farther than at the international level.

The regulatory framework for telecommunications equipment is the same as for the EU. Equipment that has not been tested and certified under EEA technical regulations must be type approved by the Norwegian Post and Telecommunications Authority. Such a process normally takes around six weeks, and has been characterized as slow and costly by third country exporters.

The PA has devoted a significant amount of resources to participating in the regulatory process at the EU level given the importance of that process for the sector. The Authority has pointed out that, although they do not participate in the formal (decision-making) parts of the meetings, they are confident that they are able to influence developments. They participate actively, and are well informed of Norwegian concerns prior to regulatory proposals being made, as they already at a very early stage in the preparatory process post possible proposals on their web-site ([www.npt.no](http://www.npt.no)) and request comments from potential affected parties.

Technical regulations that are not based on harmonized standards are notified to the WTO TBT Committee. The overriding share of such notifications to the TBT by Norway has been technical regulations for telecommunications equipment.

While the EU and the US have MRAs covering telecommunications equipment, negotiations on a comparable EFTA-EEA MRA have not been concluded.

### **3.3 *Automobiles and components***

Due to the historic dynamism of global activity in the sector and traditionally interventionist policies of some governments aimed at protecting domestic automotive industries, trade tensions related to domestic regulatory issues in general and standards and certification procedures in particular have long figured on bilateral and regional trade agendas. This reflects the fact that automobiles remain among the most highly regulated products in the world, primarily for reasons relating to safety, energy conservation, and the environment. Divergent national approaches to the achievement of legitimate domestic objectives in these key policy areas are therefore likely to remain a significant source of trade tension as global demand for automobiles continues to rise.

Norway has no domestic automotive industry, apart from small scale production of a electric cars at Think Nordic, a Ford-owned company which is currently up for sale. A number of businesses, particularly Norsk Hydro As and Kongsberg gruppen are, however, involved in the production of car parts for exports.

Regulations of the sector are basically environment-, health- and safety related, and Norway has adopted the harmonized EU safety technical requirements for motor vehicles. Unlike the areas covered by the New Approach Directives, detailed technical requirements are specified in various EU Directives and applicable throughout the EU and EFTA EEA countries. The regulating authority for the automobile sector is the Norwegian Ministry of Transport.

Purchases of automobiles are constrained by the very high retail prices in Norway. Taxation on automobiles is normally greater than 100 per cent of the import value. In addition re-registration fees are high.

In recent years there has been an effort to shift consumption by setting relatively lower taxation on environmentally friendly automobiles. This applies especially for electric cars, which have been exempted from registration fee, annual tax, value-added-tax and parking charges at public parking spaces. Given the high prices on cars, a large portion of the car park is a lot older in Norway than in comparable countries. The average age of automobiles in Norway is 10 years, with 15.000 cars older than 20 years at the end of 2001.<sup>71</sup>

### 3.4 *Electricity*

Norway is the largest hydropower producer in Europe; and has the highest electricity consumption per capita in the world. The high level of electricity consumption is a reflection of the cold climate with extensive use of electricity for heating purposes, and the substantial energy-intensive industries: aluminum, ferro-alloys, and pulp and paper. Power-intensive industries and pulp and paper account for around one third of inland energy consumption.

Hydropower accounts for almost all domestic electricity generation - around 60 percent of economically exploitable water resources are harnessed for hydroelectric generation.

Extensive changes took place in the electricity market in the 1990s. As a result of the Energy Act of 1990, the electricity supply sector was changed from a sector that focused on meeting local/regional demand for electricity to a market where prices are determined by supply and demand. The opportunity to switch from one supplier to another has steadily improved for end-users. Since 1998 users can change providers free of charge on a weekly basis. About 18 per cent of household customers and 27 per cent of industrial customers had another supplier than the dominant company of their grid area in the fourth quarter of 2002.

The Norwegian electricity market has been pointed to as one of the most market driven in Europe, although public involvement is still strong through substantial public ownership, preemptive take over rights of electricity companies, and reversion of expired hydroelectric concessions to the state.

An electricity market for physical and financial contracts was created and later merged with the Swedish, Finnish and Danish markets in **Nord Pool**. Nord Pool has a market share of around 25 per cent for standardized contracts. There are plans to build electricity cables from the Nordic market to the Netherlands and the United Kingdom.

