OECD Reviews of Regulatory Reform

NORWAY

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OECD Reviews of Regulatory Reform

Norway

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Norway: Preparing for the Future Now

Foreword

The OECD Review of Regulatory Reform in Norway 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 18 member countries. The reviews aim at assisting governments to improve regulatory quality – that is, to reform regulations to foster competition, innovation, economic growth and important social objectives. It draws on two important instruments: the 1995 Recommendation of the Council of the OECD on Improving the Quality of Government Regulation and 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, and on the regulatory framework of specific sectors against the backdrop of the medium-term macroeconomic situation.

Taken as a whole, the reviews demonstrate that a well-structured and implemented programme of regulatory reform can make a significant contribution to better economic performance and enhanced social welfare. Economic growth, job creation, innovation, investment and new industries are boosted by effective regulatory reform, which also helps to bring lower prices and more choices for consumers. Comprehensive regulatory reforms produce results more quickly than piece-meal approaches; and they help countries to adjust more quickly and easily to changing circumstances and external shocks. At the same time, a balanced reform programme must take into account the social concerns. Adjustments in some sectors have been painful, but experience shows that the costs can be reduced if reform is accompanied by support measures, including active labour market policies.

While reducing and reforming regulations are key elements of a broad programme of regulatory reform, experience also shows that in a more competitive and efficient market, new regulations and institutions may be necessary to ensure compatibility of public and private objectives, especially in the areas of health, environment and consumer protection. Sustained and consistent political leadership is another essential element of successful reform, and a transparent and informed public dialogue on the benefits and costs of reform is necessary for building and maintaining broad public support.

The policy options presented in the reviews may pose challenges for each country. However, the in-depth nature of the reviews and the efforts made to consult with a wide range of stakeholders reflect the emphasis placed by the OECD on ensuring that the policy options presented are relevant and attainable within the specific context and policy priorities of the country.

Each review consists of two parts. Part 1 presents an overall assessment, set within the macroeconomic context, of regulatory achievements and challenges across a broad range of policy areas: the quality of the public sector, competition policy, market openness and key sectors such as telecommunications. Part 2 summarises the detailed and comprehensive background reviews prepared for each of these policy areas, and concludes with policy options for consideration which

seek to identify areas for further work and policy development in the countries under review. The background reviews for Norway have been posted on the OECD Web site: www.oecd.org/regreform/backgroundreports

Acknowledgements. *The horizontal Programme on Regulatory Reform is headed by the Deputy Secretary-General Richard Hecklinger. The country reviews are co-ordinated by the Public Governance and Territorial Development Directorate.*

The Review of Norway reflects contributions from the Government of Norway, the Working Party on Regulatory Management and Reform of the Public Management Committee, the Competition Law and Policy Committee and its Working Party, the Working Party of the Trade Committee, the Working Party on Telecommunication and Information Services Policies of the Information, Computer and Communication Policy Committee; representatives of member governments, and members of the Business and Industry Advisory Committee (BIAC) and the Trade Union Advisory Committee (TUAC), as well as other groups.

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Table of Contents

Executive Summary 7

Part I

Regulatory Reform in Norway

Chapter 1. **Performance and Appraisal** 17

Introduction 18
Setting the scene: the macroeconomic context 20
Regulatory reform: its contribution so far 29
Regulatory reform: the challenges ahead 33
Conclusion 43

Part II

Regulatory Policies and Outcomes

Chapter 2. **Regulatory Governance** 47

Context and history 48
Regulatory policy 50
Regulatory Institutions 51
The local government and EU dimensions 53
Regulatory transparency 55
Alternatives to regulation 57
Regulatory Impact Analysis 57
Keeping regulations up to date 60
Improving the business environment 61
Conclusion 62
Policy options for consideration 64

Chapter 3. **Competition Policy** 69

Context and history 70
The substance of the competition law 71
Competition policy institutions and enforcement 74
Competition policy in the international context 77
The limits of competition policy: exemptions and special regulation 77
Competition advocacy for reform 82
Conclusion 82
Policy options for consideration 83

Chapter 4. **Market Openness** 89

Context and history 90
The policy framework for market openness: the six efficient regulation principles 95
Sectoral trade and investment liberalisation 103
Conclusion 104
Policy options for consideration 105

Chapter 5. **Regulatory and Competition Issues in Key Sectors** 107

A. STATE-OWNED ENTERPRISES AND THE COMMERCIALISATION OF GOVERNMENT SERVICES 108
Context and history 108
The commercialisation process 110
Recent reform initiatives 112
Reform: four key issues 113
Conclusion 120
Policy options for consideration 122

B. CIVIL AVIATION 124
Context and history 124
The domestic commercial airline sector 125
Regional airports 128
Regional air services 129
Conclusion 130

C. HOSPITALS 131
Context and history 131
Key elements of the reform 132
Outcomes 133
Conclusion 134

D. LABOUR MARKET INSTITUTIONS 135
Introduction 135
Commercialisation of services 135
Challenges 137
Conclusions and recommendations 138

Chapter 6. **Modernising Regulators and Supervisory Agencies** 139

Introduction 140
Recent developments and reform proposals 140
Independence and accountability 141
Horizontal design 147
Powers for high quality regulation 149
Assessing the performance of independent regulators 151
Conclusion 154

Appendix I. Table 1.1. Sectoral regulatory reform in Norway 158
Appendix II. Table 1.2. Potential impacts of regulatory reform in Norway 164
Appendix III. Map of Norway 167

Bibliography 169

NORWAY: PREPARING FOR THE FUTURE NOW – ISBN 92-64-10310-4 – © OECD 2003

Liste of Boxes

1. The Nordic governance model and value system 19
2. The Petroleum Fund 22
3. Regulatory reform, labour productivity and growth potential 24
4. What is regulation and regulatory reform? 29
5. Labour market reform in Norway 41
6. Modernising the public sector in Norway 49
7. Do we or don't we? Norway's 1994 checklist for new regulations 51
8. Central regulatory quality units: OECD experiences 52
9. Division of responsibilities between levels of government 53
10. Review of subordinate regulations 61
11. "Simplifying Norway" 62
12. The Brønnøysund Registers 63
13. Stratkraft: the conflict between policy and industrial policy 79
14. The EEA and the EFTA Surveillance Authority 92
15. Promoting transparency in the handling of legislation under the EEA Agreement 96
16. Notification obligations of prospective technical regulations and standards under Directive 98/34/EC (formerly Directive 83/189) 97
17. An ESA competition complaint 102
18. Reforming public enterprises: international experience 110
19. General principles of corporate governance 114
20. State-owned firms: principles of good governance 115
21. Competitive neutrality frameworks in other OECD countries 118
22. Privatisation: does it improve performance? 121
23. Frequent flyer programmes 127
24. The 2003 White Paper for improving the quality of the institutional framework of the *tilsyn* 142
25. The tools for independent and accountable institutions 144
26. Best practice for utility regulation and economic regulators in the UK and Australia 151
27. Recent assessments by the Office of the Auditor General in relation to the *tilsyn* (1996-2001) 153

Liste of Tables

1. Labour productivity, prices, production and employment per industry, 1980-2002 38
2. Use of regulatory alternatives in Norway 58
3. Trends in competition policy actions by the NCA 76
4. Trends in NCA advocacy activity 82
5. Product composition of Norwegian trade 90
6. Norway's major trading partners 93
7. Foreign Direct Investments into and from Norway 94
8. Norway's MRA Agreements 101
9. State enterprises in Norway 109

Liste of Figures

1. Key economic indicators of Norway and EU/OECD countries 1980-2001 21
2. The current account of the balance of payment, per cent of GDP 22

3. Labour productivity by sector 25
4. Public spending in the international perspective 27
5. Trends in general government employment 28
6. Student performance and educational expenditure 35

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Norway: Preparing for the Future Now

Executive Summary

Norway is one of the world's wealthiest countries, and its economy is well managed

Norway's economy and society have benefited from its immense oil and gas resources, underpinning a high per capita income and enabling it to develop and sustain an extensive social welfare system. At peak times the oil and gas sector has accounted for nearly a quarter of GDP. The impact on the economy of significant oil revenues calls for careful management, and an important reform of fiscal policy to promote future growth and stability has been made recently. Most of the government's revenue from oil is saved in a Petroleum Fund to meet future needs. The dominance of oil and gas in the economy has created a dual industrial structure, the offshore oil and gas sector, and the mainland economy. Sea-based activities (fishing, shipping and shipbuilding) are also important in the economy, while the manufacturing sector is relatively small compared to most OECD countries. ICT-based development of new industries has been relatively modest.

The Nordic governance model and value system influences priorities and a core policy goal is to maintain a dispersed settlement pattern

Public policy emphasises egalitarian values, solidarity and high standards of social welfare. These goals have stimulated the development of a large public sector, a related high level of taxation, significant public ownership of companies and considerable regulation driven from the centre, aimed at ensuring that the standard of living is broadly the same across the whole country. Norway uses a range of policies to encourage continued decentralised settlement and to maintain traditional patterns of land use. To this end domestic agricultural production is heavily protected and state aid to this sector is the second highest in the OECD.

Traditionally the state has played a central role in the economy and society. Debate on regulatory reform can generate uncomfortable tension because of this. One perspective is that the public sector should remain directly engaged across a broad range of activities, and does not question high levels of public expenditure. A second perspective does question the extent of public engagement, and supports market-driven solutions wherever possible, backed up by appropriate regulation to ensure that public service goals continue to be met. The ongoing debate on the 2002 White Paper (*i.e.* an official document for public consultation) "Reduced and Improved State Ownership" highlights the existence of these different viewpoints.

Regulatory governance has a number of specific strengths

A complete and coherent regulatory governance policy cannot be said to exist in Norway. But several good initiatives have been taken, and important aspects of regulatory quality are in place. These include forward planning of regulations, effective consultation and co-ordination of comments, good communication strategies, and some excellent guidance documents. Mutual trust and close links between regulators and stakeholders are the keynotes. Alternatives to "command and control" regulation are often used. A striking feature is the regular effort made to review, repeal, and consolidate superfluous regulation.

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However the informal, consensus-based approach to regulatory processes is not well adapted to evidence-based decision making, and consistency is an issue.

Regulatory reform has been promoted in selected areas, especially the public sector

Reforms have tended to be more reactive than proactive, and more *ad hoc* than systematic. There are some important exceptions. Liberalisation of the power market in the early 1990s was a pioneering move at the time. All consumers have a choice of many competing suppliers, and prices have been low (with the exception of the last winter, when the Nordic electricity market came under considerable strain due to very low rainfall into the hydro system the previous autumn). Elsewhere change has often come in reaction to events such as the banking crisis of the late 1980s and early 1990s, and as a consequence of Norway's membership of the European Economic Area (EEA), especially in the network sectors.

An important recent exception to the *ad hoc* approach is the public sector. With the recent "Modernising the Public Sector in Norway" programme, the government's aim is to promote efficiency, flexibility and a more user-conscious approach. State ownership has also been addressed. This remains widespread and still includes many commercial activities. The White Paper on state ownership notes that the state has several roles (owner, policy maker, and regulatory authority) and that it is important to separate these. Important steps have been taken to separate state ownership and regulatory functions, though companies that are considered to have significant sectoral importance, such as Statoil, have remained with their ministries.

The most recent initiative is the January 2003 White Paper which launched a fundamental review of Norway's supervisory agencies (*tilsyn*). *Tilsyn* include the economic regulators as well as other types of agency. The White Paper proposes major reforms to strengthen the *tilsyn*, calling for their increased independence, a redefinition of some boundaries, and better horizontal co-ordination, as well as location changes. A core common basis for all *tilsyn* is envisaged.

Trade policy is strong and reforms have improved market access, but the handling of the EEA Agreement needs to be improved

Norway is a small open economy which is highly dependent on international trade. Trade policy is taken seriously and an open, liberal and predictable trading environment is promoted. The EEA Agreement, which makes Norway a part of the EU's internal market and under which EU internal market legislation is implemented into Norwegian law (via EEA regulations), is an important influence on the economy. Unilateral initiatives such as the removal of tariffs are also promoted, and Norway encourages imports from developing countries. Handling the process of negotiation, transposition and communication of EEA regulations is a major challenge. Norwegian business is concerned about the government's communication of EEA developments, which appears to be inadequate, though steps are being taken to improve matters.

A competition law with soundly based objectives was adopted in 1993, and competition advocacy is encouraged, but its impact is modest

Efficiency is the goal of competition policy. The law's statement of purpose is "to achieve efficient utilisation of society's resources by providing the necessary conditions for effective competition". The competition authority (the NCA) and the Ministry of Labour and Government Administration have vigorously promoted competition principles across a wide range of issues. But competition policy struggles to make the impact which might be expected on markets, and is not fully integrated into the policy framework. It is undermined by weaknesses in the law, including the large number of sector-specific exemptions, and the potential for ministerial intervention in the NCA's merger decisions, its decisions against anti-competitive behaviour, and its decisions relating to exemptions. The proposals to strengthen competition policy, a key part of the policy to modernise the public sector, are very important.

The oil wealth has masked the need for further reforms that would secure the future strength of the economy

The great advantages which Norway enjoys as a result of its oil wealth have masked the need for further necessary reforms, though there is a growing consciousness of the importance of taking a longer view. The oil wealth has enabled the development of a large public sector that lacks strong incentives to make efficiency gains. This has contributed to supply bottlenecks (notably in the medium and long-term supply of labour), thereby affecting the economy's growth potential. Not least, the government oil revenue alone will not be enough to cover expected public expenditure liabilities in the long run as the population ages. Pension and other reforms are also needed for this. Regulatory reform has a particularly important role to play in the Norwegian context, because of the macroeconomic background, which is strongly influenced by the oil revenues. Maintaining international competitiveness in the non-oil sectors is a challenge, and has in recent years not been helped by the current wage settlement system, as wage growth has been unsustainably high. As well as continuing the work to improve the efficiency of the public sector, reforms need to focus on strengthening the mainland economy, and on the labour market. The framework of regulatory governance needs development in support of these objectives. These four points are taken up below.

The mainland economy has competitiveness problems that need attention

The competitiveness of the mainland economy gives rise to some concern. Its growth has faltered since 1998. Productivity performance was relatively good in the 1990s. In the last few years, the competitiveness of the non-oil export sector has weakened substantially due to higher wage growth than trading partners and a pronounced strengthening of the Norwegian krone. The effect of the offshore oil and gas sector on the economy is not the only issue. Many product markets are still over-regulated and subject to insufficient competition. State-owned companies remain pervasive and give rise to concerns about competitive neutrality relative to private sector competitors. Innovation is weak by OECD standards.

As well as strengthening competition policy, a number of other measures would help. Public policy goals are strongly focused on regional policy, which includes distorting subsidies to agriculture, and relatively less attention is paid to the policies that would strengthen manufacturing industry, innovation and entrepreneurship. Policies to promote the diffusion of ICT, including more competition in the telecommunications sector, should be considered. Countries that have moved early to liberalise their telecommunications industry generally have lower communication costs and a wider usage and diffusion of ICT technologies.

Further reforms to specific product markets are needed. Electricity apart, the network industries in Norway have only been partially reformed. Some markets, such as the railway and postal sectors, are still largely closed to competition. Other weak spots include the retail market for groceries, the construction industry, and some transport sectors such as buses and taxis, which are heavily regulated. There is evidence that product market regulations are hampering productivity growth. The efficiency of the financial sector, which is a key factor in investment, could be enhanced.

The domestic civil aviation market changed in the 1990s from a market based on exclusive rights to a market with regulated competition. But the market is dominated by SAS. The government has taken a number of measures to facilitate new entry and stimulate competition. Greater competition is urgently needed.

The public sector needs further and deeper reforms

The public sector weighs heavily in the Norwegian economy. Public expenditure accounts for over 40% of GDP (in terms of mainland GDP it is the highest in the OECD at 55%). Public sector employment crowds out private sector labour needs. The arguments for further and deeper public sector reform are compelling. In the short term, there is a need to counter pressures for higher spending which could derail the new monetary and fiscal guidelines, and to reduce taxation. In the long-term, reform is needed to avoid an unsustainable budgetary situation brought on by the ageing population.

The measures which could be taken cover a wide field. A priority should be to improve the efficiency and effectiveness of public spending. Managing demand for public services is important, and user charges have so far been rarely used. Better management techniques need to be promoted. The two core public service activities of education and health need special attention. For both, expenditure is high by OECD standards, but performance is often less than satisfactory, and for education it is only around the OECD average. The hospitals reform is a significant step forward in the promotion of improved patient choice and greater efficiency. But unlike the reforms in many other OECD countries, it does not go very far in promoting market mechanisms, and does not sufficiently separate the state's roles as purchaser and provider.

The proposals for reform of state ownership are very important and need to be followed up wherever possible. The government's White Paper proposals have not all been adopted but it is helpful that debate continues. As a general principle, commercial activities that have no link with public functions should be privatised.

Local government, which is responsible for the delivery of most public services, needs to do this more efficiently. One important issue is the limited room for adjustment to local needs and preferences given strong central government control of standards. The funding system for local government does not provide strong incentives to contain local spending. More competitive procurement procedures would also help efficiency.

The labour market needs reform to remove bottlenecks for growth

Reform of the labour market has been the subject of many OECD recommendations over the years. Early retirement and disability schemes have expanded. The wage settlement system is relatively inflexible. Wage agreements in 2002 led to a wage rise of over 5% in the private sector (even higher in the public sector), which is higher than for main trading partners, and implies a steep rise in unit labour costs. Agreements concluded so far this year, however, imply a marked reduction in wage growth. A central issue is to strengthen the supply of labour, and the 2003 budget takes steps in this direction. Pension reform is crucial.

The overall framework for regulatory governance should be strengthened

Regulatory governance, despite specific strengths, does not yet exist as a dedicated and integrated policy to underpin effective reforms. The valued tradition of consensus building that drives the current approach to making regulations does not promote analytical rigour or evidence-based decision making. Better regulation could help improve efficiency and reduce pressure on public spending. It would also help to highlight the costs and benefits of policies, such as regional policy, so that public debate is better informed. Four issues need to be taken forward. A central regulatory governance policy needs to be developed, which should include more analysis of regulatory impacts. Regulatory impact analysis (RIA) needs to be more consistent in terms of quality, scope and analysis. The quality of local government regulation needs to be addressed. The initiative to modernise the framework for supervisory bodies should be pursued. In particular, the proposals to strengthen the independence and authority of the *tilsyn* are important, alongside the need to strengthen their accountability. The 2003 White Paper sets out a helpful framework for action, based on a "whole of government" perspective which has been lacking so far in the *ad hoc* evolution of the *tilsyn* and partial reforms.

