

What is the Norway model? Mode of affiliation or political compromise?

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Introduction

‘Taking back control’ was the Brexiteer mantra. The Brexit process has shown us that today’s Europe is so tightly interwoven that neither retreat (autonomy) nor flight (replace Europe with other parts of the world) is realistic. In effect, the Brexit process as it has unfolded thus far renders abundantly clear that the core issue for the UK is to work out how close a relationship it is to have with the rest of Europe. Establishing that is proving far easier said than done. The British public is presented with a range of choices, often simplified as ‘Canada’ versus ‘Norway’. PM May’s proposed Withdrawal Agreement, which was twice rejected in the House of Commons is a hybrid in the sense that it contains elements of both.

There have been numerous assessments of the costs and benefits associated with the various options, but if the Brexit process is anything to go by there is little assurance that the eventual outcome will be remotely based on rational utility calculations. The scope for rational choice has been hemmed in by all sorts of things, including red lines and fanciful future projections. That such a high-stakes process is a quintessentially political process should not come as a surprise (even though there is no a priori reason to equate political with irrational).

But the recognition that Brexit is a high-stakes political process has not been translated into a clear understanding of the political factors that underpin the various affiliation modes that the UK is currently debating. These are treated as quite static constructs, with emphasis on legal detail not the political and societal conditions that they operate under. What will political changes mean for the workability of a given mode of affiliation? What does for instance including the UK in the European Economic Area (EEA) agreement (which is the core component of the Norway model) do to that arrangement? Will the arrangement continue to function as designed, or will the UK’s presence fundamentally alter the arrangement? For this, we need to understand not only the legal conditions that mark a given mode of EU affiliation; we need to render clear whether a given mode rests on specific political presuppositions, and if so, what it would mean to have the UK included. Would the UK’s presence in the EEA agreement challenge or undermine the political presuppositions that underpin this mode of affiliation?

The Norway model

In the UK debate, the Norway model and the Canada model are generally treated as legal constructs. Law is a codification of politics and as such conditions and constrains the nature and scope for politics. This is amplified by the fact that in the UK debate the Norway model is generally depicted as an off-the-shelf mode of affiliation, which creates the impression that this is a legally based and fairly homogeneous construct.

A closer look reveals that Norway's EU affiliation is both complex and comprehensive, in that it consists of 120 different agreements. The core is the EEA agreement, which is marked by 'dynamic homogeneity'. In relation to the EEA that refers to 'an economic area based on common rules and equal conditions of competition, and providing for the equivalent means of enforcement, including at the judicial level. Because it is dynamic, the homogeneity is also maintained when rules and interpretation of rules change in the EU'.¹ An agreement based on dynamic homogeneity is one where the scope of the agreement expands in line with the dynamics of EU integration. Many of the other agreements that Norway has signed with the EU must be negotiated and updated on a more regular basis, and some are textually speaking not entirely in synch with the relevant provisions in the present-day EU *acquis*. Norway's Schengen affiliation with the EU was established when Schengen was still an agreement outside the EU treaties. Now that much of the initial Schengen agreement has been incorporated in the EU treaties, there is a discrepancy between the text of the Norway – EU Schengen agreement and the role and status of Schengen provisions within the EU's own treaties. It is therefore a necessary task to establish whether something is Schengen-relevant or not. There are also 'gaps' in-between agreements; in other words, issues that are not covered by agreements. That creates uncertainty, and pressure to 'fill' the gaps.²

The complex character of the overall Norway model serves to underline that there is an important aspect of negotiation built into the relationship.³ That is amplified by the fact that when disagreements emerge, a political process is often necessary. The politics surrounding making and changing agreements is how people normally think of the political dimension.

For our purposes there is another political dimension that is crucial, and that refers to the political presuppositions that render the Norway model workable. An important reason for that is that the Norway model is itself often presented as *a domestic political compromise*: it has enabled EU membership opponents to keep Norway out of the EU, and at the same time has provided EU membership proponents with guaranteed access to the EU's internal market (and almost all EU programs). An important reason for that is that Norway entered the EEA agreement with the EU *before* the 1994 EU membership referendum, which saw a small majority of the Norwegian population voting against EU membership. The membership rejection had no bearing on the status of the EEA agreement. The fact that Norway had already signed the EEA agreement made it easier for people to vote no because they knew that Norway had assured EU market access.