The state electricity authority was split into a production company, Statkraft SF, which remains by far the largest production company in Norway, and a network company for the high-voltage national-grid (Statnett). Statkraft, which remains 100 per cent state owned, has a market share of between 35 -40 per cent of Norwegian annual production, and between 11-13 per cent of annual production in the Nordic region. The company has been pursuing an aggressive growth strategy through acquisitions in Norway, aiming at a market share of more than 50 per cent. **The Norwegian Competition Authority** (NCA) objected to the company's plans to purchase 45.5 per cent in Agder Energi and 100 per cent of the shares in Trondheim Energiverk. (Two municipally owned electricity companies.) The Ministry of Labour and Government Administration in an appeal ruling endorsed the purchase of 45.5 per cent in Agder Energi conditional on sale of other generation capacity. (Statkraft has to sell all interests in E-CO Vannkraft AS and Hedmark Energi AS and a further unspecified 1 TWh/year if import capacity to southern Norway is not increased sufficiently). The Ministry has confirmed the objection by the NCA concerning the purchase of Trondheim Energiverk.

Norwegian legislation about hydropower sites currently differentiates between national public and all others (both foreign public and all private electricity generators). Under the current legislation a private company is obliged by law to return any rights and assets for electricity generation to the state after 60 years (*Hjemfallsretten*). Publicly owned companies are not bound by the same restraints. ESA has pointed out that this legislation is a hindrance for private and public undertakings to enter into electricity generation in Norway, and thus in conflict with the EEA Agreement's provision on free right of establishment and free movement of capital.

The Government has, in parallel, looked into whether equal treatment can improve competitive conditions in the electricity markets. The present system is far from optimal, since it negatively affects both competition and efficiency in the sector. The Government has circulated draft legislation that would harmonize the licensing conditions applied to the public and private parties, by maintaining reversion, but in an owner neutral form.<sup>72</sup> In addition, the Government has appointed a committee to assess different alternatives that is to submit a report in the autumn of 2004.

The deregulation of the Norwegian electricity market did not cover electricity supplied under certain government stipulated conditions. Such contracts amount to some 55 per cent of electricity supplied to energy-intensive industry and timber processing. These contracts will, however, run out in the course of 2004-2011.

## **4. CONCLUSIONS AND POLICY OPTIONS FOR REFORM**

### **4.1 *General assessment of current strengths and weakness***

The picture that emerges of market openness in Norway is a basically positive one. Yet the obstacles to trade in the agricultural sector and investment in the fisheries sector, which Norway is not alone among the OECD countries in protecting, are formidable. The most fundamental changes that have taken place the past two decades in terms of regulatory induced market openness, have come as a result of Norway's participation in the European Union's single market through the EEA Agreement.

In terms of the six efficient regulation principles, the EEA Agreement has led to improved transparency for foreign market actors, a strengthening of the non-discrimination principle for the region, increased use of regionally harmonized standards, increased recognition of the equivalence of foreign measures, and improved conditions of competition. These changes have mainly come as a result of the prevalence of these principles in EEA regulations. The Agreement has not led to a reduction in the regulatory burden as such, in many respects, the number of detailed regulations governing economic activity have increased, as witnessed by the 70 per cent yearly increase in regulations after the adoption of the Agreement. The increased regulatory burden has, however, been accompanied by the advantage of having the same rules in the domestic and major exports markets.

Public confidence in the public sector has traditionally been high in Norway. Regulatory reform – apart from privatization - has not been perceived as a threat, given the high degree of consultation provided for in Norwegian decision making. Increasingly, however, regulatory decisions are a consequence of developments within the European Union. There is a growing awareness in the general public that Norway lacks influence on these developments. Many of the changes that have been brought about as a consequence of the EEA have been viewed very favorably, but there are developments that are being criticized, for example when regional support policies come under question. There are regulatory mechanisms in Norway that over time have acquired symbolic value – these are difficult to change, even though the goal behind the measure can be achieved through other regulatory action. The Industrial Concessions Act was one such example. Maintaining public support for the Agreement and the changes it is bringing about is a challenge given the apparent lack of influence on decision-making.