In conclusion, there is a need to prepare for the future now

Though Norway performs very well today, there is a need to strengthen the resilience of the economy, and to address the future. Regulatory reforms to the public sector are needed to complement macroeconomic and fiscal policies aimed at ensuring economic stability, and to contain pressures for public spending. Reforms are also important for improving the performance of the mainland economy. An important issue in the context of improving performance in these two areas is state ownership. The debate on how far to reduce public ownership, which opposes two different views on the potential ability of the private sector to deliver public policy goals, needs to be taken forward. Reform is also, and not least, needed now to deal with the looming pension liabilities, rather than wait for this issue to become a crisis. Further product market reforms and a strengthening of competition policy are also important. The scope for further reforms to sustain current and future stability and growth is large, and a careful approach should ensure that legitimate concerns about maintaining public policy goals are effectively addressed.

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PART I

Regulatory Reform in Norway

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PART I

Chapter 1

Performance and Appraisal

Introduction

Norway stands out as one of the wealthiest countries in the OECD and the world, with a per capita income of around EUR 35 000. The discovery of immense oil and gas resources in the late 1960s transformed the country's prospects. Its wealth today is driven to a considerable extent by the substantial revenues derived from oil and gas exports. At peak times the oil and gas sector has accounted for nearly a quarter of GDP, and Norway is the world's third largest exporter of oil. The dominance of this natural resource has created a dual industrial structure, the offshore oil and gas industry and mainland Norway. Whilst the oil and gas has brought great wealth and social benefits it has also concealed the need for undertaking regulatory reforms that would further strengthen the economy.

The oil wealth is not the only factor that shapes the country. Geography has a major influence on the economy and society. Over three quarters of Norwegians live within 16 km of the sea. The long (2 470 km) indented and west-facing seacoast is warmed by the Gulf Stream and has promoted a substantial fisheries industry. Other important export industries are the production of machinery, basic metals, and fish and fish products. Norway is one of the world's largest fish exporters. It is also one of the largest shipping nations in the world, controlling 10% of the global merchant fleet, and has successfully developed a range of important niche markets in specialised shipbuilding. Exploitation of natural resources (fish, forestry and hydro-electric power, and more recently oil and gas) remains the backbone of the economy. The manufacturing sector, which accounts for 10% of GDP, has become quite small compared with most other OECD countries.

Public policy goals are based on the Nordic framework (Box 1 1), and are broadly shared across the main political parties and in Norwegian society. The emphasis is on egalitarian values, solidarity and high standards of social welfare, which have been made possible by Norway's enormous oil wealth. It is striking, though, that average disposable household income is much lower than the very high per capita GDP, reflecting the fact that the oil rent is saved, as well as a policy choice to promote an egalitarian society. Environmental policy is also strong, linked to a concern for intergenerational equity (reflected, *inter alia*, in the commitment to reduce greenhouse gas emissions). Public policy goals have stimulated the development of a large public sector, a related high level of taxation, significant state ownership of companies, a heavily subsidised agricultural sector, and considerable regulation driven from the centre, aimed at ensuring that the standard of living is broadly the same across the whole country, and to encourage continued decentralised settlement. Given Norway's geography, this is a challenge. It is a large country with a small population of 4.5 million and a difficult topography. A third of it sits north of the Arctic Circle, and its mountainous spine makes inland transport difficult and costly.

A wave of reforms took place in the 1980s and early 1990s (for example, liberalisation of the electricity sector), and some important reforms have taken place more recently. But regulatory reform is not a policy priority today. Debate on regulatory reform in Norway can generate uncomfortable tension, because two very different perspectives exist on the

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issue. The first perspective reflects a view that the public sector should remain directly engaged across a broad range of activities, and is not unduly concerned about high levels of public expenditure. The second perspective questions the extent of state and municipal engagement and the level of public expenditure, and seeks market-driven solutions wherever possible, backed up by appropriate regulation to ensure that public service goals continue to be met. The ongoing debate on the White Paper "Reduced and Improved State Ownership" highlights the existence of these different viewpoints. The title of the White Paper also captures it: should state ownership be reduced, or should efforts be mainly

Box 1. **The Nordic governance model and value system**

The Nordic model of governance is broadly common to the Scandinavian countries and to Finland. Of course, there are differences of emphasis and approach, as well as a constant evolution. Many features of the model are present in other, very diverse societies around the world. The following must be read in that context.

The Nordic approach sustains and promotes a particular set of values – the foremost being equity and solidarity – which guide public policy making. The high value placed on equity in society drives social policies to ensure that different parts of the country (especially important in those countries with dispersed populations) and particular groups in society are not disadvantaged. High standards of universal public services and infrastructure are also expected everywhere. Environmental protection is also generally high on the agenda, as an important contribution to a good quality of life.

Institutionally, the model – and the values at its core – emphasise a strong and central role for the state in the economy and society. The state is seen as the main guardian and defender of society. The state (through the taxpayer) is ready to finance an extensive social welfare system. In Finland and Norway, the government also traditionally owns substantial economic assets. Public ownership has historical roots but also reflects concerns about relying on the private sector to deliver important social objectives (even where substantial regulation is in place).

The state is both strong and very decentralised. In Norway, the government system is based on ministers' constitutional responsibility in their respective areas, with relatively large ministries and a relatively small Prime Minister's Office. That said, three important forces promote integrated policy making: frequent and regular discussions and decisions by the full cabinet on all important issues, interministerial committees and working groups, and responsibility for finance and economic policy vested in a single ministry (the Ministry of Finance).

Another marked institutional feature is a political and societal culture characterised by consensus building. There is widespread participation in decision making, a search for consensus, and institutionalised contact arrangements among government, employers and the unions. Consensus-building tends to promote gradual rather than rapid change and reduces conflict. Pragmatic solutions are favoured. Norway makes extensive use of preparatory committees with broad participation to build consensus wherever possible.

It is arguable that the Nordic model of governance only works effectively in small, homogeneous societies. The consensus-based approach to decision making draws its strength and effectiveness from a close and informal network of contacts within government and society, based on mutual trust. Constitutional and political factors may also promote the development of this model, which tends to work in tandem with a political culture that generates coalition or minority governments.

focused on improving the way it works? The debate takes place against a background in which public confidence in the state, and attachment to public service delivery to meet public policy goals, have traditionally been high. The public may not always perceive – or accept – the important distinction between the goals themselves, and how they are best delivered.

Another important issue in regulatory reform in Norway is that the consensus-based approach to decision making does not promote rapid change. Much of the impetus for recent change has come not from within Norway (though the late 1980s and early 1990s banking crisis played a role), but from Norway's membership of the European Economic Area (EEA). This came into force in 1994 and makes Norway a member of the EU's internal market (membership of the EU itself was rejected in two referenda). It means that Norway must comply with EU internal market legislation (except for agriculture and fisheries). To cite one important example, EU legislation has driven the liberalisation of the telecommunications sector. The EEA agreement has reinforced Norway's evolution toward market openness. International trade as well as investment flows are a very important part of the economy.

This report is structured as follows. It starts by considering the key issues that are shaping the overall development and performance of the Norwegian economy and society, and the particular characteristics of the economy that have a strong link with regulatory reform. It then considers the contribution which regulatory reform has already made to performance, before addressing the question of where further regulatory reform might continue to boost performance and the achievement of public policy goals. It ends with the important conclusions which can be drawn from this analysis.

Setting the scene: the macroeconomic context

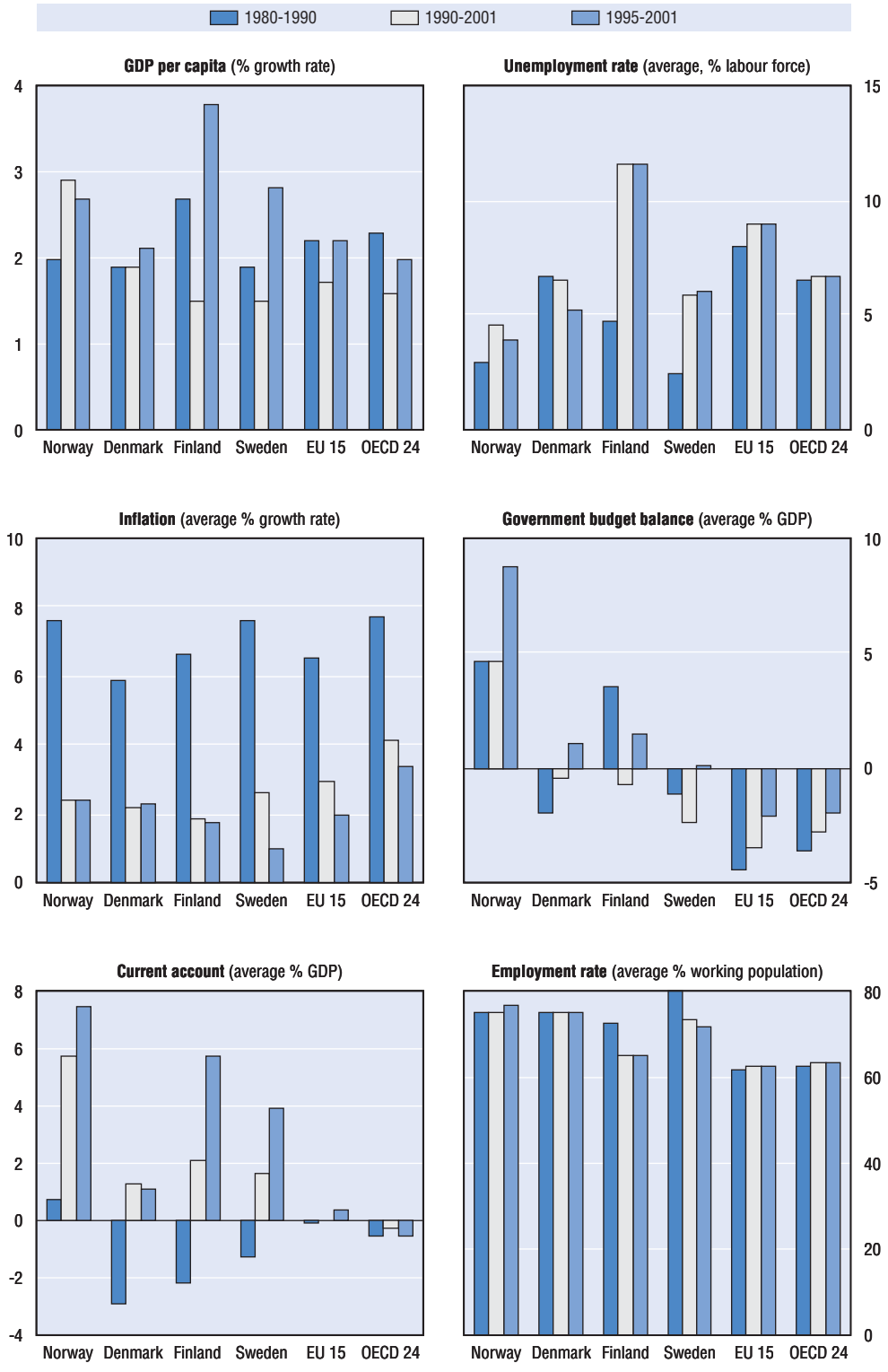
Norway's overall economic growth has been good, and the new macroeconomic policy framework looks positive for future stable growth

Norway's overall GDP growth in recent years has been good, though not spectacular (Figure 1).

The impact on the economy of significant oil revenues (and of fluctuations in the oil prices) calls for prudent economic policies to promote stability. It seems the government has found a potentially effective solution, though it remains to be tested, especially with continuing pressure to raise public spending. The solution took the shape of an important reform of the macroeconomic policy framework in 2001. It replaced earlier policies that had failed to cope effectively with the large budget surpluses arising from oil receipts, putting pressure on the government to raise public expenditure and jeopardising the goals of controlled development and a stable growth path. A new fiscal policy rule was established, aimed at promoting stable long-term growth. The new policy sets out to stabilise economic fluctuations, and allows for a steady and sustainable increase in the use of petroleum revenues in line with the expected real return of the Petroleum Fund (Box 2). Given the prospect of steady fiscal expansion under the new rule, the government also introduced an inflation target for the central bank (which brings Norway into line with many other OECD countries).

The government is aware that the long-term public expenditure position is unsustainable, and pension reform (as well as reform of the disability scheme) is on the agenda. A committee will present proposals on reform of the pension system in

Figure 1. **Key economic indicators of Norway and EU/OECD countries 1980-2001**

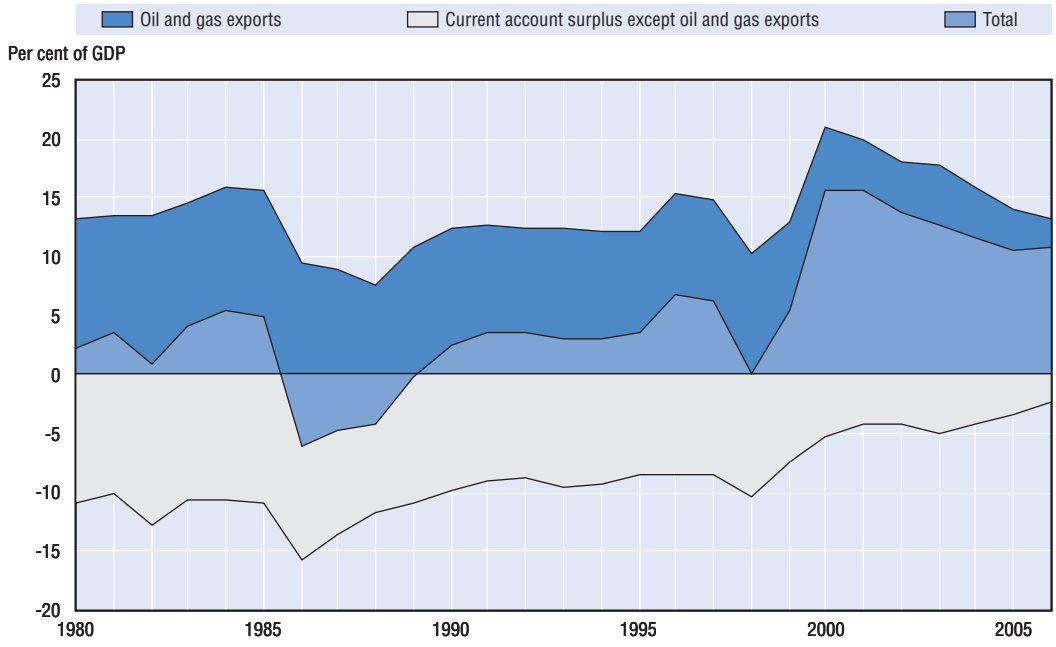


Source: OECD.

Box 2. **The Petroleum Fund**

Norway has used the substantial revenue generated by the offshore oil and gas sector to build up a Government Petroleum Fund in order to preserve a share of present oil revenues for the long term. The Fund is invested in financial assets overseas. It was established in 1990 and the first transfers were made in 1995. It is estimated that the Fund's capital by the end of 2003 will be about NOK 846 billion or 54% of GDP. Under the new fiscal policy guidelines, the net cash flow from petroleum activities will be saved and only the real return on Fund investments will be spent. With continuing high – though falling – government oil revenues, the Fund is projected to increase in real terms until 2050. But as petroleum reserves are depleted, it will stop growing. And although the Fund provides – as it was intended to – a substantial cushion for meeting future needs, it will not be sufficient to cover projected pensions liabilities and health spending as the population ages. According to Norway's own estimates in the 2003 National Budget, the return on the Fund by 2050 will be less than 5% of GDP whilst the return needed at that stage to cover pensions expenditure will be more than 15% of GDP. However the Fund could be used to help ease the transition to a new pension regime.

Figure 2. **The current account of the balance of payment, per cent of GDP**



Source: Statistics Norway and Ministry of Finance.

October 2003. The following review and legislative procedures imply that a possible revision of old age pensions cannot be implemented before 2007 at the earliest. Fiscal policy needs to take account of the long view which includes falling revenues and rising pension liabilities.

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Oil and gas exports have generated great wealth and exert a key influence on the economy

Norway's economy was set on a new path with the discovery of major oil reserves in the North Sea in 1969. Huge investments in production and pipelines followed. Most of oil and gas production is exported, and Norway is today the world's third largest oil exporter (after Saudi Arabia and Russia) as well as among the top ten gas exporters. Though oil production is expected to start declining before the end of this decade, natural gas production is set to grow. This can be expected to compensate, at least in part, for declining oil revenues. By around 2015, it is projected that more gas than oil will be sold. Further exploration could reveal further exploitable resources so exact prospects for the very long term are uncertain.

Norway's oil and gas has generated great wealth and allowed it to develop and sustain an extensive social welfare system. But as the government recognises, it needs careful handling to ensure economic stability. And as will be seen, it tends to undermine (directly and indirectly) the performance of the rest of the economy. It has created supply bottlenecks, masked the need for reforms, and enabled the development of a large public sector that lacks strong incentives to make efficiency gains. Not least, the wealth will not be enough to cover expected public expenditure liabilities in the long run as the population ages (assuming no fundamental reform of pensions) (see Box 2).

Norway's mainland economy is not so strong

Figure 1 shows that Norway's overall performance (offshore oil and gas together with mainland sectors) has generally been better than the OECD average since the 1980s. However the growth of the mainland economy has faltered after 1998. A number of factors were at work: very tight labour market conditions leading to rapid wage gains, a decline in investments in the petroleum sector, and from the summer of 2000 a pronounced strengthening of the Norwegian krone. Some of these problems can be directly linked to issues that need regulatory reform. For example (and not least) inflation was not helped by the Norwegian centralised wage-setting system that results to a considerable degree in uniform wage increases across sectors irrespective of their productivity growth (so sheltered sectors such as construction and services got high wage increases which fed into higher prices). In particular, the competitiveness of the non-oil export sector has weakened substantially.

These developments are not just negative for today's economy, but raise problems for the future as the profit squeeze and higher interest rates have damaged investment. The technological and innovative strength of the mainland economy's capital stock is a concern.

Competitiveness is a particular concern for the mainland

Competitiveness is a particular concern. Labour productivity growth has been strong but this is due to a large extent to the oil and gas sectors (Figure 3). If the oil and gas sectors are removed from the picture Norway's productivity performance, though still ranking high internationally, is less striking. As a result, the mainland economy has difficulties in sustaining the high rates of wage growth which Norwegian workers have become accustomed to without profits, and international market shares are being squeezed.