That this is a political compromise must be considered in light of the fact that the issue of Norwegian EU membership has figured as one of, if not, the, most politically divisive issue in Norway, at least since the Second World War. The EU membership issue reawakened or gave added impetus to old and entrenched cleavages⁴; it pitted centre against periphery; region against region; rural against urban areas; and deep divisions within and between political parties.⁵

When considered against this backdrop it is significant that the EEA agreement is a dynamic agreement, which integrates Norway in the EU's internal market. Through the full range of Norway's EU agreements, Norway has incorporated roughly three-quarters of EU legislation compared to those EU member states that have incorporated everything.⁶ The EEA

agreement includes such areas as research and development, education, social policy, the environment, consumer protection, tourism, and culture (collectively known as ‘flanking and horizontal’ policies). Key areas that fall outside the scope of the cooperation are the euro, the customs union and foreign trade policy, the Common Agricultural Policy, and taxation. However, some of these areas are affected by the rules of the single market. Free movement of capital affects taxation rules, and a substantial number of veterinary and food safety rules are included in the agreement. Important aspects of fisheries and agriculture are thus affected by these arrangements. At present, 40 percent of the rules and regulations that Norway incorporates are in the field of agriculture. Important reasons for inclusion were the need for market access for fish and the sheer dynamics of horizontal expansion. These provisions are not confined to border crossing activities but cover internal affairs: ‘[i]n practice today, this body of regulations makes up the main portion of all public regulation pertaining to production, sale, labeling, hygiene and so forth with regard to fish and agriculture in Norway and to a large extent sets the standards in both these sectors’.⁷

The politics surrounding the Norway model is profoundly affected by the fact that Norway’s approach has been to develop *as close a relationship to the EU as possible without formal EU membership*. Today twenty-five years after the EEA agreement came into effect, the most interesting point is that Norway’s comprehensive incorporation in the EU through the EEA Agreement has sparked surprisingly little controversy, despite the fact that it has profound constitutional democratic implications (NOU 2012:2; Eriksen and Fossum 2015).⁸

We cannot explain the absence of conflict simply with reference to the initial political compromise. Actors that fundamentally disagree look for ways of shirking or undermining the agreement. It is one thing to enter an agreement, quite another to honour and sustain it over time. Norway despite being deeply divided over the question of EU membership has faithfully adopted and incorporated EU laws and regulations throughout the agreement’s life.

We therefore need to understand what precisely has sustained this close EU affiliation over time. Legal certainty clearly matters.⁹ In addition, there are social, economic and not the least political reasons that help to explain the paucity of conflict. Economically speaking, Norway is highly internationally exposed and has a long history of adaptation to changing international circumstances. Socio-economically speaking, Norway has a long history of tripartite cooperation and state – society interaction.¹⁰ Norway has a strong economy with a large sovereign wealth fund that forms a significant economic buffer. Politically speaking, Norway has a very competent public administration and an extensive welfare state both of which help to alleviate social disruptions from international exposures. A further remarkable feature of Norway is that the public’s trust in government is very high,¹¹ and has apparently not declined through EU adaptation.

These factors are important, but they cannot unto themselves explain why the political system has not reacted more to the extensive process of EU adaptation, especially given that most political parties have been divided on the EU membership issue (the largest party the Social Democrats (AP) has for most of the time been split with a rough 60-40 divide in favour of EU membership), and some parties notably the Centre Party, has been against EU and EEA

membership. Norway has since the 1960s had exceptionally strong no-to-EU-membership organisations, with the one from 1994 still very active.¹²

Two important political factors are that the Norwegian political system is hardwired as a consensus-seeking system. It operates in a complex cleavage structure with divisions along value and functional lines, and where the EU membership issue twice has triggered deep-seated cleavages. Consensus-seeking behaviour is induced by the proportional electoral system that favours medium-sized parties, and works as a constraint on the largest parties.¹³ Equally important is that the political parties have instituted gag rules to keep the EU membership issue off the political agenda.¹⁴ All governments are coalition governments, and all coalitions have to consist of parties favouring Norwegian EU membership (even if internally divided) as well as parties opposing EU membership. As part of the coalition agreement – whether explicitly stated or tacitly agreed – the parties commit to *retain* the present EU affiliation. The two largest parties, the Conservatives (Høyre) and the Social Democrats (AP) are the ones most favourable to EU membership. They however form coalitions with small Eurosceptic parties that threaten to disband the coalition should the large party seek to apply for EU membership.