Norway has an excellent record with regard to the use of regionally or internationally harmonized standards, and should explore opportunities for expanding mutual recognition agreements.

Norway's record on the elimination of tariffs for industrial goods is also laudable. The policy reflects a recognition that when the major share of imports are entering duty free, then the maintenance of duties for some countries represents in practice a discriminatory measure. Even though duty-free treatment is provided for the developing countries through the GSP, these countries are facing pan-European requirements for documents proving origin.

In addition to the changes that have resulted from the EEA Agreement, Norway has actively sought to promote regulatory reform aimed at simplifying regulations and modernizing the public sector the past decade. These efforts are ongoing, and it appears that there is some difficulty in promoting comprehensive and consistent reform, mainly due to the consensual nature of decision-making in Norway and the lack of economic pressure for change.

There are no benchmarks for regulators to use in assessing market openness issues. This contributes to an already weak awareness of trade issues among regulators.

#### **4.2 *The dynamic view: the pace and direction of change***

Norway has consistently pursued trade liberalization through a rules based multilateral system and through regional trade agreements. The benefits of trade have made possible a high standard of living and social welfare. Given the beneficial economic conditions and low levels of unemployment in Norway, the common forces driving regulatory reform are not as strong as in many other OECD countries. While the direction of change is positive, the pace is fairly slow.

An increasing focus on inadequate monitoring and follow-up of regulations has emerged and needs to be addressed more fully.

There is also an increasing focus among regulators on competition as a means of ensuring efficiency in parts of the public sector. Yet there is skepticism, particularly among the labor unions, as to whether increased competition will improve efficiency when seen in terms of total cost to society.

#### **4.3 *Potential benefits and costs of further regulatory reform***

The benefits of further regulatory reform also from a market openness perspective are significant. Reduced reporting obligations, for example, can improve the general environment for doing business in Norway, and can lead to an increase, not only in foreign inward investments, but also in domestic investments in business and industry. Improved transparency in the implementation of regulations can also contribute to an improved business climate.

The costs related to further regulatory reform are not evident, yet particular stakeholders may perceive that reduced flexibility will be one "negative result" of improved quality of regulatory management.

#### 4.4 *Policy options for consideration*

This section identifies possible avenues for enhancing market orientation of the regulatory system. The following recommendations are based on the analysis presented in this chapter and on the good regulatory practices identified by the OECD.

- *Develop a strategy to ensure that business interests/concerns including trade and investment interests are recognized across the board in the regulatory process.*

There is a widespread sentiment in the business community that there is a lack of recognition of business needs and concerns among regulatory authorities. While the Ministry of Trade and Industry most often takes a business perspective, such a perspective is seen as most often lacking in other ministries.

The *Simplifying Norway Action Plan*, specifically the improved structure for business impact assessments, addresses this issue partially. However, there is no authority that checks whether a regulatory proposal has been properly assessed. By for example establishing a unit with broad final authority to ensure that proper assessments are made, regulatory processes could be significantly improved in this regard.

There is little or no experience with the new Business Impact Assessment Unit. There is a need to assess how the Unit is operating, and whether or not it is addressing business concerns. Up until now assessments have been made ad hoc, and have often been based on the administration's assessment, and not taken due notice of business' own assessment.

- *Strengthen transparency in regulatory procedures especially for foreign partners.*

While there exist strict formal procedures to ensure transparency, decisions may still be influenced by extensive informal and ad hoc consultations. By reducing the ad hoc and informal nature of consultation procedures and complaints procedures, transparency may be improved especially for foreign partners.

- *Improve transparency of EEA regulations by posting proposed legislation electronically at an early stage and providing avenues for comment electronically.*

The need to improve transparency of EEA regulations is squarely recognized by the Norwegian government, and a number of practical improvements are presently being considered. One approach could be for regulators to systematically post new EU proposals on their web sites at an early stage, and to request comments and reactions from both the business community and other interested parties.

The Norwegian Postal and Telecommunication Authority has already gleaned excellent experience with this type of approach. Interested parties may feed in their comments to the ongoing regulatory process over a long period of time. It is also a mechanism that saves the regulator resources in eliciting comments. The process should, however, not become an alternative to formal consultations at a later stage in the regulatory process.