Competitiveness, which is considerably influenced by productivity, is also an issue. Norway ranked lower in 2002 on the widely used International Institute for Management

Box 3. **Regulatory reform, labour productivity and growth potential**

Any analysis of productivity growth and the level of productivity in Norway is strongly influenced by the large offshore oil and gas sector. If this sector is included, Norway ranks almost at the top of OECD countries in the 1990s, both as regards the level and the growth rate. If this sector is excluded, Norway's ranking is still relatively favourable, but less so.

The relatively favourable productivity performance of the mainland economy is the mirror image of rapid growth in real wages which, in turn, reflects the fundamentally tight labour market conditions (notwithstanding cyclical slack in recent years). The government in Norway acts as a strong source of demand for labour, easily absorbing not only the growth in labour supply but also the falling demand for labour in the mainland business sector, in particular manufacturing. Meanwhile, due to "solidaristic" wage formation (allowing only little differentiation in wage growth across sectors, occupations, skill levels, regions, etc.) low productivity activities and jobs are being squeezed, which may have contributed to aggregate labour productivity rising relatively fast.

Looking ahead, the prospective decline in petroleum production will act as a two-edged sword. Fiscal revenues of the government will decline and public expenditure will have to be adjusted given the already sizeable tax burden and the pressure stemming from ageing, although the Petroleum Fund (see Box 2) will provide some relief initially. At the same time, the current account surplus will diminish or turn into a deficit, thus calling for a renewed focus on the competitiveness of the "traditional" mainland sector and moderate real wage growth. Maintaining high productivity growth in the mainland sector over the longer haul will be a necessity but also a challenge.

One of the more important goals of regulatory reform is to raise labour productivity. This can reduce inflation, which, other things being equal, enlarges disposable income for spending on more goods and services that create more employment. Of course there are second-round effects (for example the employment increase may raise nominal wages), but with rising productivity this does not necessarily raise unit labour costs. The final effect also depends on the initial situation in product and labour markets.

(IMD) scoreboard than most other OECD countries. There is an important link between regulatory reform, labour productivity and growth potential (Box 3).

Sea-based activities are of major economic importance

The sea-based activities of fishing (including aquaculture), shipping and shipbuilding together make up an important part of the economy. Fish and fish products are one of the largest exports from Norway, which is one of the major exporters of these products in the world. The sector provides substantial income and employment, both directly and indirectly. The main goal of Norwegian fisheries management is the sustainable utilisation of living marine resources, which is based on international fisheries management requirements. The key elements of fisheries management are the knowledge base of management, the regulation of fishing activity and the enforcement of these regulations. In order to manage the fisheries, Norway has established an extensive system for controlling fishing activity and the fishing fleet. Support to the fishing sector has been significantly reduced in recent years and is today very limited. Norway's extensive coastline has also promoted a strong shipping and shipbuilding tradition. Norwegian shipping companies control 10% of the global merchant fleet, the world's largest measured in own tonnage (though the shipping industry contributes only 2% of GDP and employment

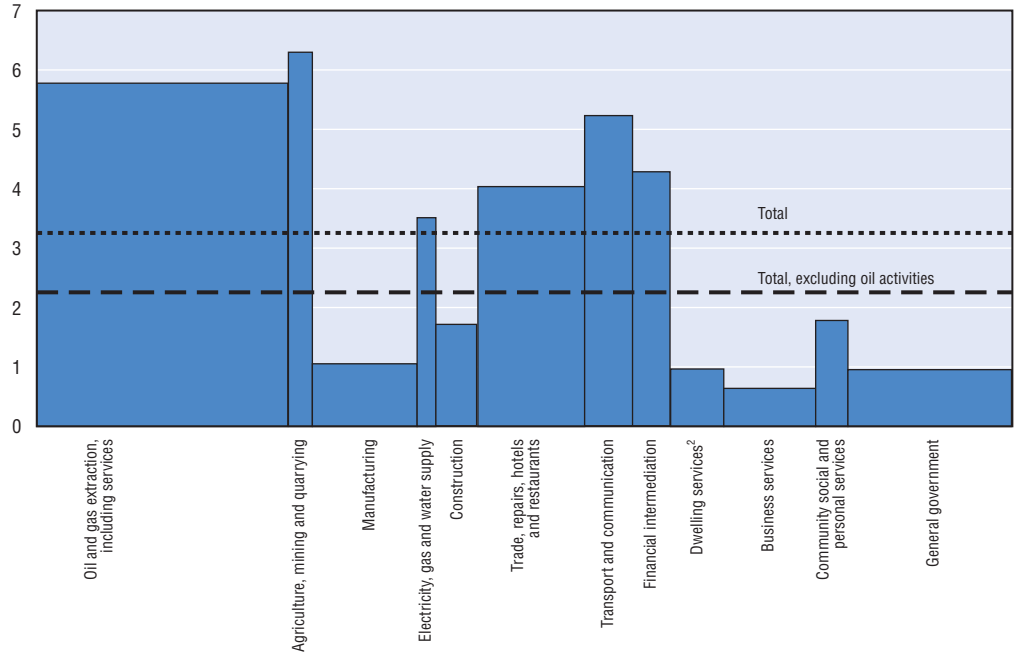
is modest). Prospects for the industry are positive because of the shift in Europe from road to sea transport. Nevertheless state aid including tax exemptions for maritime transport amounts to over NOK 2.5 billion in 2003. A subsidy scheme for new ships was ended as of January 2001. However a new subsidy scheme is being prepared, as a consequence of certain EU countries having reintroduced state aid to the shipbuilding sector.

Support for regional settlement is a core public policy goal, and includes high levels of aid for agriculture

Public policy emphasises the importance of maintaining a dispersed population. The government uses a range of policies to retain households in remote areas and attract others. It imposes high standards for core public services on local authorities. Central government transfers and the tax system are biased in favour of remote regions. For example, employers pay little or no social security contributions for employees in the northern regions (this has been challenged by the ESA, and the government must now make new proposals). The benefits of this policy are not clear-cut. Though living standards are a match for other parts of the country (some public services are even better than elsewhere), people are still leaving. The cost of regional policy (defined very broadly to include an appropriate portion of the cost of policies that make a major contribution to regional policy, such as agricultural aid) is likely to amount to several percentage points of

Figure 3. **Labour productivity by sector**[1]

Average annual percentage change, 1988-2000



1. Value added per hour worked. The width of the bar represents the share of each sector in total value added in basic prices in 2000.
2. Dwelling services includes rental income which accounts for a sizeable share of the economy.

Source: Statistics Norway.

GDP. In February 2003, the government appointed a committee with broad participation to review existing regional policy aid and to propose alternative measures. Its work will be based on advice by an expert committee, established in autumn 2001, which is studying the effects of various policy measures on regional development.

An important part of regional policy aims to maintain, as far as possible, traditional patterns of rural settlement and land use. To this end domestic agricultural production is heavily protected. An estimated two thirds of farm revenue comes from support measures, much higher than the OECD and even EU averages. Agricultural tariffs are among the highest in the OECD (the average tariff in 2000 was 38.7%). State aid is the second highest. It is estimated to have been NOK 19.6 billion in 2001 (some 70% of all state aid). Heavy regulation is also applied through price support laws. Exemptions make it difficult to apply competition policy to the agro-food industries. It should be said that Norway facilitates imports from developing countries, in keeping with its more liberal trade policy for these countries. However the overall effect of policy is a significant distortion of international trade, high food prices in Norway (prices are over 100% above world prices, and cross border shopping is common), and an important burden on public expenditure.

The primacy of natural resource exploitation in the economy has left less room for innovation and R&D

The recent OECD study on the factors that could enhance long-term growth prospects (The new economy beyond the hype, 2001) suggests that policies to promote information and communication technology (ICT), human capital, innovation and entrepreneurship – alongside the basics of good macroeconomic policies and open markets – are very helpful to growth in the longer term.

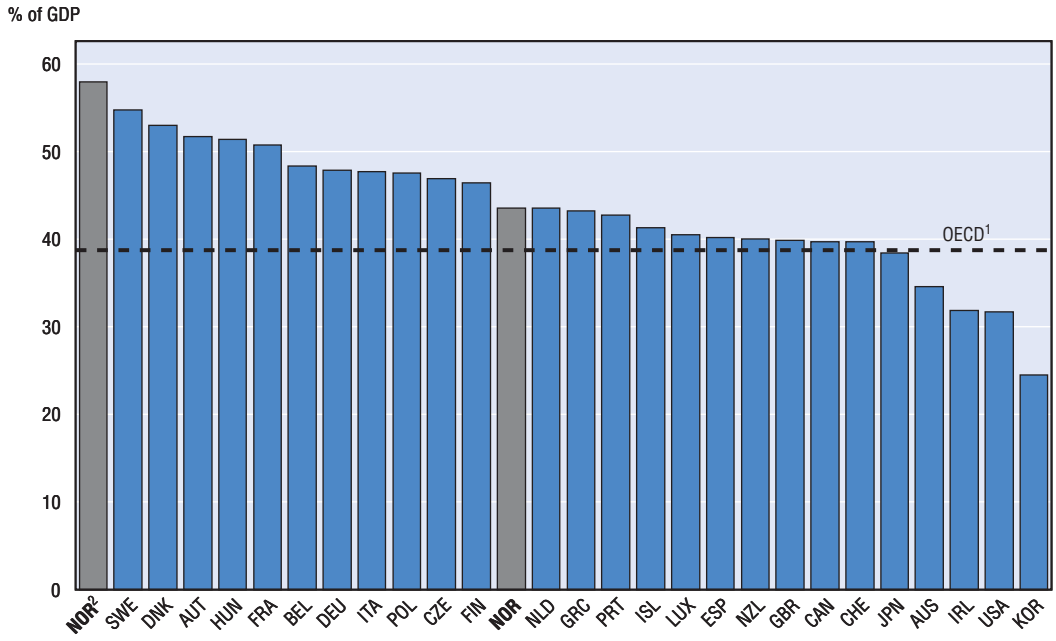
Some of these growth-enhancing factors do better than others in the Norwegian context. As might perhaps be expected of an economy that is largely built around the exploitation of natural resources, Norway's information and communication technology (ICT) sector is very small. Measured in terms of patents, its innovation is low relative to other OECD countries.

Norway's R&D record is mixed and spending both by business and the government was stagnant in the second half of the 1990s, but has picked up since 1999. Public R&D expenditure is above the EU average, but overall expenditure (public as well as private) is below the EU average. The composition of Norwegian industry (which is low on R&D-rich sectors such as defence and pharmaceuticals) accounts for part, but not all, of the difference. Policy toward R&D was reviewed and strengthened by Parliament in 1999. Parliament set a target of reaching the same level of R&D, measured as a percentage of GDP, as the OECD average by 2005. A tax credit scheme for business R&D expenditure entered into force in 2002, and allocations on R&D have been increased in the 2002 and 2003 budgets.

The public sector weighs heavily in the Norwegian economy

Norway has a large public sector. It is the third largest sector of the economy (after oil and gas, and the sea-based sectors). Public expenditure (Figure 4) accounts for over 40% of total GDP (in terms of mainland GDP it is the highest in the OECD at 55%). It employs some 30% of the workforce, and accounts for about 20% of mainland investment. Local government, which has significant devolved responsibilities for the provision of public services, accounted in 2001 for around 30% of public expenditure and for nearly 80% of public sector employment.

Figure 4. **Public spending in the international perspective**



1. Weighted average.
2. Norway as a percentage of mainland GDP.

Source: OECD, OECD *Economic Outlook*, No. 71, June 2002.

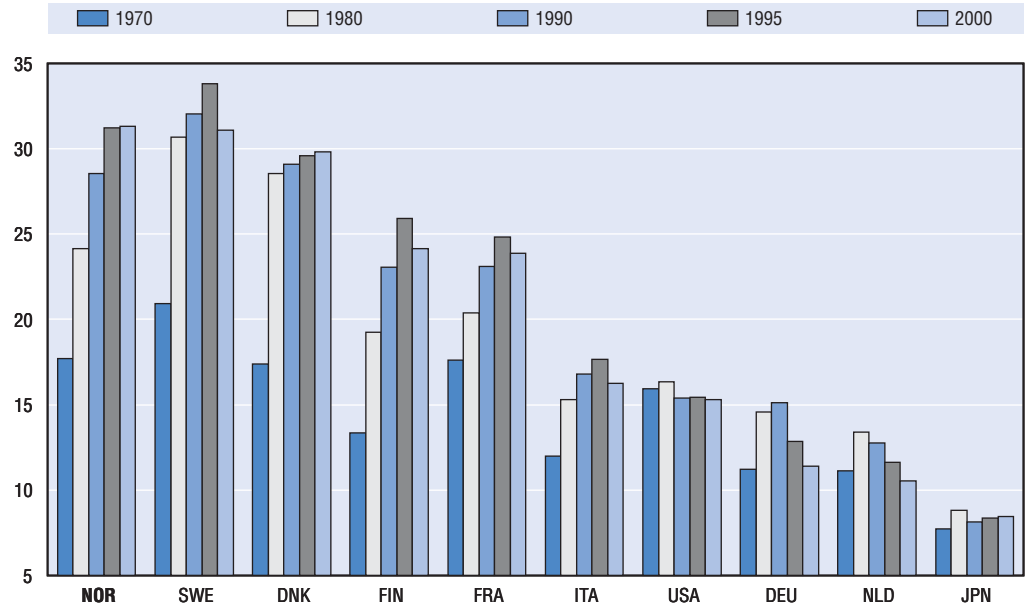
Total public spending as a percentage of GDP on the combined sectors of education, health, social services and the environment is the highest in Europe. This reflects the Norwegian attachment to extensive and universal welfare services of a high standard, a strong commitment to a clean environment, and the maintenance of decentralised settlements – including in the remotest areas – across the country.

Public spending drives a high level of taxation. The tax system, and the need for changes to it, have been reviewed by an expert committee (the Tax committee) which submitted its report in February 2003. The committee proposed reductions in the tax on labour income and the wealth tax, partly compensated by increased tax on housing and real property. The government will present a White Paper on the tax system this autumn.

The weight of the public sector in the Norwegian economy raises important issues for other sectors and for overall performance. It has a large impact on the labour market, especially as public sector employment continues to grow. Local government employment grew annually by 2.6% between 1988 and 1998. Employment growth in the three years from 1999 to 2001 was almost entirely in the public sector. In the context of a tight labour market (see below), this crowds out private sector labour demand. The current *de facto* life long tenure for most public sector employees means that numbers rise when demand for services rises, but do not fall with falling demand (Figure 5).

Life long tenure (and other factors such as a lack of schemes to link remuneration with performance) also damages efforts to improve efficiency of the public sector, which is a growing issue (Norway is not the only OECD country to struggle with the problem). The government recognises that efficiency is not satisfactory. An important recent initiative is

Figure 5. **Trends in general government employment**
As a percentage of total employment



Source: OECD,OECD *Economic Outlook*, No. 71, June 2002.

the "Modernising the Public Sector in Norway" programme. As well as crowding out private sector labour needs, low public sector productivity affects overall productivity performance (and hence competitiveness, which is closely linked). It also contributes to high taxes, which not only promote high prices for consumers but further damage competitiveness. The average price level of consumer goods in Norway is approximately 20% higher than in other Nordic countries, and much higher than the EU average.

Although unemployment has risen recently, the medium to long-term outlook for the labour market is constrained

The employment rate remains one of the highest in Europe (Figure 1), despite a recent rise in unemployment caused by the cyclical downturn in the economy. Norway's qualified workforce is almost fully employed. Unemployment remains low relative to the EU and OECD average. This is an enviable situation from many perspectives, but Norway suffers from a structural labour shortage which affects growth prospects for the mainland economy. High levels of protective regulation are part of the reason for this. But the most important reasons are the generous sick and disability benefits (about a quarter of those aged 55-59 and a third of those aged 60-66 are on disability pensions, with total spending about 2.5% of GDP which is the highest in the OECD), and the pension system. High marginal taxes on labour income are also unhelpful. Since 1998 the wage formation system has failed to curb unsustainably high wage growth. The strong recent appreciation of the Norwegian krone adds to the problem).

To address this situation, Norway should tackle underlying regulatory obstacles to a better functioning labour market. Measures to raise labour supply (for example pension reform to raise the average age of retirement, which would have the added advantage of helping to address the looming problem of pension liabilities), to promote longer working

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hours, and to increase labour efficiency (for example and not least, public sector reform) would help to remove the bottleneck. Otherwise this key constraint on the economy is set to stay. The present situation also generates social problems, as the less educated are often unemployed, which does not seem very compatible with the policy emphasis on an equitable society.

Regulatory reform: its contribution so far

Regulatory reform (Box 4) is an important part of governments' toolkit for improving economic performance and meeting public policy goals. The general use of regulatory reform to promote policy goals in Norway is not, as yet, deeply rooted. Reforms have most often taken place as a reaction to events such as the banking crisis in late 1980s and early 1990s, and more recently through implementation of the 1994 EEA agreement. The approach is more reactive than proactive, and more *ad hoc* than systematic. One notable exception has been the recent spotlight on public sector reforms, including state

Box 4. **What is regulation and regulatory reform?**

There is no generally accepted definition of regulation applicable to the very different regulatory systems in OECD countries. In the OECD work, regulation refers to the diverse set of instruments by which governments set requirements on enterprises and citizens. Regulations include laws, formal and informal orders and subordinate rules issued by all levels of government, and rules issued by non-governmental or self-regulatory bodies to whom governments have delegated regulatory powers. Regulations fall into three categories:

- Economic regulations intervene directly in market decisions such as pricing, competition, market entry, or exit. Reform aims to increase economic efficiency by reducing barriers to competition and innovation, often through deregulation and use of efficiency-promoting regulation, and by improving regulatory frameworks for market functioning and prudential oversight.
- Social regulations protect interests such as health, safety, the environment, and social cohesion. The economic effects of social regulations may be secondary concerns or even unexpected, but can be substantial. Reform aims to verify that regulation is needed, and to design regulatory and other instruments, such as market incentives and goal-based approaches, taht are more flexible, simpler, and more effective at lower cost.
- Administrative regulations are paperwork and administrative formalities through which governments collect information and intervene in individual economic decisions. They can have substantial impacts on private sector performance. Reform aims at eliminating those no longer needed, streamlining and simplifying those that are needed, and improving the transparency of application.

Regulatory reform is used in the OECD work to refer to changes that improve regulatory quality, that is, enhance the performance, cost-effectiveness, or legal quality of regulations and related government formalities. Reform can mean revision of a single regulation, the scrapping and rebuilding of an entire regulatory regime and its institutions, or improvement of processes for making regulations and managing reform. Deregulation is a subset of regulatory reform and refers to complete or partial elimination of regulation in a sector to improve economic performance.

Source: OECD Report on Regulatory Reform (1997).

ownership. However the absence of a systematic approach elsewhere also means that there remains considerable scope for using regulatory reforms to strengthen the economy and boost long-term growth.