These factors have enabled the political parties to separate the EU membership issue from the issue of EU adaptation. This has made it possible for coalitions that are deeply divided on EU membership to stay together and operate in a society that has become increasingly Europeanized.

One important aspect of this bifurcating of EU membership and EU adaptation is to defuse the constitutional implications of the dynamic EU adaptation. That is probably a necessary concession to sustain the arrangement. It has proven possible to do so because the higher threshold procedures that we associate with constitutional change have only been triggered twice: in 1992 in connection with the EEA agreement and in 2016 in connection with Norway's accession to the EU's system of financial supervision. Legal scholars have argued that the government's very limited use of constitutional provisions is out of step with the magnitude of EU interference, and that the government's justification for this is everything but well grounded.¹⁵

The fact that it has become a kind of constitutional convention to use a popular referendum to decide the EU membership issue probably helps to entrench the notion that EU membership is a key constitutional concern, whereas EU adaptation is not. From a legal constitutional and democratic perspective this is a problematic division, not the least because it discounts the cumulative effects of the adaptation. The effect is to sideline the constitution's role as a vehicle for staking out the society's future role and direction.

The membership – adaptation division serves as a rather peculiar type of funnel for handling political conflicts surrounding Norway's EU adaptation. It de facto directs the attention to single issues or single pieces of EU legislation, because there is no principled debate on the broader ramifications of how Europeanisation transforms Norway, and what the political cost of this mode of affiliation is in relation to EU membership. We see the same lacunae with regard to core questions of political community. The critical question of what Norway in what Europe? is effectively left in abeyance.

Norway's political compromise on the thorny EU issue entails a *deliberate suspending of debate* on Norway's current status and future direction.¹⁶ Norway's Europeanisation is so extensive that every debate on Norway's future development that fails to incorporate the important European development will necessarily be lopsided.

The de-politicization of this affiliation has been considered necessary to sustain the consensual element of Norwegian politics. It is also in a sense a functional necessity from the nature of Norway's EU affiliation, because the affiliation leaves Norway with no real codetermination and a narrow channel for voicing its concerns. The inability to affect these conditions – including being faced with issue-linkages and EU influence on issue-areas that were explicitly removed from cooperation in the initial EEA agreement as is the case with agriculture – puts proponents of a strong EU affiliation in an awkward situation. They cannot, as can member state officials, claim victories in Brussels (even if the Norwegian delegation in Brussels has successfully managed to change EU policies to make them more amenable to Norwegian conditions). Norway's lack of political representation in the EU system is not only a vertical deficiency; there is also an important 'horizontal' deficiency in that basically all aspects of society are less clued into what goes on in the EU. In this context, the social construction of politics is still overwhelmingly national.

The critical point is that political tensions and conflicts have to be worked out domestically, either by conflict avoidance, fatalism, or demands for compensations for ill effects. It is very difficult to see how the high levels of trust that presently mark Norway's EU affiliation could have been retained had not the Norwegian political system had such mechanisms for defusing or handling internal conflicts.

The current combination of de-politicization and forms of 'compensation' is a fragile construct. It presupposes that there is no external shock that can upset the fragile compromise and the specific conditions that sustain this. The question many raise is whether Brexit may be precisely such a shock.

Implications of Brexit

Focusing on the political presuppositions that a given mode of affiliation rests on brings up the following two sets of issues: a) whether the UK will be able to replicate the political conditions that have enabled Norway to function under this model, and b) if not, what the implications will be for the sustenance of the Norway model. I focus here on the practical side. There are important normative considerations but they only figure in this account insofar as they have direct bearing on practice.