- *Increase focus on implementation of regulatory decisions including decisions on regulatory processes.*

The introduction of regulations without necessarily establishing measures to ensure and monitor implementation has been the rule rather than the exception in Norway. While this may be seen as a positive trait, reflecting a fundamental confidence in both individuals, economic actors and public administrations, it is not necessarily well-founded. The experience in the implementation of the improved public procurement regulations at municipal level are a case in point.

Measures to ensure implementation, often imply the need for both monitoring, and for sanctions related to non-compliance.

- *Underpin non-discrimination in the regulatory mindset.*
- As shown, the principle of non-discrimination, as it applies to economic actors within the European Economic Area has received widespread recognition by regulatory authorities. Advantages could be obtained from instilling the principles of *national treatment* and *most-favored nation* into the regulatory mindset. This could for example be done, by establishing a check-list for reviews of regulatory proposals. Today, multilateralization appears to take place in an ad hoc manner, and without apparent grounding in any extensive assessment of implications of applying liberalization measures on an *erga omnes* basis. When liberalization measures are undertaken consideration could be given to whether the openings could beneficially be multilateralized. *Consideration could be given to establishing a central contact point for complaints by business actors, both domestic and foreign.*

The experience so far with the EFTA Surveillance Authority and the Complaint Board for Government Procurement, particularly the number of complaints received, might be an indication that there is a need for such a body or unit.

Such a unit could assist complainants in determining which avenues of redress are available, and could also amass valuable information on regulatory practices and regulations which function perhaps contrary to their intention.

## NOTES

1. The population is approximately 4.5 million, with a population density of less than 14 persons per square kilometer.
2. Norway is one of the world's largest fish exporter. Approximately 95 per cent of production is exported. Norway is the world's third largest net exporter of oil and supplies approximately 10 per cent of natural gas consumption in Western Europe.
3. Norway is one of the few countries able to offer a complete set of maritime services, including shipowners, brokers and shipyards. The country's shipping companies control around 10% of the world's merchant fleet, making Norway one of the largest shipping nations in the world. Norway is particularly strong in the area of complex and specialized vessels: Norwegian companies for example, control almost one-quarter of the world's cruise vessels and nearly 20% of all gas carriers and chemical tankers. In addition, the fleet of offshore service vessels is the world's second largest, owing to the country's huge oil and gas industry. *The Economist Intelligence Unit Limited 2001, EIU Country Profile.*
4. *WTO Trade Policy Review on Norway*, Report by the Government, WT/TPR/G/70, 24 May 2000.
5. Such a deep scepticism regarding trade is not isolated to the Norwegian public, but can also be seen in a number of OECD countries. See *Making Sense of Globalization*, CEPR Policy Paper No. 8.
6. According to preliminary estimates by the OECD, the support for the agricultural sector measured in terms of PSE ("Producer Support Estimate") was 19.6 billion NOK in 2001, where 7.7 billion was in the form of border measures. This amounts to 67 per cent of the production value, which again is the next highest support level in the OECD.
7. *The National Budget, St. meld. Nr. 1 (2002-2003).*
8. Norway is a plaintiff in the ongoing panel case on steel against the United States.
9. Press release from The Norwegian Ministry of Finance, No. 69/2002, 03.10.02. *The Fiscal Budget 2003: Prudent Fiscal Policy Stance.*
10. A UNDP report rates Norway as "the best country in the world" to live in. See UNDP's Human Development Report 2001, available at [www.undp.org/hdr/2001](http://www.undp.org/hdr/2001). The ranking relies on a composite measure that includes, life expectancy, educational enrollment, adult literacy and income per capita.
11. *Oecd 2002 Annual Review - Norway*, 31 May 2002.
12. *OECD, Annual Review of Norway*, ECO/EDR (2002) 13, September 2002.
13. *The Commanding Heights - The Battle Between Government and The Marketplace That is Remaking the Modern World*, Daniel Yergin and Joseph Stanislaw, New York: Simon & Schuster, 1998.