Norway was a pioneer in the reform of its electricity market, but has been less bold with the other network industries, and state ownership remains pervasive

Norway has not experienced a big wave of change in the network industries. An important exception at the start of the 1990s was the liberalisation of the power market, a pioneering move in the international context of the time, and well ahead of EU legislation which has only caught up very recently. Norway has the highest per capita consumption of electricity in the world and needs an efficient power market. The market is now fully open. All consumers have a choice of many competing suppliers, and a competitive wholesale power market (Nord Pool) is shared with Nordic neighbours. There are no controls on retail prices (as in many other OECD countries) reflecting a confidence that the market is sufficiently competitive to allay potential fears of dominance. Though prices do not vary much between suppliers, they have been low until very recently (significant price rises were experienced in the last winter 2002-2003, because of a strained electricity market due to very low rainfall into the Nordic hydro power system). Switching supplier has stimulated competition. 18% of households and nearly 28% of businesses are buying power from a supplier other than the locally dominant one. However public ownership remains pervasive and raises concerns. Statkraft, the largest power generator, is owned by the government, and local authorities own many other power companies.

Other network industries have further to go and in general, Norway is at the same stage as many other OECD countries in their liberalisation. Change often comes at the behest of the EU through the EEA Agreement. The telecommunications sector was liberalised in 1998, in step with EU directives. Prices have fallen. But despite significant market entry the incumbent, Telenor, retains a large market share, and remains largely state-owned (78%) which contrasts with most EU countries. That said, in the context of taking forward the White Paper on state ownership, Parliament has approved reducing the state ownership share in Telenor, through sales of shares or mergers, to 34%.

Some limited steps have been taken to liberalise the transport sector, which also remains under heavy state ownership. The railways (NSB AS) are state-owned. Administrative unbundling of the track and infrastructure from rail services was carried out in 1990, which improved management. This was followed in 1996 by a fuller separation under which NSB was required to pay for access to the track. But NSB retains a monopoly of non-freight services. Inland freight is open to private competition but here too, real competition has not emerged, prices remain high and productivity remains low.

The postal sector remains a state monopoly, though it is now a state-owned company (a limited company subject to private sector corporate governance rules). Posten Norge AS is the second largest employer and operates at a loss. The state ownership White Paper does not envisage any change in state ownership.

The domestic civil aviation market was transformed from a market based on exclusive rights to a market with regulated competition in the 1990s. EU-wide regulations govern the market as a consequence of the EEA Agreement. The market is dominated by SAS which holds a near monopoly position after its acquisition of Braathens AS, the other major domestic carrier, in addition to its ownership of Wideroe, the major regional carrier. The state owns 14.3% of SAS (the governments of Denmark and Sweden own a further 35.7%).

The Norwegian competition authority has taken a number of measures to stimulate competition. In particular it has introduced a ban on frequent flier programmes for domestic flights, and opposed the air passenger surcharge, which was later abolished. Competition has emerged, albeit modestly, on some major routes with the entry into the market of Norwegian Air Shuttle. As with other network industries the government maintains a number of public service obligations, including air traffic safety and the availability of services across the country. Some of these obligations need to be balanced with the desire to improve efficiency through competition where possible.

Reforms of the financial sector have taken place but more could be done to maximise efficiency

Attempts to liberalise financial markets came relatively late in Norway. As in many other countries the abolition of controls on international capital movements was first followed by a limited liberalisation of the banking sector. Some important reforms were spurred by the banking crisis of the late 1980s and early 1990s. The crisis confronted the banking system with substantial losses on loans and a low capital adequacy ratio, to which the government reacted by enlarging its participation in the banking industry. This was followed by a process of rationalisation which generated substantial cost savings and helped to restore margins. The government also introduced new regulation: a deposit guarantee scheme, an increase in capital requirements and a stronger supervision of the banking industry. A partial reprivatisation of the three top commercial banks also took place. Improving prudential regulation rather than stimulating competition was the main objective. However the reforms have also encouraged competition, which is greater in the services that include more foreign-owned firms. The state has retained a 47.28% ownership share in the largest commercial bank, Den Norske Bank, through the Government Bank Investment Fund.

Public sector reforms to improve performance have been carried out, and important steps have been taken to address state ownership

The government gives high priority to the public sector with the aim of promoting efficiency, flexibility and a more user-conscious approach. Budgeting and management flexibility have been enhanced, public agencies have been encouraged to be more user-friendly (through user charters, etc.), and efficiency has been promoted through measures such as benchmarking and budget allocations linked to outcome targets. There is still potential for improvement, especially at the municipal level. In 2002 the government established a programme "*Modernising the Public Sector in Norway*". A cabinet committee oversees the implementation of the programme. The agenda includes reviewing and simplifying legislation in general and competition law in particular, an action plan to reduce administrative burdens on business and it introduces requirements to estimate total costs in connection with tenders, investments and reorganisations of service provision. The programme also announced a review of the feasibility of extending the use of outcome-based systems of financing, and the launch of a review of the supervisory agencies (*tilsyn*) (see also Box 6). A White Paper on the supervisory agencies was released in January 2003. It calls for significant changes in their organisation and location. One goal is to strengthen their independence. For example the paper discusses the system for reviewing supervisory body decisions, which currently involves a ministerial appeal in a number of cases.

State ownership has also been addressed. This remains widespread and still includes many commercial activities (see Chapter 5, Table 9).

The 2002 White Paper "*Reduced and Improved State Ownership*" addresses the issues clearly and directly. The White Paper notes that the state has several roles (owner, policy maker and regulatory authority), and that it is important to separate these. State ownership is not a goal in itself. State-owned entities should not offer products and services in the market when private companies could deliver these more efficiently. Private owners will generally be in a better position to meet the requirements for good management, organisation and finance. For activities that remain state-owned, managing state ownership, and in particular the need to separate the functions of ownership and regulation, is important, as is effective corporate governance. The White Paper reviewed some 40 companies and concluded that state ownership should be reduced in a number of these, with a complete withdrawal in some cases. Since the presentation of the White Paper a handful of companies have been fully or partially privatised.

Important steps have been taken to separate state ownership and regulatory functions, by transferring ownership of many of the state's business activities to the Ministry of Trade and Industry. Companies that are considered to have significant sectoral importance have, however, remained under their respective sectoral ministries. For example, the oil and gas company Statoil remains with the Ministry of Petroleum and Energy. The public broadcasting corporation, NRK, remains with the Ministry of Church and Culture. The postal service, Posten Norge AS, and the railroads, NSB AS, remain with the Ministry of Transport and Communication. As requested by the Parliament, the government has set up a committee to study how best to manage state ownership as a broad reduction in shares is not likely in the near future given Parliament's position, and the relatively limited Norwegian private capital base.

Trade policy is strong and reforms have improved market access and eliminated many barriers

Norway is a small, open economy which is highly dependent on international trade. Trade policy is taken very seriously and an open, liberal and predictable trading environment is promoted. Norway's multilateral record is excellent. Tariffs are zero for nearly all industrial goods and non-tariff barriers are minor. Norway also encourages imports from developing countries. A number of reforms have promoted market openness, many of these through implementation into Norwegian law of EU legislation via the EEA Agreement. The Agreement has improved transparency for foreigners and promoted the principle of non-discrimination. But important unilateral initiatives have also been taken. Since 1995, almost 3 300 tariffs have been eliminated on a Most Favoured Nation (MFN) basis. Norway also takes a clear stand in formal support and implementation of international standards agreements, both as a consequence of the EEA Agreement and because it is party to the WTO TBT Agreement.

A competition law with soundly based objectives has been adopted, and competition advocacy encouraged, though its impact is modest

The current competition law was adopted in 1993, with efficiency as the goal of competition policy. The law's statement of purpose is "to achieve efficient utilisation of society's resources by providing the necessary conditions for effective competition". This legal conception of competition policy provides a strong basic framework for the promotion of competition. The competition authority (the NCA) and the Ministry of Labour

and Government Administration have vigorously promoted competition principles across a wide range of issues. Powerful established companies such as Statkraft and SAS have been challenged, and the NCA has examined competition across a range of sectors including agriculture, procurement and more recently, the delivery of public services. But as will be seen later, competition policy struggles to make the impact which might be expected on markets, and is not fully integrated into the policy framework.

Regulatory governance has a number of specific strengths

Regulatory governance policy – that is, policy for enhancing the capacity to make "fit for purpose" and cost-effective regulations and regulatory regimes – is a driver of regulatory reform in general and an essential adjunct to more specific reforms, such as sectoral reforms.

A complete and coherent regulatory governance policy cannot be said to exist in Norway. But regulatory governance has a number of strengths, and several good initiatives have been taken. Many important aspects of regulatory quality as set out in the 1995 *Recommendation of the Council of the OECD on Improving the Quality of Government Regulation* are in place. These include forward-planning of regulations, effective consultation and co-ordination of comments, good communication strategies, and some excellent guidance documents. Transparency in the process of rule making uses a mix of formal and informal approaches that suit the Norwegian context. Mutual trust and close links between regulators and stakeholders are the keynotes. There is a strong and longstanding tradition in the use of alternatives to "command and control" regulation.

A striking feature is the considerable and systematic effort put into the review, repeal and consolidation of superfluous regulations. This goes back a long way, starting in 1963. It remains a priority: the government has said that it will continue with the "*Simplifying Norway*" project, launched in 1999 with the mission of simplifying business regulations, as well as streamlining public service delivery. There is a strong emphasis on promoting a business-friendly environment. The Brønnøysund registers, unique in the OECD, provide an up-to-date and complete record of reporting obligations, permits and licences imposed by central government on business. The system also co-ordinates reporting obligations to minimise burdens on business.

The strengths of the Norwegian approach also contribute to some important weaknesses, as discussed later. The informal, consensus-based approach to regulatory processes is not well adapted to evidence-based decision making, and consistency is an issue.

Regulatory reform: the challenges ahead

Regulatory reforms have an important role to play in the Norwegian economic context, since there is a strong two-way relationship between such reforms and macroeconomic policy. A key goal of Norwegian macroeconomic policy – and a unique challenge compared with other European countries – is to manage the oil and gas income. This generates a huge and persistent current account surplus which makes the currency prone to appreciation. Maintaining international competitiveness in the non oil sector is a challenge, and important elements of the current regulatory environment interact in a negative way with this issue. The wage settlement system has in recent years delivered unsustainably high wage growth. This has lowered profits in the exposed sector and would call for a depreciation of the currency to maintain international competitiveness. But the

oil and gas sector promotes currency appreciation. With a stable or appreciating currency, the manufacturing sector is squeezed. More flexibility in wage formation and higher productivity growth in the manufacturing sector are necessary to sustain international competitiveness.

Against this background, regulatory reform has an important, if not critical, contribution to make in ensuring a stable and competitive economy. The attention paid by the government to public sector reforms and administrative simplification, important as these are, has meant that other reforms have not progressed so far. Reforms should particularly focus on improving the efficiency of the public sector (which includes the issue of state ownership), strengthening the mainland economy (especially the manufacturing sector, and reforming the labour market. The overall framework of regulatory governance needs development in support of these objectives.

1. The public sector needs further and deeper reforms

The arguments for further, and deeper, public sector reform are compelling. They relate both to the short and long-term outlook. As regards the short term, there is a need to counter pressures for higher spending which could derail the new monetary and fiscal stance. There is also a need to reduce taxation which has a negative impact on productivity growth and overall competitiveness. The debate on state ownership needs to be continued and the question asked: to what extent is continuing state involvement in commercial activities also constraining productivity growth? As regards the long term, the 2000-2050 economic scenario based on the new fiscal rule presented in the (then) government's *Long-term Programme* in 2001 implies that substantial public sector reform is needed to avoid an unsustainable long-term budgetary situation.

A number of steps have already been taken. The "Modernising the Public Sector Programme" was an important initiative. The government recognises the need for further reform.

Where can regulatory reform help?

The efficiency and effectiveness of public spending would be improved by a range of reforms

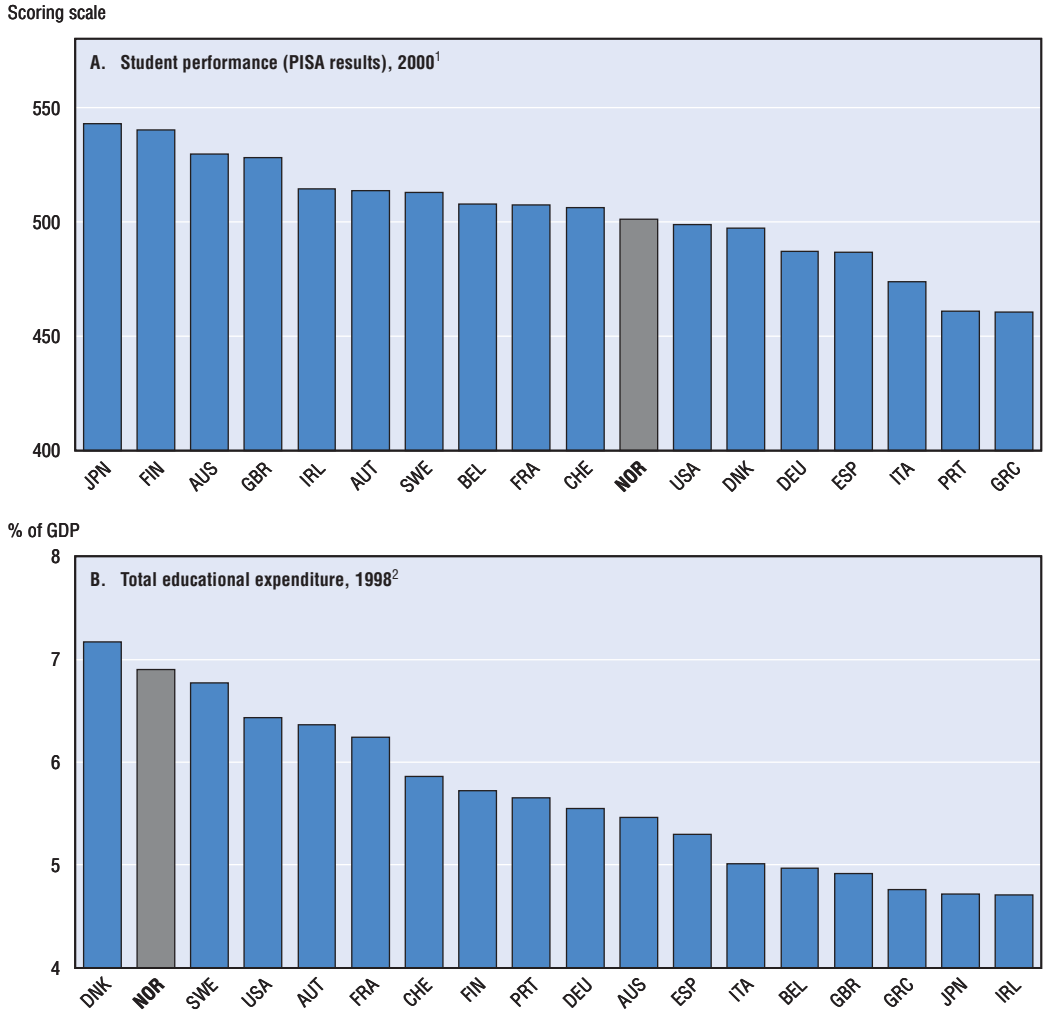
A priority should be to improve the efficiency and effectiveness of public spending. This would help to contain public expenditure. Managing demand is important. The move to activity-based financing for public services such as hospitals should promote cost efficiency, but needs to be balanced by mechanisms – such as user charges – to contain demand. User charges have so far rarely been used in Norway to influence demand. Yet pressures on services can be large. For example, pressures to spend on care for the elderly are high and rising. Competition between public and private service providers and the promotion of user choice is also important for efficiency. The provision of public services by the private sector is generally low by OECD standards (for example, private "for profit" hospitals provide only 0.5% of beds). More generally, better management techniques need to be promoted. These include objective setting that emphasises outcomes rather than inputs and outputs, and links this to financial incentives. The legal framework for this is in place, though it is easier said than done. The Norwegian National Audit Office already assesses the performance of public bodies, as in other OECD countries. But the role of its audits in the policy debate could be strengthened.

The core activities of education and health need attention

The two core public sector activities of education and health need special attention. As regards *education,* it is striking (Figure 6) that Norway comes second in a wide range of OECD countries on expenditure, but is slightly below average on performance.

As well as efficiency, another important issue is ensuring that education supports the needs of the labour market. Facilities for vocational education and apprenticeships training have become more effective, and reform to improve competences and lifelong adult learning has been carried out. Despite these efforts, significant mismatches between labour market demand and skill supply persist. Tertiary education – the Norwegian participation rate is one of the highest in the world – also carries the risk that the distribution of students across disciplines does not fit the needs of the labour market. Norwegian students are not required to invest much personally into their education, so

Figure 6. **Student performance and educational expenditure**



1. Average performance across the combined reading, mathematical and scientific literacy scales.
2. Total expenditure on educational institutions as a percentage of GDP.

Source: OECD, *Knowledge and Skills for Life – First Results from PISA 2000*, Table 3.6. and *Education at a Glance – OECD Indicators*, 2001, Table B2. 1a.

there is a real danger that university studies last too long and function as a substitute for unemployment, and that study finance acts as a form of unemployment benefit. In short, the Norwegian labour market is in strong need of flexible responses to the demand for labour, but there is a lack of capacity to adjust to these needs rapidly and adequately.

The expenditure/outcome situation is broadly similar for *health,* where Norway also ranks higher on public spending, relative to other OECD countries, than on some important health outcomes. Long waiting lists have coexisted with low bed occupation in hospitals, an example of poor utilisation of resources. A major reform was introduced in January 2002 aimed at achieving more efficient use of resources. This shifted control and ownership of the hospital sector back to central government after 30 years of decentralised ownership and control at the county level. Though waiting lists have fallen, the new system remains poorly co-ordinated and fails to provide adequate incentives for the efficient use of budget allocations to reduce health care costs. A new financing system has yet to be adopted, and the provider/purchaser roles are not yet adequately separated.

The proposals for reform of state ownership are very important and need to be followed up wherever possible

The government rightly put the spotlight on state ownership and the need for reform in its 2002 White Paper. However, the White Paper recommendations have not all been adopted. Parliament did not endorse the general goal of reduced state ownership but instead, it endorsed efforts to improve state ownership. It asked the government to take an *ad hoc* approach and has subsequently authorised share sales in a number of companies. The government's comfortable financial position generates little pressure (if any) to sell shares, and the Norwegian private capital market is generally considered not to be strong enough to absorb a broad privatisation plan. The desire to maintain Norwegian ownership of significant assets is also strong with many people. However debate continues and the government has, as requested by Parliament, set up a committee to make further recommendations.