With regard to a), *if* the UK ends up with something that resembles the Norway model, it would be a destination that nobody had planned for and many have argued against.¹⁷ As such, it would no less than in Norway be considered an unholy compromise. Brexiteers such as Boris Johnson have argued that they would rather stay as EU members than support a soft Brexit (which is generally how the Norway model is couched).¹⁸ Such sentiments which are likely to be wide-spread would combine with allegations of betrayal (preventing the people from taking back control) and would make it a highly unstable compromise.

The UK political system is likely to create space for sustaining a high level of conflict, especially given that there are many politicians and media outlets that would find it opportune to stoke up and sustain feelings of hurt and betrayal. The UK political system is hard-wired to produce a viable majority government. The license to govern – to stake out a course for the future and pursue it - trumps the search for compromise or ensuring that the minority will be onboard. Even if there are coalition governments, the coalitions that are formed operate on the basis of a majoritarian logic; there are few built-in mechanisms for accommodating minorities. Time is the main corrective mechanism. A favourable election result gives the opposition the chance to form a new mandate to govern, and if deemed necessary, change or reverse what the previous government has done (up to a point).

The bar for reaching a domestic compromise in the UK on the Norway model is very high. The intransigence in views and positions that Brexit has revealed – and amplified – suggests that the UK is unlikely to reach a consensus on its relationship to the rest of Europe. Thus, the prospects of de-politicizing the EU issue appear very dim. Thus, even if a compromise were reached, the prospects for sustaining it over time are slim.

The history of the UK's EU relationship bears that out. As Chris Lord¹⁹ has noted, the question of the UK's relationship to the EU has haunted the UK from the EU's inception. When the UK was out it wanted in, and when the UK was in it wanted out. The UK has sought and obtained an exceptional range of exemptions, opt-outs, and opt-ins from the EU. The UK's initial approach to Brexit was to try to strike deals across the EU's member states to optimize the UK's benefits. That posits Brexit as a form of continuation of the UK's opt-outs and exceptionalism approach. The problem with such an approach - as the Brexit process has shown very clearly - is that the EU treats non-members differently from how it treats members when it comes to granting exemptions, especially in the core area of the four freedoms.

The scope for the UK to draw on the EU-level to work out its domestic conflicts will be greatly diminished by the structure of the Norway model. The lack of co-decision at the EU-level means that the conflicts have to be worked out domestically, the Norway model leaves no recourse to the EU-level to work these out. Incidentally, that is the opposite of how the present UK PM is trying to work out the UK's future relationship with the EU. Faced with deep divisions and domestic intransigence, especially within her own party, PM May has done little to reach out across party lines to strike a national compromise and has instead shown a strong propensity to try to get the EU to help her in working out the UK's relationship to the EU.

The propensity to take issues to the EU rather than to sort them out domestically is something that the Norway model is not designed to do. EU-Norway trust relations within the ambit of the Norway model context hinge to a large extent on de-politicizing the EU issue. In the UK context of Brexit, we have seen that during the Brexit referendum debate the UK pushed the EU and its concerns out of the debate and insisted on conducting the debate on UK-terms only. Now, when there is no consensus internally in the UK on how to deal with Brexit, the UK PM goes to the EU to sort these out. This is not an easy strategy, also because the EU faces numerous constraints not the least with regard to the Northern Ireland question and to the important question of the EU's internal unity.

Thus, if the UK cannot work out its own domestic situation – what it wants from the EU and how it wants to relate to it because relate it must - any affiliation will be politicized and as such unstable.

With regard to b) the UK's sheer size and prominence means that its presence will completely dwarf the present EEA membership (the EU non-member contingent: Iceland, Lichtenstein and Norway). If the UK enters the EEA or is somehow affiliated to it, a highly politicized UK is bound to affect the sustenance of the Norway model.

A UK that has not settled its EU relationship domestically will politicize what Norway has laboriously sought to depoliticize: it will be very difficult for the UK government to defuse domestic allegations of EU influence and hegemony, allegations that can be linked to all sorts of issues, from mundane (the metric standard) to fundamental ones.

The other point is that the EEA agreement will be put in play domestically in Norway, and the Norway – EU relationship will come under renewed scrutiny. Some Norwegian Eurosceptic politicians have already argued for the potentials that Brexit would give for revoking the EEA in favour of a North Atlantic trade agreement including Canada, USA, UK and Norway.²⁰ There is growing opposition to the EEA agreement in the trade union movement because the agreement is seen as encouraging social dumping. The Norwegian government is defending the EEA agreement but the situation is more volatile now than it was before the Brexit vote.