14. Public involvement in the banking sector came in response to the banking crisis in the late 1980s. The government has subsequently sold its shares in most of the banks, but has retained a 47.28 share in Den norske Bank (DnB). *The National Budget (2002-2003)*.
15. *The Norwegian Government Policy for Reduced and Improved State Ownership, ( White Paper) St.meld.nr. 22 (2001-02)*.
16. OECD - STRATEGIC REVIEW AND REFORM -NORWAY, The Norwegian Ministry of Labour and Government administration, May 1999.
17. *The National Budget, Stortingsmelding Nr. 1 (2002-2003), Chapter 5*.
18. *Et verdiskapende Norge*, Torger Reve og Erik W. Jakobsen, Universitetsforlaget 2001, ISDN 82-115-00019-3.
19. Op.cit. *White Paper No. 22*.
20. *ibid.*
21. Parliamentary records, *Innst. S.nr. 264(2001-2002)*.
22. There is no provision to dissolve Parliament in Norway. Nor does the minority government have a fixed majority behind it in Parliament. It thus needs to seek support from issue to issue. Observers point out that this has made it difficult for minority governments to pursue comprehensive and coherent policy goals for change. Increasingly majorities are formed in Parliament which subsequently “instruct” the government in specific issue areas.
23. Together with the other EFTA States, Switzerland, Iceland and Liechtenstein, Norway has concluded free trade agreements with Turkey, Israel, Jordan, the Palestinian Authority, Morocco, Bulgaria, Romania, Macedonia, Croatia, Slovenia, Hungary, The Slovak Republic, the Czech Republic, Poland, Lithuania, Latvia, Estonia, Mexico and Singapore. Negotiations have been opened with Lebanon, and negotiations with the Southern African Customs Union, which in addition to South Africa, comprises Botswana, Lesotho, Namibia and Swaziland, are scheduled to open in May 2003.  
  
Negotiations on free trade agreements are being conducted with Canada, Chile, Tunisia and Egypt. Negotiations on an agreement with South Africa is expected to be started in the course of 2002.  
  
In addition Norway has concluded a bilateral free trade agreement with the Faroe Islands. Given the extensive net of preferential trade agreements Norway has entered into and the broad coverage of the generalized system of preferences for developing countries (GSP), a very small portion of imports enter on an MFN basis.  
  
Norway has bilateral investment agreements with Madagascar, Malaysia, China, Sri Lanka, Poland, Hungary, the Czech Republic, Romania, Indonesia, Estonia, Latvia, Lithuania, Chile, the Slovak Republic, Peru and Russia. In addition a number of agreements on technical, economic- and investment co-operation agreements have been concluded with Brazil, Ecuado, Egypt, India, Guyana, Jamaica, China, Romania, Singapore, South Korea, Thailand, Turkey and Vietnam.
24. The Agreement does not cover EU’s agricultural market or CAP, however, it does provide a regime for trade in processed agricultural products and there are bilateral agreements providing access for some agricultural products. The EU’s veterinary regulations and other regulations aimed at ensuring food and animal health and safety are included in the Agreement.
25. *The National Budget (2002-2003), Stortingsmelding Nr. 1 (2002-2003) Nasjonalbudsjettet*.



26. Originally the EFTA side of the EEA Agreement amounted to around 10 per cent of the population and GDP of the area, today the EFTA side consists of between 1 and 2 per cent.
27. The EEA-Agreement does not have direct effect in Norway, thus all acts and decisions have to be implemented into the Norwegian regulatory framework.
28. *On EEA Cooperation 1994-2001*, Norwegian Government White Paper No. 27, (2001-2002), 26 April 2002.
29. *OECD Reviews of Foreign Direct Investment, Norway*. May 1995.
30. So-called group exemptions exist for example for aid in favour of small and medium-sized enterprises, aid for training, as well as de minimis aid.
31. The National Budget, *Stortingsmelding No. 1 (2002-2003)*, Chapter 5.2.4.
32. *Aftenposten*, 14 January 2003.
33. Norway's Law Data Foundation, Lovdata *Årsmelding 2001 (Annual Report 2001)*.
34. *On EEA Cooperation, op.cit.*
35. *ibid.*
36. The EEA Agreement provides for a veto from the EFTA EEA countries, which speak with one voice, however, this does not prevent the EU from enacting a proposal, and as a consequence parts of the Agreement may be suspended for the EEA EFTA. Thus the veto has not been used. Instead negotiated solutions are sought if EFTA EEA countries have difficulties in accepting a EU regulation.
37. *op.cit. On EEA Cooperation*
38. *op.cit. The National Budget (2002-2003)*.
39. *Statement to Parliament 24.01.02*, by the Minister of Labour and Government Administration, "Modernizing the public sector in Norway".
40. *Op.cit. The National Budget, Chapter 4, Tariffs.*
41. The levy provided around 6 billion NOK per year in income. The large number of regulations associated with it is a result of the myriad of exceptions and conditions that have been added on to the measure over the past 32 years. The distribution of the investment tax in 2001 was as follows: domestic trade (wholesale and retail trade, repair of motorvehicles): 20.1 per cent; real estate and business services: 17.4 per cent; manufacturing: 10.2 per cent; financial services and insurance: 9.5 per cent, construction: 7.4 per cent.
42. *The National Budget, Stortingsmelding Nr. 1 (2002-2003)*.
43. In the primary sector affected parties' organizations have participated directly in decision-making on the distribution of benefits.
44. The Public Administration Act, section 39.
45. Norwegian business organizations have pointed out that they are often better aware of pending proposals for new regulations than the Norwegian government given their participation in EU business organizations.
46. *St.meld. nr. 27(2001-2002), On EEA Cooperation 1994-2001*. Government White Paper.