Local government needs to deliver public services more efficiently

Local government is responsible for the delivery of most public services (*e.g.* day-care centres, primary and secondary education, elderly care), and its efficiency in carrying this out needs attention. Parliament determines the responsibilities for each level of government, and central government control of standards for service provision is strong, reflecting concerns about equity and regional settlement. Local government has to comply with national laws defining minimum quality standards for most of the services it provides (for example, the maximum number of students per class, teachers' salaries and work conditions). Minimum standards continue to be imposed (the government recently introduced, for example, minimum standards for the housing of drug addicts). This severely limits the scope for local government to adjust to local preferences. However some changes are underway, such as the hospitals reform (see above).

The funding system for local government – which is largely based on block grants and tax revenues – does not provide strong incentives to contain local spending. One way of improving cost effectiveness is the merger of municipalities, which the government is encouraging. These vary significantly in size, topography and population. Over half have less than 5 000 inhabitants (ten have more than 50 000). A recent study by Statistics Norway showed that a 50% reduction in the number of municipalities would generate a

saving of around 0.2% of GDP. More competitive procurement procedures would also help efficiency. Municipalities account for 37% of general government procurement. The competition authority has been a strong advocate of change.

2. *The mainland economy needs attention*

The competitiveness of the mainland sector is troubling. The dominance of the offshore oil and gas sector in the economy generates distortions that have a negative effect on the mainland. But this is not the only reason for its less than optimal performance. Many product markets are still over-regulated and subject to insufficient competition. State-owned companies remain pervasive and give rise to concerns about competitive neutrality relative to private sector competitors.

Where can regulatory reform help?

A clearer policy to strengthen the mainland economy is needed

Norway's public policy goals do not include a strong focus on the industrial sector. Other imperatives – and in particular, regional policy – shape the framework within which industry must take its place. Policies to promote regional equity and development involve distorting subsidies, notably to agriculture, and the traditional central role attached to the state in the economy and society generates distortions and confusion as regards the boundary between the state and private sector. The government has clearly acknowledged the latter issue. The former has not been aired in the same way. It is quite legitimate for the government and society to wish to maintain the traditional pattern of rural settlement. But an analysis of the costs and benefits would be helpful. What are the costs of regional policy, and could regional policy goals be met differently? The government has already identified key policy issues to modernise the state. The question could now be asked: what mix of further regulatory reforms would contribute to a strengthening of the private sector?

More competition in telecommunications would support innovation

Higher productivity through innovation in the mainland economy would help to reduce labour market pressures and improve international competitiveness. Policies to promote the diffusion of ICT could work toward this goal, including the promotion of greater competition in the telecommunications sector. As noted the incumbent, Telenor, remains dominant in this industry. The OECD growth study underlines that the diffusion of ICT does not just depend on the cost of the hardware, but also on the associated costs of communication and use, once the hardware is linked to a network. Increased competition in the telecommunications industry is particularly important in driving down costs, as it leads to more entrants, greater technology diffusion, improved quality and a higher rate of innovation. Countries that moved early to liberalise their telecommunications industry now have much lower communication costs, and hence a wider usage and diffusion of ICT technologies than those that followed later. For example, the cost of leased lines (lines used to transport large volumes of information between firms) and of Internet access typically come down substantially with effective telecommunications liberalisation. Though its market shares are declining, Telenor still retains a particularly large share of the market for fixed line telephony, plays a significant role in mobile telephony, and remains the principal owner of the telephone and cable networks.

A stronger competition policy is also an essential contribution to a stronger mainland economy

Competition policy, despite the sound general principles that underpin its legal conception and an active and thoughtful competition authority, exerts a relatively weak influence on the economy. It is undermined by weaknesses in the law, not least the large number of sector-specific exemptions (which include restrictions on competition in movie theatres and publishing, part of cultural policy), the fact that in the event of conflict competition policy usually defers to other interests (this in practice is also true in virtually all OECD countries), and the potential for ministerial intervention in merger decisions (which may include considerations other than competition policy). The competition authority is an active advocate of competition-based reforms (as explicitly authorised by the law), but its views and proposals are not given the full weight they deserve, and its place in the general policy-making process is uncertain. This is clear if one considers the way in which sectoral liberalisation has been tackled. The government has retained a measure of public control in the process, through ownership if not regulation. Former monopolies often still dominate their sectors. The government's commitment to competition is currently complicated by the fact that it also seeks to promote the traditional values of equity and regional support. The proposals to strengthen competition policy, part of the policy to modernise the public sector, are very important.

Further reforms to promote competition in specific product markets are needed

Product market regulation is a barrier to growth. Regulation is not the only or even the most important driver of low labour productivity growth. But its impact can still be significant. There is evidence that product market regulations are hampering productivity growth in Norway. Table 1 compares two periods with respect to production, labour productivity, output price and employment, on a nation wide and an industry level. (It should be noted that the analysis has limitations because of the lack of data on a number

Table 1. **Labour productivity, prices, production and employment per industry, 1980-2002**

	Average growth rate labour productivity		Average growth rate output price		Share in employment (%)			Share in GDP (%)[1]		
	1980/90	1990/02	1980/90	1990/02	1980	1990	2002	1980	1990	2002
Agriculture, hunting, forestry and fishing	3.8	6.1	6.5	–0.8	11.3	8.4	5.2	2.4	2.0	1.9
Mining and quarrying[2]	5.6	5.2	0.0	3.0	1.0	1.4	1.4	9.2	16.5	22.5
Manufacturing	2.3	1.0	7.2	2.8	19.8	15.2	14.1	16.7	12.5	9.4
Electricity, gas, water	1.2	3.1	9.2	2.6	1.0	1.0	0.7	2.4	2.2	1.6
Construction	2.4	0.9	5.8	4.1	7.7	7.3	6.9	5.2	4.8	3.7
Trade, restaurants and hotels	2.8	5.7	5.6	–0.6	17.2	17.1	16.6	6.8	6.9	9.3
Transport, storage and communication	1.7	1.4	7.1	3.5	8.2	7.9	7.8	7.9	7.0	5.8
Financial, real estate, business services	–1.3	0.2	9.1	3.6	5.9	8.6	12.5	15.2	15.2	16.1
Community, social and personal services	0.7	1.1	7.6	4.3	25.9	30.9	33.0	21.0	20.7	18.0
Total	2.6	2.9	6.0	2.5	100.0	100.0	100.0	100.0	100.0	100.0

1. At constant 2000 prices.
2. Including oil and gas extraction.

Source: Statistics Norway, OECD Secretariat.

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of industries). If the sectoral deviations from the national average performance are compared over the two periods, liberalisation appears to be linked with an acceleration in labour productivity growth. This seems to be the case with utilities and telecommunications. Wholesale and retail trade and the financial, real estate and business services show a similar picture. On the other hand, restrictions in competition appear to be linked with a deceleration in labour productivity growth and rising prices. This seems to be the case with the construction sector and parts of manufacturing industry, such as the agro food and publishing and printing industries. It should be noted that the agricultural sector is included in an aggregate with fishing and notably aquaculture. In fish farming, production volumes and productivity grew strongly in the 1990s.

With the important exception of the electricity sector, the network industries in Norway have only been partially reformed. State ownership remains very high, and some markets, such as the railway and postal sectors, are still largely or wholly closed to competition. Some other sectors would also benefit from further regulatory and market-opening reforms. These include the retail market for groceries, pharmacies, the construction industry, and some parts of the transport industry.

The *retail market for groceries* is highly concentrated, as it is integrated via four retail chains. This makes market entry difficult for smaller suppliers. Competition between retailers is also limited by controls over opening hours (government proposals for liberalisation may not make a huge difference). An OECD study on distribution shows that Norway's position is unique: only 18% of enterprises are under sole ownership. Foreign ownership of retail chains is common. There are no indications of abuse of market power, as retail prices are considered competitive, albeit high for other reasons. Exceptions include the price of food (due to the closed and highly protected agricultural sector), retail sales of stronger alcoholic beverages (a state monopoly) and pharmaceutical products.

Pharmacies are still quite heavily regulated, though the new Pharmacy Act which came into force in March 2001 has liberalised the market to a large extent. The Act retains the option of limiting the number of concessions to protect the existence of pharmacies in sparsely populated areas of Norway, but this power has not yet been exercised until now. The wholesale level is now private and competitive. Retail medicine prices are still regulated for prescription drugs. The maximum price level for the different drugs are adjusted regularly, based on comparisons with the lowest prices in a range of European countries. Pharmacies and wholesalers have been allowed to vertically integrate into one "distribution level" as pharmacy chains. There are now three on the Norwegian market, and they increasingly exercise their purchasing power against the pharmaceutical industry. Over 90% of private pharmacies belong to one of the chains.

The *construction industry* shows weak competition among wholesalers and increasing competition at the retail level. The sector suffers from weak productivity growth, and producer price increases have been much higher than the Norwegian average (see Table 1). Although there are many small suppliers, the large construction companies continue to "play the first violin" and determine the degree of competition. However, the existence of cartels is not yet proven.

Competition in *bus transport* – despite a large number of small operators – is constrained by regulation (fares and service levels, and the licensing regime) mainly designed to protect the rail service. The issue of disconnecting bus policy from rail policy and promoting more competition is under review. Competition in *taxi services* is also constrained by licensing.

Effective handling of the EEA Agreement is important for the business community

The EEA Agreement is a very important influence on the Norwegian economy. Many new regulations are adopted through the transposition of EU internal market legislation, as required under the Agreement. This is an important issue for the business community, which needs to comply with the new regulations, and which of course also stands to gain from a more accessible internal EU market governed by the same rules, which also facilitates life for foreign companies in Norway. A further advantage of the internal market has been that the level of protection in such areas as health, safety, the environment and consumer interests has been considerably enhanced.

However handling the process of negotiation and transposition into Norwegian law of EEA regulations effectively is a major challenge for the government, and needs further attention. Norway is not an EU member and can exert only a limited influence on the preparation of EU legislation. But current procedures for participation in this important development phase, as well as for communication with business (and other affected parties), and transposition into Norwegian law, could be improved. Norwegian business is concerned about the quality and timing of information provided by the government as regards new regulations and their transposition. The government recognises that there is much scope for improving information to interested parties on planned changes in EEA regulations. This is the most important element in the ongoing follow-up to the government's European Policy Platform and to Parliamentary Policy White Paper No. 27 on the experience of the first eight years of the EEA. A new and substantially improved site for electronic information on EEA legislation in the pipeline, to be established within the next few months, will be the centrepiece of an enhanced information and consultation strategy.

Some other issues could be addressed to improve the trade environment for the business community. Trade is recognised as important for the economy, but trade concerns do not play a significant role in the rule-making process. Regulators' awareness of trade issues is not always satisfactory and no specific attention is paid to trade impacts in the instructions which set out requirements for law preparation (for example, RIA is not applied to EEA regulations). Beyond Europe, Mutual Recognition Agreements (MRAs) are important in reducing the costs of trading with different markets, since they remove duplication of inspections and certification fees. Norway already has a number of MRAs.

The efficiency of the financial sector could be enhanced by reducing state ownership

Financial markets play a role in economic growth mainly through their role in mobilising savings, transforming savings into investment, and influencing the type of investment undertaken. Effective competition in financial services is important in minimising the cost of services for the customer. The market for Norway's financial services industry is not as competitive as it might be, and a key factor is the continuing level of state ownership. Despite a reduction of state ownership, the government still retains significant control over the largest financial group, DnB, with a stake of 47.28%. This group is increasingly in competition with private banks. The same issues of competitive neutrality (see below) arise here as they do in other markets with a mix of privately and publicly owned players – perhaps more so given the importance of supervision in this sector. The government recognises the issue, and in its 2002 White Paper on state ownership proposes to reduce its stake in DnB to a third.

3. The labour market needs reform to remove bottlenecks for growth

Reform of the labour market has been the subject of many OECD recommendations over the years. There is too much regulation and not enough competition. Early retirement schemes were introduced in the late 1980s and have gradually expanded. As in many other countries, disability schemes have served as a quasi-permanent exit route from the labour market. The wage settlement system is in some regards inflexible and in recent years excessive wage growth has generated problems for competitiveness. Wage agreements in 2002 led to a wage rise of over 5% in the private sector, which implies a steep rise in unit labour costs and higher wage rises than in the main trading partners for the sixth consecutive year. The wage agreements reached in the public sector will lead to higher wage rises than in the private sector. As a consequence of the impaired competitiveness, the government and the social partners agreed to curb wage growth ahead of this year's negotiations. Agreements concluded so far this year imply a marked reduction in wage growth.

Where can regulatory reform help?

Box 5 shows the main proposals for reform. There is an urgent need to eliminate existing constraints on the supply of labour and hence on the growth potential of the Norwegian economy. A central issue is to prevent a further reduction in the participation rate. The 2003 budget takes steps in this direction. It proposes reforms to the unemployment benefit scheme in order to promote a quicker return to work, as well as reforms of the disability pension scheme and measures to reduce sick leave. The liberalisation of the Immigration Act is geared to attract skilled labour from outside the EEA. The quality as well as the quantity of supply is an issue – the education and training system must be more adapted to the needs of the labour market. Pension reform is crucial. The OECD has already stressed the need to reform the standard pension system, as well as the various schemes encouraging early retirement.

Box 5. **Labour market reform in Norway**

The main policy options are:

- Introduce more flexibility in wage formation through decentralised negotiations with more differentiation between industries.
- Reconsider facilitating early retirement.
- Introduce incentives to reduce sick leave.
- Reconsider childcare cash benefits.
- Introduce study leave.
- Stimulate more competition in employment services.
- Allow more flexibility in working hours.
- Restrict disability pensions.
- Stimulate more flexibility in labour contracts.

Source: OECD Secretariat.

4. The overall framework of regulatory governance needs attention

As in neighbouring Finland, regulatory governance as a dedicated and integrated policy to underpin effective reforms does not yet exist, though important elements are in

place and work well. And as in Finland, part of the reason lies with the valued tradition of consensus-building that drives the current approach to making regulations, which is based on informality rather than formality, discourages a central strategy, and does not promote analytical rigour or evidence-based decision making. Yet enhancing regulatory capacities would improve efficiency and remove pressure on public spending. Better regulation can be used to help shape a better public service and economic environment, especially for the mainland economy. It would also help to highlight costs and benefits of policies (such as regional policy and high uniform standards of service), and expose trade-offs, so that public debate is better informed, and a "constituency" for reform can be built up.

A central regulatory governance policy needs to be developed

A comprehensive, government-wide regulatory policy to focus the current dispersed and ministry-based approaches is needed. This would also, crucially, demonstrate that there is political support for the importance of regulatory quality and the need for a committed and coherent approach, which goes beyond the current emphasis on administrative simplification. Such a policy needs to include elements that either do not exist today or are relatively weak. These include more effort on *ex ante* analysis of prospective regulation, which would assist in pinpointing regulatory impacts (see below). A stronger central policy needs corresponding institutional change at the centre.

Regulatory Impact Analysis needs to be more concerted and rigorous

Regulatory Impact Analysis (RIA) is currently stronger on principles than execution. In many ways, Norway already does a good job. The requirement to carry out RIA starts early in the rule-making process, and involves extensive consultation. Tools and guidelines are good quality and comprehensive. But there is no central structure to oversee the process and the assessments covering different issues are not aggregated. Effects on the public sector – and in particular, public sector employment – are given disproportionate attention compared with effects on competition, business and consumers. Another consequence of the current approach is that RIAs vary considerably in quality, scope and analysis – which usually does not include cost-benefit analysis. These issues need attention.

The initiative to modernise the framework for supervisory bodies should be pursued

The government released a White Paper on 24 January 2003 on the modernisation of supervisory bodies (*tilsyn*), as part of the broader strategy to modernise the public sector. An issue is the potential for ministerial intervention: decisions of many bodies can be appealed to the minister. Apart from the existing supervisory bodies, one important issue is the separation of the regulatory from the commercial function. For example, after its privatisation, the company which operates airports (Avinor) still carries a regulatory function, despite now being a commercial company. This role should be transferred to a separate public regulator.

The quality of local government regulation needs to be addressed

The major responsibilities of local government for public service delivery raise the issue of regulatory capacities at this level. Is local government well-enough equipped for its tasks? There are concerns about the low quality of local regulations, and a need for guidance to local authorities on raising regulatory quality standards. Here, as elsewhere in the public sector, more effective regulation would help to mitigate pressures on public

spending. Initiatives such as the KOSTRA database which benchmarks municipal services have already been taken. More is needed.

Conclusion

Norway's economy and society, measured against that of its OECD peers, are in many ways very strong, especially as regards macroeconomic performance. Substantial oil and gas resources have ensured it a place among the wealthiest countries in the world, but effective management of the economy also plays its part in this achievement. Not all resource-rich countries do as well. At the same time there is a growing consciousness of the need to address the future, as oil production declines and reserves are exhausted. The government's 2003 budget reflects this debate. What are the long-term prospects? When and how should adjustments be made to ensure a strong economy and equitable society for future generations – and to cover the growing needs of a rapidly ageing population? The government has already made a number of important reforms, notably to the fiscal framework and to the management of the public sector. The difficult question now is perhaps not whether, but when, further change and reforms should be made to secure a comfortable future. Significant public revenues from the oil wealth, and the absence of any crisis to sharpen the political and public will for reform, dampen enthusiasm for change today. Why not wait until tomorrow?

In fact, the arguments for further change today are powerful. First, the stability of today's economy is an issue, as much as its future growth. Norway's macroeconomic and fiscal policy is, because of the oil revenues, necessarily geared to ensuring the overall stability of the economy and to containing pressures for public spending. Regulatory reforms are needed to complement this policy, not least by improving the efficiency of the very large public sector. This is also a far better way of dealing with the pressures to raise the quality of public services than raising spending. The evidence shows this. Spending on the two key public services of education and health is already very high by international standards, but performance only average.

Second, reforms are important for improving the overall performance of the mainland economy, which is not outstanding. Since unit labour costs are among the highest among the OECD countries, relatively high productivity growth is required to improve international competitiveness. But this could be improved through stronger reforms than have been made so far to product, labour and financial markets. A virtuous circle is within reach, as an improvement in the exposed sector's performance would ease the transition from an oil-based economy towards an economy that will depend to a greater extent on "traditional" non-petroleum exports.

A key issue in the context of these two points – the efficiency of the public sector, and the strength of the mainland economy – is state ownership. The debate on which way to go – how far to reduce state ownership, which opposes two different views in Norway on the potential ability of the private sector to deliver public policy goals – is crucial. As a general principle, commercial activities that have no link with public functions should be privatised.