If the UK were included in the EEA agreement, it would likely politicize this through higher levels of domestic conflicts and through that refusals to comply with new provisions. That in turn would make it more apparent that the countries in the EEA are not EU-members, with the implication that they should not be treated like members, as the case has been thus far for Norwegians. Insofar as Norway would be 'outed' as a non-member, and the present propensity across Europe to treat Norwegians and things Norwegian as inside the EU disappear; the main justification for the Norway model is lost.

The Norway model is a political compromise. If the UK enters the EEA and avails itself of the same institutions, the model will change, or in the worst case unravel.

Concluding comments

The Norway model must be discussed in terms of what it is: a political arrangement for managing a highly contentious issue that does not go away and that may render governing very difficult if it the issue is not somehow handled. Norway's consensus-seeking political system did so by separating membership from adaptation. The compromise enabled EU opponents to retain the sense of independence whereas EU proponents could ensure EU access and reciprocal rights. Both lost: independence is a hollow shell and lack of membership is deprivation of influence and access to decision-making forums, and delinking from the European debates, but overall the level of conflict is very low. The very point of the Norway model is to render the EU relationship as invisible as possible.

The structure of the Norway model is premised on the need for working out disagreements and conflicts at the domestic level; the type of EU affiliation gives very little scope for taking issues to the EU-level to sort them out with European colleagues. This is the opposite of Theresa May's Brexit strategy.

The UK cannot emulate the political presuppositions that the Norway model is based on. First is that its domestic politics is not designed for avoiding conflict, if anything, Brexit has raised the level of conflict significantly – along a broad range of divisions which can all be activated by the EU dimension. Second, much of the UK political establishment does not appear very interested in signing an agreement with the EU in the first place. Third, the structure of the EEA agreement compels the members to work out their disagreements at the domestic level; the affiliation gives very little scope for having the EU help to sort out domestic conflicts. Such efforts, instead, are likely to weaken trust relations. Fourth, for these reasons the UK's presence in the EEA will make the arrangement highly volatile and serve to 'out' the non-members as precisely that which in turn could lead to different treatment across Europe. Fifth, the closer the UK is to the EEA the more likely it is for this mode of affiliation to be put into play domestically in Norway.

Other factors that may render the Norway model precarious pertain to the broader pattern of party system fragmentation that we see across Europe. What it means is that parties will find it more difficult to sustain complex compromises over time. A conciliatory and consensus-seeking style of politics is on the wane. Several general tendencies exacerbate this: the dislodging of parties from their social roots; the move towards 'cartel parties'²¹ and the rise of technocracy. In this circumstance, there is less reassurance that membership based parties will necessarily pursue centrist or conciliatory stances. These factors would appear to render parties less reliable as vehicles for interest aggregation and articulation in society.

In today's volatile situation the balance of law and politics is shifting. In stable periods law curtails and conditions the pursuit of politics; in periods of rapid and dynamic change, politics has more leverage and law is trying to keep up pace. Finding a working balance requires that political volatility be kept within bounds and subjected to normative requirements.

¹ Fossum, J.E., & Graver, H.P. (2018). *Squaring the Circle on Brexit – Could the Norway Model Work?* Bristol: Bristol University Press.

² Fredriksen, H. H. (2015) 'The EEA and the Case Law of the EU of the CJEU: Incorporation without Participation', in E. O. Eriksen and J. E. Fossum (eds) *The European Union's Non-Members: Independence under Hegemony?*, Abingdon: Routledge, pp 102–17.

³ This was recently underlined by Sir Ivan Rogers. See interview in the Guardian, 05.03.2019, available at: <https://www.theguardian.com/politics/2019/mar/04/theresa-may-did-not-understand-eu-when-she-triggered-brexit>.

⁴ Valen, H. (1999). 'EU-saken post festum' (The EU-issue post festum), In B. Aardal, H.M. Narud, & F. Berglund (eds), *Velgere i 90-årene* (Voters during the 1990s), Oslo: NKS Forlaget, 106-119.