47. EFTA Surveillance Authority, *Annual Report 2001*.
48. Riksrevisjonen, The Office of the Auditor General, is an independent agency that monitors that public assets are used and administered according to sound financial principles and in keeping with the decisions and intentions of Parliament. It employs around 450 people and has its own web site [www.riskrevisjonen.no](http://www.riskrevisjonen.no).
49. *Innst. S.nr. 101 (2001-2002)* Conclusions from Parliament's Control- and Constitutional Committee. Reviews of regulatory practice indicated that there was a lack of compliance with both national and EEA procurement regulations.
50. The Pilot Project on Public Procurement was established in 1998 and is an administrative cooperation between 15 EU/EEA countries. The project is partly funded by the European Commission.
51. *Act No. 32 of 6 June 1997* concerning the regulation of imports and exports.
52. *OECD Reviews of Foreign Direct Investment, Norway, 1995*.
53. World Trade Organization, *Trade Policy Review Norway – Report by the Secretariat. WT/TPR/S/70*
54. *op. cit., TPRM, Report by the Government*.
55. *USTR Foreign Trade Barriers Report – Norway, 2001*.
56. The Norwegian Competition Authority, *Annual Report 2000*.
57. *The National Budget Stortingsmelding Nr. 1 (2002-2003)*.
58. *Op.cit. The Norwegian Competition Authority*.
59. The Ministry of Foreign Affairs has indicated that the documents may be accessed through use of the Freedom of Information Act.
60. *Simplifying Norway Action Plan, The Ministry of Trade and Industry. 23 October 2002*.
61. Membership in the European standardisation organisations entails an obligation to implement the European standards and to withdraw national standards in the same area.
62. The independent sectoral standardization bodies are: The Norwegian Council for Building Standardization (NBR); The Norwegian General Standardization Body (NAS); The Norwegian Electrotechnical Committee (NEK); The Norwegian Technology Centre (NTS); and the Norwegian Post and Telecommunications Authority (PT).
63. The U.S. Commercial Service, *Norway Country Commercial Guide, 2002*, Chpt.6: Trade Regulations, Customs and Standards
64. *USTR Foreign Trade Barriers Report, 2001*, Chapter on the European Union.
65. Norsk Standardiseringforbund, (NSF), *Årsrapport 2001*. (Annual Report 2001).
66. *Act of 16 June 1994* On Technical control units that have the task of conducting conformity assessments.
67. The sectoral authorities are regulatory authorities in the various sectors, for example the Post- og Teletilsyn for telecom equipment, Helsetilsynet for medical devices.

68. *Act No. 65 of 11 June 1993* and the Price Policy Act. No. 66 of 11 June 1993. Technical changes were introduced on 12 April 2000.
69. EFTA Surveillance Authority, *Annual Report, 2001*.
70. *The National Budget 2002, Stortingsmelding. Nr. 1 (2001-2002)*.
71. Statistics Norway.
72. Op.cit. *The National Budget (2001-2002)*