Third, action is needed now to deal with the looming pension liabilities, rather than wait for this issue to become a crisis. The government's projections show clearly that the oil revenues will not be enough to cover these liabilities.

Norway's current approach to reform is not systematic and lacks an overall framework. Important initiatives aimed at the public sector have been taken and some key issues, not least state ownership, have been highlighted for action, but progress often seems difficult, and the momentum for reform (which existed in the early 1990s) has slowed. The state ownership debate reveals an important divide between those who would put more trust in the market, and those who wish to see a continuing large role for the state. Yet the scope for further reforms to sustain current and future stability and growth is large. Norway can also take advantage of best practice developed in other countries that have taken reform further and tested different approaches. Concerns about sustaining public policy goals of equity, high levels of social welfare, and regional solidarity are real and legitimate in the face of change, but if the political will is there, careful reform policies can address these concerns.

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PART II

Regulatory Policies and Outcomes

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Norway: Preparing for the Future Now

PART II

Chapter 2

Regulatory Governance*

* The background report used to prepare this chapter is available at: *www.oecd.org/regreform/backgroundreports*

Context and history

Norwegian regulatory governance puts the state centre stage, but is also influenced by its oil wealth

Regulatory governance in Norway has been shaped by two factors. First, it is based on the Nordic model. This emphasises a strong and central role for the state in the economy and society. By international standards, the size of the Norwegian public sector and of public spending is significant. Two key public policy goals which command wide support explain this and underpin the state's activities. The first is to ensure an extensive and universal welfare system of a high standard. The second is to support decentralised settlements, in a country that is geographically large, extends well beyond the Arctic circle and has a difficult topography, but contains a population of just four and a half million. Consensus-building, broad participation, incrementalism and pragmatism mark the process of decision making, backed by strong mutual trust between the government and citizens.

However Norway is also unique in the Nordic context, because of its immense oil and natural gas wealth. Oil and gas production account for nearly a quarter of GDP. This wealth is being carefully managed to promote a successful economy today as well as to help provide for future needs as the population ages. This raises a challenge. The existence of such wealth, its successful management, and the related absence of any prospective economic crisis (which is often a powerful motor for reform) makes it hard to justify and sell further change and reform today, beyond what has already been done.

Some important reform initiatives have been taken in recent years, in relation to both the private and public sectors

Some important initiatives have been taken over the past twenty years. First, wide-ranging reforms were implemented in the 1980s and early 1990s, largely in response to the late 1980s and early 1990s banking crisis, and the 1994 European Economic Area (EEA) Agreement which promoted Norwegian integration into the EU's internal market. These aimed at improving the efficiency of capital and product markets, and increasing the growth of the economy. The reforms included the deregulation of the housing market, the introduction of green taxes, the reform of corporate and capital taxes, and of credit and currency markets, the deregulation of the electricity market, revision of the competition policy, legislation on public procurement, and the gradual deregulation of telecommunications.

Second, public sector reforms were pursued to improve public sector efficiency and flexibility. Budgeting and management flexibility has been enhanced. User-orientation in public agencies has been encouraged by various means, including user charters, benchmarking of municipal services, and outcome targets linked to budgets. This work, as will be seen later, needs to be reinforced and completed, especially as regards services delivered at local level. A recent important initiative is the programme launched in January 2002 *Modernising the Public Sector in Norway,* led by the Ministry of Labour and Government Administration, which covers over two hundred sub-projects (Box 6). This has been

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Box 6. **Modernising the public sector in Norway**

The Programme's main objective is to make the public sector more user-oriented, efficient and simple, primarily by means of delegating within the state and by decentralising to the level of government closest to the user. The main goals are:

- A less complex public sector.
- Public services adapted to individual needs.
- An efficient public sector.
- A public sector that promotes productivity and efficiency.
- An inclusive and motivating human resource policy.

Several regulatory policy commitments are integrated in the Programme and its sub-projects:

- Consolidate and reduce public sector ownership interests.
- Establish a clearer distinction between the state's administration, financing and service provision responsibilities.
- Strengthen public supervisory authorities, ensuring they have high standards of expertise, and giving them a more independent position in relation to central government.
- Strengthen the Competition Authority by implementing an action plan to ensure fair competition.
- User-oriented one-stop shops to public services, cutting across agencies and administrative levels.
- Use of sun-setting.
- Simplification of laws and regulations (see Box 11 on "Simplifying Norway").
- Requirements for estimates of total costs in connection with tenders, investigations and major re-organisations of service provision.
- Delegation, decentralisation and more independence to municipal and county service providers with regard to their organisation, services and influence on their level of income.
- More reliance on systems of outcome-based financing, especially within the context of user-choice and money-follows-the-user.

followed up by the establishment of a committee of cabinet ministers in order to support the implementation of the modernisation programme. A White Paper on the supervisory agencies (*tilsyn*) was presented to Parliament in January 2003.

Third, Norway has made it a priority to review, repeal and consolidate superfluous regulations. A series of reviews has been carried out since 1963. The most recent review in 2002 led to the repeal of around 10% of all secondary national regulations. However, this has dominated the regulatory agenda at the expense of broader regulatory quality issues and the institutional needs of good regulatory governance. And the production of regulations remains extensive (the transposition of EU laws is a major factor).

Fourth, the government has addressed the important issue of state ownership – which remains widespread and still includes many commercial activities. Acknowledging the conflict of interest between the state as owner and regulator in many sectors (it is essential

for well-functioning markets that regulation is applied neutrally and does not favour state-owned entities), it transferred ownership of most of its business activities from line ministries to the Ministry of Trade and Industry. That said Statoil, by far the largest state-owned enterprise, remains with the Ministry of Oil and Energy. A 2002 White Paper, *Reduced and Improved State Ownership,* has proposed a number of further measures, including the reduction of state ownership, but important elements have not been endorsed by Parliament.

Also noteworthy are the arrangements, under the Ministry of Labour and Government Administration, for skills-development courses available to civil servants (though not, so far, to local government employees) which include regulation. Whilst the focus tends to be on legal aspects, important elements of regulation are covered, such as identification of alternatives to regulation and RIA.

But the will to promote further necessary regulatory governance improvements appears weak

Norway's Nordic-based regulatory governance traditions combined with its oil wealth make it difficult to generate strong commitment, enthusiasm, or a sense of urgency for big changes. Its attachment to, and trust in, the state as a key player makes it a reluctant reformer of the boundaries between state and market. The controversy over the state ownership White Paper underscores this. At the same time, regulatory governance, based on traditional Nordic approaches, remains somewhat inflexible and fragmented. Despite many first-rate regulatory tools and guides such as Regulatory Impact Analysis (RIA) guidance, much regulatory work suffers from a lack of co-operation and coherence across government, and consensus-based decisions mean a relative disregard for the practical evidence of what might work best. Overall, this has damaged the government's capacity to meet rising public expectations of key services such as education and health.

Regulatory policy

There are several good guides but no government-wide policy to promote regulatory quality

Current policies cover many important aspects of regulatory quality, as set out in the 1995 *OECD Council Recommendation on Improving the Quality of Government Regulation*, and the 1997 *OECD Report on Regulatory Reform*. The *Instructions for Official Studies and Reports* go back to 1985 and have been revised since. This cornerstone of policy sets out requirements for law preparation as well as preparatory committee and working group reports, including the need to consider the significant effects of regulation and to consult. Beyond the general requirements no specific approach is imposed, and there are no sanctions for non-compliance. The *Instructions* are supported by a 1994 checklist adapted from OECD standards (Box 7). Non-mandatory *guidance documents* are available from various ministries on impact assessment. The Ministry of Justice issues guidelines on *legislative techniques and preparation,* which also urges regulators to consider whether a review is needed.

These policies and initiatives are not bound together by any explicit government-wide statement of regulatory policy. Efforts are independently spread across individual ministries and agencies. And regulatory quality is less a policy in its own right than an adjunct to elements of public sector reform such as easing burdens on business. This is in contrast to many other OECD countries (such as the UK and Canada) which have adopted an explicit regulatory quality policy.

Box 7. **Do we or don't we? Norway's 1994 checklist for new regulations**

Part I: General questions

1. Define the problem.
2. Do we want a solution to the problem?
3. Is it possible to solve the problem – and if so, who should do it?
4. What measures/combination of measures can be applied and are most likely to solve the problem?
5. What does our commitment to established and planned national and international obligations suggest?
6. What are the financial, administrative and actual effects of the measure?

Part II: About regulations

7. How should a regulation be formulated?
8. How should such a regulation be administrated, sanctioned and enforced?
9. To what extent will the regulation be complied with?
10. If the regulation is recommended: What will be necessary in the terms of publicity, information and implementation? When should the regulation be evaluated?

Regulatory Institutions

A number of government institutions work, generally independently, to promote quality regulation

As well as principles of regulatory quality, countries need supporting regulatory institutions and mechanisms to ensure that regulation is well managed. Reflecting the dispersed nature of its regulatory quality principles, this role in Norway is spread around a number of central government institutions, including four key ministries.

The *Ministry of Labour and Government Administration* is responsible for the *Instructions*. But as well as the lack of sanctions for non-compliance, there is no staff to promote use of the *Instructions*. And the ministry's regulatory policy activities have recently been delegated to an arms' length agency, *Statskonsult*. The ministry also heads up the *Government Committee for Modernisation and Simplification* (made up of Cabinet members) which co-ordinates and oversees the *Modernising the Public Sector* programme. The *Ministry of Finance* plays an important role because of its fiscal and economic policy responsibilities. The *Instructions* require that it should be consulted on any regulation that may affect the budget, central government organisation or have other significant socio-economic consequences. It pays particular attention to regulation with potential budget, structural and product market impacts. The *Ministry of Trade and Industry* is responsible for the issue of regulatory burdens on business. It provides guidance to other ministries via Business Impact Assessment guidelines (compliance has been low), and promotes dialogue with business via a forum of business organisations. It is also considering the establishment of business test panels. It also set up a Business Impact Analysis task force in 2002. The *Ministry of Justice* is responsible for ensuring the technical and legal quality of primary legislation, and advises other ministries on preparing legislation. Draft laws are subject to its technical review. A critical review in 2002 of secondary legislation led to a recommendation that the ministry also support preparation of the latter.

Other parts of government play a more or less marginal role. The *Prime Minister's Office* does no more than co-ordinate the forward planning of the law-making process. The *Cabinet* is often involved in the regulatory process, probably too much as current guidelines encourage ministers to take an interest in the work of other ministries and there is no system to sift out the more important issues. However, the *Office of the Auditor General* has expanded its activities to include performance audits assessing whether policy goals have been met, sometimes on its own initiative (for example, it has published reports on the power market, and the administration of the Petroleum Fund). *Parliament (the Storting)* plays an independent role, which can often force the government's hand (the parliamentary majority is often not the government) and its committees can be very active, though more on the policy than on regulatory quality. *Committees* made up of the social partners (government, business and the unions) and others (such as NGOs and experts) are widely used to prepare reports on policy initiatives.

This all adds up to a highly decentralised approach under which ministries enjoy considerable autonomy in the regulatory process. Though several ministries are embarking on cross-cutting initiatives to improve regulatory quality, there is no central unit or central policy purpose to help this, as in many other OECD countries (Box 8).

Box 8. **Central regulatory quality units: OECD experiences**

Mechanisms for managing and tracking reform inside the administration are needed to drive regulatory reform, to keep on schedule and to avoid a recurrence of over-regulation. It is often difficult for ministries to reform themselves, given countervailing pressures, and maintaining consistency and systematic approaches across the entire administration is necessary if reform is to be broad-based. This requires the allocation of specific responsibilities and powers to ministries at the centre of government.

Experience across the OECD suggests that central oversight units are most effecitve if they are:

- independent from regulators (*i.e.* hey are not closely tied to specific regulatory missions);
- operate in accordance with a clear regulatory policy, endorsed at the political level;
- operate horizontally (*i.e.* they cut across governemment);
- staffed by experts (i.e. they have the information and capacity to exercise independent judgement); and
- linked to existing centres of administrative and budgetary authority (centres of government, finance ministries).

The central oversight units should also have explicit responsibilities and authorities for managing and tracking reform inside the administration. Functions applied by central regulatory quality units in OECD countries generally fall into four categories:

- Provide advice and support to ministries, rule-makers and regulators.
- Challenge rule-makers and regulators' practices and their compliance with the regulatory policy and instruments (*e.g.* RIA, public consultation, use of alternatives to "command and control".
- Advocate further regulatory reform.
- Assess performance of regulatory policy, regimes and measures.

Source: OECD, (2002), *Regulatory Policies in OECD Countries. From Interventionism to Regulatory Covernance,* Paris.

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The local government and EU dimensions

The local level delivers important public services, and its regulatory effectiveness needs attention

Regulatory quality is important at all levels of government: failure to carry out effective regulation at one level can undermine efforts elsewhere. Norway is a unitary state with three levels of government: central government, 19 counties and 434 municipalities. The latter vary considerably in size, from 5 000 to over 50 000 inhabitants. Parliament determines the division of responsibilities between levels. However central government control of activities at local level is strong and ministries play an important role. A governor represents central government in each county. To retain and attract people in remote areas central government imposes demanding standards for the provision of core public services (especially primary education, health care and care for the elderly). Reflecting this, local government has limited regulatory authority, though it is responsible for delivering most public services (Box 9).

Box 9. **Division of responsibilities between levels of government**

In terms of service provision, central government is responsible for: higher education and universities, the social security system, defence, the national road network, railways, labour market training schemes, justice and police force, prisons, foreign policy and since 2002 hospitals.

The counties are responsible for: upper secondary schools, vocational training, child welfare institutions, institutions for the care of drug and alcohol abusers, county roads, provision of local public transport and museums.

The municipalities are responsible for: primary and lower secondary schools, early childhood educational and care facilities, child welfare, primary health, care for the elderly and disabled, public libraries, fire departments, harbours, municipal roads, water supply, sewage, garbage collection and disposal, and the organisation of land use within the municipality.

Local government spending amounts to 30% of general government expenditure. Local authority employment accounts for about one fifth of the total workforce or 60% of the workforce in the public sector.

The distribution of responsibilities is, however, much debated, linked to the issue (not specific to Norway) of funding. An unresolved tension exists between central government funding and control, and the political accountability of local governments. More responsibility has shifted over the last decade to the local level, and a 2002 government White Paper proposed further decentralisation, including a reduction in the level of centrally imposed regulations and more authority for the counties in regional development. This does raise the issue of regulatory capacities at local level. Concerns have been raised about the low quality of local regulations, and a need for guidance to local authorities on raising regulatory quality has been identified (which has been partly met by Ministry of Justice guidelines). But deeper changes seem to be needed, linked among other issues to funding.

Local government spending is funded mainly through central government grants and tax-sharing. Maximum and minimum rates are imposed by parliament on the latter. In practice nearly all local authorities levy the maximum rates, which implies inefficient spending. A substantial redistribution of funds between high and low income municipalities is undertaken by central government. Poor incentives for efficient spending may spill over into an inefficient mix of budgetary and regulatory instruments to deliver public policies. More effective regulation may be a cost-effective alternative to more spending. The KOSTRA database, operational from 2001, now provides useful benchmarks for and comparisons on the availability, prices and costs of many municipal services, allowing municipalities to identify best practice.

Co-operation mechanisms exist between local governments, and between local governments and central government. Co-operation across municipalities is limited by the absence of compensation schemes for tasks which are taken on. More co-operation takes place in the technical sector such as waste disposal, and in the energy sector via joint ownership of power plants. Several mechanisms exist to ensure that regulatory proposals affecting local government are co-ordinated, including regular formal meetings between central and local government, and the circulation for comment of draft regulations that are considered of special relevance to the latter. Perhaps most important, informal dialogue is strong and continuous between all levels and on all topics.

Norway's integration with the EU internal market is an important influence on the economy, and needs better handling

Norway's membership of the EEA Agreement makes it a member of the EU's internal market, except for fisheries and agriculture. It must therefore comply with the relevant EU legislation, which has been a huge task with major impacts. Since 1994 nearly 4 000 EU regulations have been transposed into Norwegian law. An average of more than 230 relevant EU acts were produced annually over 1999-2001. There is now only a very small backlog of transposition, but implementation times for specific acts vary from 2-3 months to several years.

Norway (like other EEA/EFTA countries) can only exert limited influence on the development of EU legislation. The EU Commission consults Norwegian experts in the early stages, and Norway can participate in most of the committees that oversee existing legislation and assess the need for changes. An EEA committee (the EEA Joint Committee) exists for EEA/EFTA countries to raise issues about new draft EU legislation, and the EEA ministerial Council meets twice a year. Norway's system to make the best of this somewhat constraining background is based on guidelines from the Prime Minister's Office. These specify the internal government co-ordination process for EEA matters. The *Instructions* do not apply to EEA legislation, but ministries prepare "framework notes" which must include an impact assessment of proposed legislation. The Storting is kept informed. As in EU countries it tends to focus on the contentious issues.

The government also recognises the need for considerable improvement in the handling of EEA work, including participation in the preparatory stages, dialogue with affected groups, and implementation. The Nordic rule-making tradition emphasises brevity in the law (details are put into preparatory work and guidelines), which conflicts with the EU emphasis on detail and precision. The government is considering a new guide to improve implementation. Norwegian business is concerned about the quality and timing of information provided by the government, both in respect of draft new acts, and

their subsequent implementation. They rely mainly on their own networks for such information. The framework notes, for example, are not generally available to them.

Nordic co-operation is important in helping Norway to influence EU developments

Nordic countries share a supranational identity rooted in their political history and cultural similarities. They co-operate through two main institutions: the *Nordic Council*, which is a forum for the parliaments, and the *Council of Ministers*, a forum for ministers. The most significant outcomes of this co-operation have been the establishment of a passport union (1952) and a common Nordic labour market (1954). Until the early 1970s this approach was considered an alternative to EU co-operation. Today, the system mainly promotes cultural co-operation. However the Nordic co-operation is important to Norway as a means of keeping closer, through its Nordic EU members, to EU developments.

Regulatory transparency

A mix of formal and informal approaches suits the Norwegian context, provision is in line with OECD best practice, but there are a few weaknesses

Transparency is one of the central pillars of effective regulation – that is, regulation that will be suited to its purpose. It is a challenging task and involves a wide range of practices, including standardised processes for making and changing regulations, consultations with interested parties, effective communication of the law and plain language drafting, publication and codification to make it accessible, controls on administrative discretion, and effective implementation and appeals processes.