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- ⁵ The 1972 referendum saw the Liberal party (Venstre) splitting up, and the establishment of Det Nye Folkeparti. It also precipitated the establishment of the Socialist Left Party (Sosialistisk Venstreparti) as a collection of previous organisations on the left.
- ⁶ NOU 2012:2 [Norwegian Official Report]. (2012) *Outside and Inside: Norway's Agreements with the European Union*. Report by the EEA Review Committee delivered to the Norwegian Ministry of Foreign Affairs, 17 January. Available at: www.regjeringen.no/no/dokumenter/nou-2012-2/id669368/
- ⁷ NOU 2012:2, author's translation.
- ⁸ NOU 2012:2; Eriksen, E. O. and Fossum J. E. (eds) (2015) *The European Union's Non-members: Independence under Hegemony?*, London: Routledge.
- ⁹ Blichner, L. C. (2008) 'Fem mulige grunner til å akseptere EØS-avtalen' (Five possible reasons for accepting the EEA agreement), *Nytt Norsk Tidsskrift*, 4: 359–367.
- ¹⁰ Norway is among the countries that Katzenstein refers to as adaptive small states, which he attributes to socio-economic and political factors. See Katzenstein, P. (1985) *Small states in World Markets*, Ithaca: Cornell University Press.
- ¹¹ Olsen, J.P. (2017) *Democratic Accountability, Political Order, and Change*. Oxford: Oxford University Press, p. 107.
- ¹² In 1994, Nei til EU [No to EU] had 138.426 members, whereas the yes side had 35.000 members when it reached its highest level. See Bjørklund, T. (2005). *Hundre år med folkeavstemninger*, (A hundred years of referenda) Oslo: Universitetsforlaget.
- ¹³ Rokkan, S. (1970) *Citizens, Elections, Parties: Approaches to the Comparative Study of the Processes of Development*. New York: David McKay.
- ¹⁴ Fossum, J. E. (2010) 'Norway's European "Gag Rules"', *European Review*, 18 (1): 73–92.
- ¹⁵ Holmøyvik, E. (2015) 'Norway's constitutional acrobatics under the EEA Agreement', in Eriksen, E. O. and Fossum J. E. (eds) (2015) *The European Union's Non-members: Independence under Hegemony?*, London: Routledge, 137-152.
- ¹⁶ An analysis of the Storting's European Consultative Committee written transcripts revealed that there were very few debates; executives simply briefed the legislators on what was taking place; and the committee's work and deliberations were marked by a clear 'system-enforced consensus' and absence of debate on principled and constitutional issues. See Fossum, J. E. and C. Holst. (2014) 'Norsk Konstitusjonell Debatt og Europeisk Integrasjon' (Constitutional debate in Norway and European integration), in E. O. Eriksen and J.-E. Fossum (eds) *Det Norske Paradoks: Om Norges Forhold Til Den Europeiske Union*, Oslo: Universitetsforlaget, 196–219.
- ¹⁷ There is no enthusiasm for this arrangement in Norway but no Norwegian government would turn down an application.
- ¹⁸ Cancian, D. (2018) 'Boris Johnson would rather "stay in the EU" than consider a soft Brexit', *The Guardian*, 15. January 2018. Available at: <https://www.ibtimes.co.uk/boris-johnson-would-rather-stay-eu-consider-soft-brexit-1655177>

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- ¹⁹ Lord, C. (2015) “The United Kingdom, a once and future (?) non-member state”, in Eriksen, E. O. and Fossum J. E. (eds) (2015) *The European Union’s Non-members: Independence under Hegemony?*, London: Routledge, 211-229.
- ²⁰ Tybring-Gjedde, C. (2019) ‘Brexit kan gi Norge en unik mulighet’ (Brexit can give Norway a unique opportunity), *Aftenposten*, 27. January 2019. Available at: <https://www.aftenposten.no/meninger/debatt/i/71853K/Brexit-kan-gi-Norge-en-unik-mulighet--Christian-Tybring-Gjedde>
- ²¹ Katz, R. and P. Mair, ‘Changing Models of Party Organization and Party Democracy - The Emergence of the Cartel Party’, *Party Politics*, 1,1(1995): 5-28.