Transparency of rule-making processes is based on the 1967 *Public Administration Act*. This requires that "interested and affected groups" have the opportunity to express their opinions before a regulation is issued, and that regulations must be published in the Official Gazette before they can be invoked. The 1970 *Freedom of Information Act* gives citizens the right of access to any documents of the public administration. The *Instructions* and the Ministry of Justice legislative guidelines contain more detailed requirements.

Transparency in terms of public consultation gives stakeholders the opportunity to help shape regulation, gives regulators valuable feedback on potential costs as well as benefits and the prospects for successful compliance and enforcement, and provides a safety net against capture by particular interest groups. Consultation needs to be fully embedded in the regulatory process.

Norway uses a mix of formal and informal arrangements. The *Instructions* and the Public Administration Act lay down formal requirements for "notice and comment". Draft regulations must be circulated to all affected parties, and documents are available on paper or via the Internet. Consultations must run for a minimum of six weeks and usually not less than three months (unless the minister exceptionally decides otherwise). In fact, over 75% of consultations examined by the Ministry of Labour and Government Administration in 1997 were completed in less than three months, and more than a quarter in less than six weeks (without ministerial agreement). Observers have noted several cases of rushed-through consultations on matters of high controversy, such as the recent hospitals reform. In many of these cases, a consensus among the political parties has allowed for a fast decision-making process through Parliament. The Ministry has taken steps to raise awareness of requirements, though there is no evidence that breaches – which can reflect a consensus reached – are deliberate. Informal consultation (for example with experts) often also takes place and adds value. A *Contact Committee* of the social partners meets

twice a year for informal discussion. It is clear that informality, mutual trust and close links between regulators and stakeholders play an important role. Still, credibility and legitimacy of the consultation process may be damaged if formal procedures are bypassed.

Forward planning – the publication of plans for future regulation – is also covered (as in most OECD countries). The Prime Minister's Office prepares, twice a year, catalogues of planned bills and reports for the Storting. These are publicly available and easily accessible on the government's Web portal. Ministries may also announce proposals, but there is no requirement or common practice. The national budget and the government's four-year programme provide an overview of impending reforms and political priorities. And when the government changes, a Declaration is prepared to present the main government policy initiatives.

Transparency of communication is another pillar of effective regulatory practice. The existence and content of laws need to be known, and citizens provided with information to help them comply with, and make use of, the law. Norway uses a variety of tools for this. As in most other OECD countries all new primary and secondary legislation must be published (in the Official Gazette) and can be viewed on a free Web site which has other information such as court decisions, as well as a register of business laws. The Brønnøysund registers (Box 12) are also important. Responsible ministries must inform affected parties about new and changed regulation. The Ministry of Justice guidelines advise on plain language and consistent wording.

Adoption and communication of a law sets the framework for achieving a policy objective. But *effective implementation, compliance and enforcement* are essential for actually meeting the objective. A mechanism to redress regulatory abuse should also be in place, both as a democratic safeguard and as feedback to improve regulations.

Ex ante assessment of compliance is increasingly part of the regulatory process in OECD countries. Norwegian guidance – the checklist, and the guidance on RIA – stresses the need to consider compliance when making regulations. It says for example that regulations should not be adopted when compliance is not expected. But (as in most other OECD countries) compliance is not systematically monitored, though some agencies such as the Norwegian Pollution Control Authority do so publicly. However compliance appears to be generally high. Enforcement is also stressed in the regulatory guidance, but there is no overall policy and it is left (as with compliance) to individual ministries. That said, features such as the legal basis for investigation are similar and there is evidence of considerable co-ordination across ministries.

Arrangements for the review of administrative decisions are clear and strong. The notification of administrative decisions must include information on the right of appeal, the time limit (three weeks), the appeal body, and the procedures. The responsible ministry usually decides appeals in relation to agencies and regulators. A judicial review may also be launched, either for abuse of discretion, or on the validity of the regulation itself. There are no special courts. The courts may review decisions across a wide range of issues, including its legal basis, interpretation of the law, and infringement of procedures. The courts may also, more generally, review the constitutionality of any acts invoked in a specific case. A *Parliamentary Ombudsman* has also been in place since 1963 (currently with 36 staff). Anyone (including foreigners) can bring a complaint, after administrative redress has been exhausted. Though the Ombudsman's decisions are not binding, they are usually followed. In 2001, the Ombudsman settled 2 214 complaints of which 998 were dismissed.

Alternatives to regulation

Norwegian use of alternatives is already strong, and could be further promoted

The use of a wide range of mechanisms, not just traditional regulatory controls, for meeting policy goals helps to ensure that the most efficient and effective approaches are used. Governments must lead strongly on this to overcome inbuilt inertia and risk-aversion.

Norway has a very strong and longstanding tradition in the use of alternatives to "command and control" regulation. These include economic instruments, voluntary agreements and self-regulation, information-based strategies, and performance-based regulation. The regulatory guidance includes a requirement to consider the use of alternatives. Table 2 shows the range of alternatives deployed in Norway, as well as the range of sectors involved which are by no means confined to the environment. That said, scope exists to do more in other sectors, and a stronger enforcement of the regulatory guidance would help.

The environment is, as in other OECD countries, the main testbed for new approaches. New environmental problems such as climate policy and waste management have been addressed with environmental taxes (notably the 1991 CO_2 tax) and voluntary/negotiated agreements. A 2002 White Paper on climate policy proposes a national system of tradable quotas for greenhouse gas emissions from 2005 (approved in principle by Parliament). An interesting development was the establishment in 2002 of a new agency (Enova) to improve energy efficiency through the market, by promoting investment in energy conservation, renewable energy and natural gas.

Regulatory Impact Analysis

Norway's Regulatory Impact Analysis is stronger on principles than execution

RIA is perhaps the most important regulatory tool available to governments, as its aim is to ensure that the most efficient and effective regulatory options are systematically chosen. It is, however, a challenging process which needs to be built up over time. It combines good habits of consultation with a rigorous review of the impact of prospective rules through a clear and balanced assessment of costs and benefits.

Norway adopted elements of RIA relatively early, in 1985 through requirements implemented by Royal Decree which were subsequently adjusted – in the *Instructions* – to give ministers substantial discretion, and to focus on procedures rather than substance. RIA applies to all regulatory proposals, and must be started early. Financial, administrative and other significant consequences (*e.g.* regional) must be covered. Guidance on how to carry out impact assessments are laid out in a series of non-mandatory guidance documents from various ministries. RIA requirements are very fragmented and numerous. There is currently one guideline on socio-economic analysis and four different guidelines on how to carry out various regulatory impact assessments (gender alignment, regions, business, the environment,). On the plus side, RIA is a requirement that starts early and involves extensive consultation, with tools and guidelines that are good quality and comprehensive. But RIA format and substance (and importantly, how the separate assessments should be assimilated) are not prescribed, no central unit exists to oversee the process, and no evaluations have been carried out. A key negative effect is bias: effects on the public sector (notably employment) are given disproportionate attention relative to effects on competition, business and consumers, and secondary legislation is given little attention.

Table 2. **Use of regulatory alternatives in Norway**

Example	Results / effects
Economic instruments	
Green taxes. Introduced to induce changes in environmentally harmful activities, particularly in transport, energy use and waste disposal.	In 2002, green taxes generated 8.5% of central government tax revenue (equivalent to 3.1% of GDP). The fiscal incentives (green taxes) have been criticised, on the ground that numerous exemptions given to various industries may reduce the cost-effectiveness of the tax.
Waste charges. Following amendment of the Pollution Control Act that came into effect 1 February 1994, municipalities are encouraged to differentiate charges in order to support waste reduction and recycling.	In 1999 nearly 50% of municipalities were practising some form of differentiation.
Health-related taxes. Introduced to reduce consumption of goods with negative effects on health (tobacco, alcohol, sugar, and soft drinks).	In 2002 health-related taxes generated 3.1% of central government tax revenue (equivalent to 1.1% of GDP).
Deposit-refund. Established for the end of life vehicles and beverage bottles and boxes.	End-of-life vehicles and beverage boxes now have a return rate of around 90%, while return of plastic bottles is picking up from a lower level (since the refund-system was recently expanded into new types of bottled beverage).
Subsidies. Operating support to new, renewable energy equivalent to 50% of tax on electric power. Investments can also be eligible to a 25% direct subsidy.	Investment grants in 2001 of NOK 72 million are estimated to release wind power of about 120 GWh/year, and NOK 110 million in bio-energy, heat pumps, etc. to release 328 GWh/year.
Tradable permits. Government proposal on introducing a national system of tradable quotas for emissions of greenhouse gases (GHGs) in 2005 has been approved in principle by Parliament. A broad quota system from 2008, which had been proposed already by the former government, was also endorsed.	According to a Government proposal the system should comprise, as far as it is practicable, all GHG emissions that are exempted from CO_2 tax (about 30% of GHG emissions). Quotas will be allocated free of charge ("grandfathering"). A broad system, comprising over 80% of GHG emissions, is envisaged from 2008.
Fishing quotas are transferable when a vessel is permanently withdrawn from fishing (so-called "unit quotas"), but only within certain vessel groups and for a limited period.	Number of vessels has been reduced by more than 20% in those parts of the fishing fleet that have access to "unit quotas".
Voluntary agreements and self-regulation	
Fisheries. Distribution of quotas. Quotas usually allocated between groups of vessels in accordance with proposals of the fishermen's organisations. (The Ministry of Fisheries formally distributes the right). The sales organisations report catch data and irregularities to the Directorate of Fisheries.	High degree of legitimacy of the provision of exclusive rights to a limited number of fishermen.
Recycling and recovery industry. Based on bilateral arrangement by which industry commits to achieve certain target or objectives mutually agreed upon. If voluntary schemes do not produce satisfactory results, the sectors are required to comply and get sanctioned in line with the Pollution Control Act.	The alternative of taxation gives a strong incentive to co-operate. To avoid a new tax being implemented, business associations in 1994-1995 signed an agreement with the Ministry of Environment that they would establish their own collection and recovery system for plastics, metals, glass, beverage, cartons and corrugates. So far, monitoring and control exercised by the industry itself has avoided major free-riding problems.
Occupational Health and Safety. Since 1992, the employer is fully responsible to implement health and safety policies at the firm level and to establish a democratic dialogue with employees in order to ensure health and safety at work.	While results are ambiguous at the SME level, the system has provided for a high rate of compliance in large enterprises. The legislation was revised in 1997 in order to facilitate internal checks in SMEs and was further harmonised with EFTA's framework. From 1993 to 1996 the number firms completing the adoption of the programme rose from 8% to 45% with a reduction in workplace accidents.
The Industrial Energy Efficiency Network is a voluntary scheme for industrial energy conservation. Participating companies are obliged to establish energy monitoring systems. In return, the participants receive government support for training of key personnel and energy audits. A similar network exists in the building sector.	The Industrial Energy Efficiency Network was established in 1989 and currently covers about 80% of energy use in the mainland industrial sector (800 member companies). The Network provides various forms of assistance to industries for improving energy efficiency.
Media. Ethical standards. Applied and enforced by the Norwegian Newspapers Publisher's Association and the Association of Norwegian Newspaper Editors.	n.a.
Aluminium industry. Voluntary agreement with the Ministry of the Environment to limit GHG emissions (signed in 1997). By 2005, the industry is to reduce its GHG emissions per product unit by 55% relative to 1990 emissions.	In 2000, when the agreement was evaluated, total GHG emissions from the aluminium industry were estimated at somewhat less than 50% of 1990 emissions. However, most of the reductions had been accomplished by the industry prior to signing the agreement.

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Table 2. **Use of regulatory alternatives in Norway** *(cont.)*

Example	Results / effects
Information and performance based strategies	
The GRIP Center (the Foundation for Sustainable Production and Consumption). Established in 1995 by public and private organisations the GRIP Centre aims to contribute to greater eco-efficiency and thereby to greater competitive strength in Norwegian enterprises by developing, testing and disseminating methods that combine sustainable commercial development with better competitive ability.	n.a.
Eco-labellin – The Nordic Swan. Adopted in 1989, the voluntary seal of approval is an officially certified environmental label for Norway, Denmark, Sweden and Iceland.	According to a survey conducted in 1996, 80% of Norwegians recognised the label and 79% preferred labelled products.
Performance based contracting. Following changes in the Transportation Act in 1994, tender was allowed as an option to counties when buying public transport services (bus and local ferry routes). Performance-based contracts involve financial incentives for product development, quality requirements and the possibility of tendering the contract if the operator does not fulfil expectations.	Results so far are positive in terms of lower public subsidies.

Source: Government of Norway.

The following list, based on best practices identified by the OECD, sets out the most important areas for government attention in the development of RIAs:

- Maximise political commitment to RIA. Use of RIA should be endorsed at the highest level. This is weak, as regulatory quality is only a subset of the wider issue of public sector reform, and the emphasis tends to be *ex post* (for example simplification initiatives) not *ex ante*.
- Allocate responsibilities for RIA carefully. Ownership by regulators needs to be carefully balanced with quality control and consistency: responsibility for RIA should be shared between ministries and a central quality control unit. Ministries have the main responsibility in Norway and there is no central unit. As already noted, the Ministry of Labour and Government Administration which is responsible for the Instructions does not have any dedicated resources to support (or challenge) RIA, and there are no sanctions for non-compliance.
- Train the regulators. Regulators need the skills to carry out high quality RIAs. A number of initiatives are in place, including skills-development courses (though mainly on legal issues). The Business Impact Unit is expected to offer advice and support to ministries as regards business regulations.
- Use a consistent but flexible analytical method. An effective RIA needs a soundly based cost-benefit analysis which includes quantification. The *Instructions* combined with the Ministry of Finance cost-benefit guidelines meet the description in principle. But in practice, RIAs are usually neither consistent nor quantified. Quality can be high and some major reforms such as the commitments pursuant to the Kyoto Protocol are quantified, but many RIAs are of a low standard.
- Develop and implement data collection strategies. RIA quantitative evaluations are only as good as the data which supports them, and lack of information is known to raise problems. The proposed business test panels of the Ministry of Trade and Industry could be very valuable in this respect. The systematic monitoring of reporting burdens on business by the Brønnøysund Register Centre (see below) is also relevant, albeit it is *ex post*.

- Target RIA efforts. RIA resources should be targeted at regulations with the largest potential impacts, and with the best prospects for changing outcomes. Norway meets this need in principle in the *Instructions* but the absence of binding criteria for RIA preparation undermines the intent. As noted this leads to bias favouring attention to the public sector, and secondary regulation is neglected (which the government has recognised in a 2002 review which noted that "impacts of new and revised regulations are often not satisfactorily assessed").
- Integrate RIA with the policy-making process. RIA can only be effective if it is integrated, as early as possible, with policy making and is not just an "add-on" after policy decisions have been made. Norway fully meets these conditions through the two-step approach of a preliminary and final impact assessment set out in the Instructions, and the Prime Minister's Office guidelines to present important drafts (complete with cost-benefit analysis) early on. But relatively few decisions appear to be affected by this process. Either RIA quality is an issue which detracts from its use to help decision making, or the need to reach consensus is more important in guiding decisions than RIA results.
- Communicate the results and involve the public. Consultation provides essential quality control, by providing feedback on a draft regulation's feasibility and likely future impact. As noted, Norway has several mechanisms to involve the public, including the committee structure used for developing bills. These committees traditionally draw heavily on input from affected and organised interest groups. They can be a channel for data, and the release of legislative proposals for public consultation.
- Apply RIA to existing as well as new regulation. RIA disciplines are as useful in the *ex post* review of existing legislation as in the *ex ante* assessment of new regulation. Norway does not have a consistent approach, not least because responsibility is left to individual ministries. However the recent review of secondary legislation (Box 10) has taken heed of this.

Keeping regulations up to date

Norway pays extensive attention to technical updates and simplification

Norway has made substantial efforts to weed out and simplify its regulations. Those that remain are accessible and readable. The Ministry of Justice guidelines cover when and how to review existing regulations. It recommends that regulators consider the issue of review even as they prepare new regulation. Five major reviews have been carried out over the last four decades, focusing mainly on the repeal of outdated regulation and improving the organisation and technical quality of the rest. A 1980s review was carried out in parallel with the establishment of a comprehensive regulatory database, *Lovdata,* that excluded any regulations which were not up to technical legal standards. From 1999 to 2002 an interministerial committee undertook a comprehensive technical review of all subordinate regulations applicable at the national level and made proposals to improve the quality of future regulations.

Political commitment to this kind of review remains strong. The government has said that it would continue the project "Simplifying Norway" (see Box 11). It has also committed to sunsetting (the automatic removal of a regulation beyond a certain date) of subordinate regulations. However reviews have focused on technical criteria and obsolescence, and lacked strong central objectives beyond this. The overall regulatory environment may not have improved much as a result. Applying RIA standards to future reviews would add

Box 10. **Review of subordinate regulations**

In May 2002 a cross-ministerial committee tabled a report with the results of three years of work reviewing and simplifying all national secondary legislation in Norway. During the course of the project the number of nation-wide secondary legislation was reduced by approximately 10%. The committee also tabled a set of proposals to increase the quality of future regulations:

- Setting up a central unit to serve as an expert body advising and supervising all regulatory work at the sub-ordinate level. The unit is proposed to be administrated within the Legislation Department of the Ministry of Justice.
- Organisational measures within the ministries and other bodies responsible for preparation of regulations (*e.g.* units giving advice and performing quality control, establishing a network of desk officers responsible for drafting regulations and acts of law).
- Mandatory publication of all regulation in the central Web site registry Lovdata.
- No sub-ordinate regulation not registered in the Web site registry Lovdata may be invoked unfavourably towards the public.
- Automatic repeal of all existing regulations not registered at Lovdata within a specific time limit.
- A clear obligation in the *Instructions* to assess whether review of the act in preparation should be carried out at a later stage, and if so when.
- Training programmes for regulatory work.
- Developing guidelines on regulatory work at sub-ordinate level, on review of existing regulations and consequence assessment.
- It should be considered to use "Sunsetting" of regulations to a greater extent than today. The Ministry of Justice should elaborate this question further on a general basis.

further value. And the very "productivity" of reviews suggests that regulatory quality processes are deficient, especially as regards *ex ante* assessments of regulatory impact.

Improving the business environment

The Brønnøysund registers of obligations on business are a useful initiative which could be made to work even better

Norway also pays considerable attention to the reduction of administrative burdens on business. Policies include one-stop shops, inventories of formalities, and programmes to reduce licences and permits. Based on the revision of a programme launched in 1999, the 2002 "Simplifying Norway" project focuses on reducing burdens on business (Box 11).

The Brønnøysund registers is an important initiative (Box 12). It provides a continuously updated and complete record of reporting obligations imposed by central government on business (669); the same for permits and licences (255); estimates of administrative compliance costs; and it also co-ordinates reporting obligations to ensure that business never has to report the same information twice.

This excellent initiative could be even further improved if it covered reporting obligations imposed by local government. This would help comparison between municipalities and exchange of best practice. Awareness of the registers could also be raised (a 1999 survey suggested that only 30% of ministries surveyed always or often calculated business reporting obligations for new regulations).

Box 11. **"Simplifying Norway"**

Simplifying Norway was originally launched in 1999 as a two-year programme co-ordinated by a committee of 16 ministers headed by the Prime Minister. The programme was terminated after eighteen months due to change of government, but re-launched by the current government in 2002. "Simplifying Norway" is part of the public sector modernisation project (see also Box 6).

The programme's main objectives were originally: 1) simplification of government regulations of the business sector; 2) the development of a citizen and use-oriented public administration and 3) the simplification of the regulatory framework of local municipalities to engage them more in service delivery instead of compliance with central government guidelines. By reducing the administrative and regulatory complexity, the programme intends to engage in an effort to increase the flexibility and autonomy of public servants and a partial devolution to local governments, as well as a more intensive use of the Internet to gather public information and documentation.

The programme acted as a broad umbrella for a set of projects managed by the various ministries. For example, in 1998 the Ministry of Labour and Government issued a guide to support all public service agencies drawing up service declarations by the end of 2000.

The re-launching of the programme in 2002 focuses on reducing administrative burdens for businesses. The Ministry of Trade and Industry, on the request of the government, is developing a continuous government strategy to reduce administrative burdens imposed on businesses. In an Action Plan based on contributions and suggestions from all ministries the Ministry of Trade and Industry has provided and overview of on-going initiatives and come up with proposals for future prioritising of new initiatives. The government will update the Action Plan once a year, next time autumn 2003.

There is no government evaluation of the overall project or its sub-components. However, a survey conducted in late 2000 revealed that 40% of ministers and high-level civil servants interviewed about the performance of the project estimated that the effect of the programme had been "close to zero regarding increased efficiency". The interviewees estimated that the project had lead to no simplification. Despite the strong political will, the project was not sustained by sufficient capacities and co-operation by central politicians and because it faced resistance of the administrative leadership. Due to the large number of institutions and departments involved the project was also believed to have been too fragmented.

E-government, by contrast, needs to be strengthened. Measures are in hand to do this. There is currently no single electronic access point for business interactions with government. Some Electronic Data Interchange (EDI) is now possible (for example tax returns) but the government's IT strategy proposes a major upgrade. It plans to have all business forms and communications with public authorities available via the Internet (through a single business portal) by end 2004. The project, which is overseen by an eEnvoy who reports directly to the Prime Minister, is huge and involves carefully planned subprojects.

Conclusion

Norway has taken some important reform initiatives in recent years, including reforms of key markets, and public sector reforms aimed at improving efficiency and

Box 12. **The Brønnøysund Registers**

The Brønnøysund Register Centre, an administrative agency under the Ministry of Trade and Industry, is Norway's central register authority and source of information. It currently operates fourteen registers with information on, among others, business' reporting obligations, legal entities, company accounts, bankruptcies, etc. The registers – in particular the Register of Reporting Obligations of Enterprises and the Central Co-ordination Register for Legal Entities – play a key role in efforts to monitor and reduce administrative burdens.

The Register of Reporting Obligations of Enterprises *(Oppgaveregisteret)*

Created in 1997, the main task of this register is to maintain a constantly updated overview of businesses' reporting obligations to central government, and to find ways to co-ordinate and simplify these obligations. The register keeps an updated overview of all reporting obligations of industry and business. The information supplied by each business enterprise is not registered by the *Oppgaveregistret*, but by the authorities using the information. Under the Act relating to the Reporting Obligations of Enterprises, the public authorities must co-ordinate their reporting activities. This means that if two or more public authorities ask the same questions of the same type of company, these authorities shall collaborate so the question is asked only once. The register also maintains an overview of the permits that are required to operate within various businesses and industries, and provides information on how to obtain such permits. Currently the register is restricted to business and industry's reporting obligations to the central authorities. The results of its monitoring efforts are published on a yearly basis. The register has compiled a database of about 669 reporting obligations and a total of 255 different permits and licences covering all business sectors in Norway. The register estimates burdens related to submission of information in terms of time.

The Central Co-ordination Register for Legal Entities

Created in 1995, the primary task of this register is to co-ordinate information on business and industry that resides in various public registers, and which is also frequently requested on questionnaires from the public authorities. Instead of having each public authority send their own separate form for a company to answer, the register ensures that all the information is collected in one place. A nine-digit organisation number identifies an entity, making it easier for the authorities to collaborate on information exchange. Pursuant to the Act relating to the register, other state registers are obliged to co-operate with the register and keep their register information updated. A co-ordinated register notification replaced the registration forms from various authorities that were previously used. Many associations and others with no registration obligation find it useful to register voluntarily with the register. There is no charge for registration. The register only contains information that is stipulated by law, and everyone has access to register information, such as correct name and address, business objective, industry/branch and representative. Key information can be obtained without cost via the Internet and over the phone.

Applying national reporting definitions

In order to create synergies across the administration and increase co-ordination capabilities, the code sharing policy is complemented with a process of classification and homologation of information items. The Register of Reporting Obligations for Enterprises has recently established a repository of definitions based upon a database that contains all the information collected from enterprises nation-wide. This repository is open to the public and intends to have continuous feedback both from the business community and the administration. All ministries and agencies are obliged to use these definitions in everything concerning reporting obligations of enterprises. Large national projects dealing with electronic reporting also use the definitions kept in this register. The use of national definitions for information items clearly simplifies processes in which two agencies require the same kind of information from an enterprise, and eliminates ambiguity or confusion about requirements to the firms. The national system of informational definitions also relies on a high degree of compatibility with international standards, with obvious advantages.

flexibility. State ownership has also been addressed. Most ownership responsibilities have been separated from the regulatory function, and proposals have been tabled for further change. Important elements to promote regulatory quality are also in place. These include forward-planning of regulations, effective consultation and co-ordination of comments, good communication strategies, and some excellent guidance documents. There is a strong and longstanding tradition in the use of alternatives to traditional regulation. Most striking, considerable and successful efforts have been made systematically over time to review and simplify existing regulations, and the registers of reporting obligations are an example for other OECD countries.

Is this enough? Norway's oil wealth and a comfortable economic outlook make it difficult to generate commitment for further regulatory and structural change. Yet the demands on government for better public services need to be addressed, and the tempting answer to increase spending by dipping into the Petroleum Fund is not the right one (for fiscal and other reasons). Better regulation can be used instead to help shape a better public service and economic environment. Enhancing regulatory capacities would improve efficiency by pinpointing best practice, exposing trade-offs between different options, and clarifying costs (not least the cost of high regulatory standards imposed throughout the country). Policy decisions would then be more soundly based.

The agenda for taking this forward is broad and challenging. A comprehensive, government-wide regulatory policy to focus the current dispersed and ministry-based approaches, and to show political support for the importance of regulatory reform in its own right (and not just as an adjunct to public sector reform), is essential. Policy needs to go beyond the current tendency to focus on regulatory review and administrative burdens, important as these are, and put more effort into *ex ante* analysis of prospective regulation, which would deepen understanding of the positive (as well as negative) impact of regulation in achieving public policy goals. The tradition of consensus-based decision making is likely to come under strain from this approach, which emphasises evidence-based decision making. But decisions are likely to be more durable and effective. A stronger and centrally driven policy also needs corresponding institutional change at the centre. Just as important, regulatory capacities at local level, where much of the public service delivery takes place, need attention if better regulation is to flourish.

Policy options for consideration

1. Strengthen regulatory policy as a high priority for the government.

Despite the existence of several elements of an effective regulatory policy, there is no single, explicit or published government-wide policy to promote regulatory quality. Regulatory policies tend to be applied *ad hoc*, depending on the political strength of individual ministers, without a supporting government-wide and institutionalised management structure. This means that policy makers have no strong incentives to apply current policy guidelines effectively. An explicit government-wide policy on regulatory quality would boost the benefits of reform for Norway. The United Kingdom and Canada are examples of countries that have used regulatory policies as an important part of policies supporting not only public sector reform but also economic growth and innovation.

2. Select a ministerial committee responsible for developing and setting broad targets in Norway's regulatory policy. It should establish a systematic process of oversight for reform results, against which ministries will be held accountable.

A permanent ministerial committee, supported at the highest political level, should be established or adapted to adopt, promote and review regulatory policy. Such a committee should have the necessary authority to promote effective implementation. Similar arrangements to ensure high-level political attention and accountability for regulatory reform have been successfully adopted in Denmark (the Regulation Committee) and in the Netherlands (the Competition, Deregulation and Quality of Law-MDW-Committee).

The Government Committee for Modernisation and Simplification led by the Minister of Labour and Government Administration, currently responsible for overseeing projects under the Modernising the Public Sector Programme, might assume this responsibility (with appropriate changes in portfolio, composition and support). This would help to reap synergies, and avoid possible duplication and overlap.

Experiences from Norway as well as other OECD countries also suggest that high-profile, external committees independent of the government administration can play a very important role in advocating regulatory reform and in challenging and developing the reform agenda. Norway should build on existing practices. It should ensure that stakeholders are included in the development of a government-wide regulatory policy, and that bodies representing stakeholders and experts (such as the Contact Committee and the Forum of business representatives) play a continuous role in further developments.

3. Establish a central technical unit with the mandate, capacities and resources to promote, advise on and support a government-wide and comprehensive regulatory policy.

The implementation of regulatory policy in Norway absolutely requires stronger and more credible institutional backing to replace the current lack of criteria, sanctions or staff resources to enforce RIA and other obligations. The establishment at the centre of government of an oversight unit with broad responsibility for regulatory policy would confirm the importance attached by government to regulatory policy. The main function of the unit would be to oversee the RIA system and provide technical opinions on the substantive quality of proposed regulations. The unit could also offer training and provide advice on regulatory instruments. As part of this, the *ex post* evaluations of tools and procedures would constitute an important feedback loop to ongoing improvements and revisions of regulatory policy. The unit might also be equipped with a formal challenge function *vis-à-vis* ministries' regulatory proposals (though this might not work so well in the Norwegian context as in other countries). The unit would need relevant expert capacities (especially economic) and credible means to fulfil its mandate, especially as regards RIA.

4. Integrate, formalise and enforce RIA requirements, and place the responsibility for quality assurance in relation to all aspects of RIA with the central technical unit.

Norway should address the current fragmentation of RIA requirements by providing that all RIA be carried out in an integrated fashion, and published in a single and (if possible) standardised document. As well as these procedural improvements, clearer criteria should be considered for when and how to prepare RIAs. For example, the *Instructions* could incorporate elements from the five guidelines which currently support

RIA preparation. To the extent possible, such criteria could also be used and incorporated into the ongoing review of regulations with potential constraints on competition (see also Chapter 3).

5. Adopt explicit and measurable government-wide criteria for making decisions as to whether and how to regulate, including stronger implementation of the cost-benefit principle.

RIAs show considerable variation in quality, scope and analytical methods. Cost-benefit analysis is rarely used in impact assessments of regulations. Adopting precise criteria and detailed methodologies for cost-benefit analysis, together with a mechanism to target efforts, will provide an objective basis for regulatory decision making, as well as a basis for comparing a range of policy alternatives. Gradually increasing the analytical rigour required in the analysis of important regulations, and expanding the scope of RIA to substantive lower level rules, (as expertise increases and resources permit) would progressively promote benefits. The accountability and transparency of regulation would be increased, as would the efficiency of public consultation, if it were integrated with RIA as recommended below.

6. Further improve processes for review and reform of existing regulations by incorporating in the reviews regulatory quality elements, consistent with the RIA requirements applied to proposed new legislation.

As a result of several broad reviews of existing regulations, Norway's stock of national regulations is well consolidated and of a high technical standard. To date, review criteria have been mainly legal/technical and determined *ad hoc*. Future reviews should incorporate regulatory quality elements consistent with those applied to new regulations. Most notably, this could include regulatory performance and efficiency assessments, based on impact analysis requirements and the identification and assessment of alternative options.

7. Strengthen the application of consultation and reporting requirements already in place.

Many first-rate regulatory tools and processes are available to support regulators. Though generally well developed there is scope for improvement in the application of some of these tools. Firstly, current deviations from the formal consultation requirements should be corrected to avoid a potential weakening of the credibility and legitimacy of consultation procedures. Secondly, the use of the Brønnøysund registers could be improved by *i)* expanding its coverage to local governments' reporting obligations; *ii)* by increasing awareness and incentives among ministries to comply with the obligations to report and consult with the registers, and *iii)* by systematically integrating reporting burden estimates – based on the methological standard developed by the Brønnøysund Registers – in RIAs.

8. Improve awareness and enforcement of existing requirements to assess alternatives during the policy-making process.

Although regulators are required to consider alternatives as part of the regulatory development process, compliance remains poor in most areas, other than the environment. The central unit (recommended above) should ensure that these issues are addressed, among other ways, in the training courses. Adopting untried alternatives

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necessarily involves an element of policy risk. Thus, government must take on the responsibility of promoting the use of alternatives. A possible first step would be to better document and promote the progress already made in this area, particularly in the environmental field. A further step might be the preparation of a public and periodic report on progress in implementing alternatives.

9. Improve impact assessments, consultation and communication of EEA regulations by applying RIA standards and by involving and informing affected parties as early as possible in the implementation process.

Norway should continue its efforts to ensure that affected stakeholders are informed as early as possible in the EEA process. Currently planned improvements of the consultation procedures should include a stronger emphasis on providing better estimates of expected economic and other impacts of EEA regulations, as well as information about their expected implementation.

10. Ensure that decentralisation of regulatory authority is matched by sufficient capacities to prepare, assess, implement and monitor regulations at the local level.

The intention to strengthen and transfer more functions to the municipalities and to reduce central state control raises concern about municipalities' regulatory capacities. Although initiatives to provide better central guidance and support are being established, further attention seems to be needed to ensure that sufficient regulatory capacities can be maintained and developed locally.

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PART II

Chapter 3

Competition Policy*

* The background report used to prepare this chapter is available at: *www.oecd.org/regreform/backgroundreports*

Context and history

Norway's competition policy makes market efficiency its main objective

Norway was a pioneer in European competition policy. The rudiments of a competition policy were already in place by 1920 and a recognisably modern competition law, the first of its kind in Europe, was enacted in 1926. It created two institutions independent of government responsible for the registration of restrictive agreements and dominant firms, which also had the power to investigate abuses, set prices, terminate cartels and dissolve dominant firms, and enforce compliance (at least in theory) with criminal penalties. Price control was an important policy feature. The process of constituting competition policy was repeated after WWII, beginning again with concern about price levels and controls. Over the next 30 years, the scope of policy shifted as orders banned price fixing and collusive tendering and a form of merger control was added to the law. Price levels remained a concern, but ideas of how to address this evolved. In the early 1980s it was proposed to fight inflation with more competition. A consensus emerged that the basis of the law should move from economic regulation (including price control) to competition.

The current general competition law, the *Competition Act*, was adopted on this basis in 1993, with efficiency as the goal of competition policy. The law's statement of purpose, set out in Section 1.1, is "to achieve efficient utilisation of society's resources by providing the necessary conditions for effective competition". Efficiency is taken to mean allocative efficiency (that is, a situation in which resources cannot be reallocated to make someone better off without making someone else worse off). Dynamic efficiency (how resource allocation might evolve over time with technological and other changes) is also taken into account. The potential to consider other objectives also exists, though specific references to these (such as consumer welfare) were not included in the new law. The law combines prohibitions (subject to potential criminal enforcement) with provisions for more discretionary intervention.

But the Norwegian geographical and policy context mitigate its influence on the economy

Competition policy often faces a difficult task in the Norwegian setting. Its influence has in consequence been less strong than might be expected. Natural resources and geography have generated particular challenges in important sectors of the economy. Fishing, which has flourished with the long, complex sea coast, challenges competition principles by combining small-scale production with large-scale marketing. The industry also raises important long-term conservation issues which need careful handling. The issue of national interests as a supplier to international markets is another consideration. Similar issues apply to shipping and shipbuilding, and the more recent sea-based activities of offshore oil and gas production.

At the same time Norway's traditional public policy goals (shared with its Nordic neighbours) of equity and community responsibility have promoted a strong and central role for the state. This has led to extensive direct state engagement in the economy as well

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as co-operative structures at local level, and a powerful policy of regional support based on shared standards imposed from the centre. The country is large, but the population is small and widely dispersed, and one of the least urbanised in Europe. Much of policy recognises, supports and maintains this pattern of living. Though significant steps have been taken over the last twenty years away from central control (not least regulatory reforms to open up key financial, energy and telecommunications markets, and a reduction in state shareholdings), change towards greater reliance on markets and competition has been cautious. The desire to improve efficiency through market discipline still coexists uneasily with a continuing widespread support of state engagement and policy to regulate the achievement of important goals (rather than leave it to the market).

Reforms to strengthen competition policy have been launched recently

The current competition framework does not appear very effective, both because of uncertain support in the broader policy context and because of weaknesses in the legal and institutional structure. The government's 2002 *Modernising the Public Sector* project (see also Chapter 2) includes a plan for strengthening competition policy, launched in November 2001. It proposes giving competition policy a higher priority so as to make more efficient use of resources and strengthen the position of consumers, and incorporates the principle that regulations should not impede competition more than necessary.

To achieve this, the plan proposes a wide range of actions. The competition policy institutions will be made stronger and more independent. A non-political avenue of appeal from Norwegian Competition Authority (NCA) decisions will probably be set up, marking a turning point in recognising that competition policy should be insulated against political intervention. Discussion is also underway, via a 2003 government White Paper on the organisation of public authorities, on how to apportion responsibility for competition issues between the NCA and the sectoral regulators. The law will be harmonised with the competition rules of the European Economic Area (EEA) and EU. Regulations that can restrict competition will be reviewed. A comprehensive review of existing competition – distorting regulations is underway, organised by the Ministry of Labour and Government Administration. This has already resulted in a searchable database of such regulations. Government procurement will be reviewed to ensure that it enhances competition and stimulates new entry. And the operations of public entities (such as hospitals) will be reviewed to enhance efficiency and competition. Proposals include encouraging competition between entities, ensuring fair competition between private and public entities, and reviewing the interests of state-owned companies to avoid dominant positions.

The substance of the competition law

Anti-competitive restrictive agreements are explicitly and broadly prohibited by the law

The most serious restrictive agreements are the object of explicit and broad prohibitions on price fixing, resale price maintenance, collusive tendering and market division that cover any agreement, concerted practice, or other conduct that is liable to influence competition (so it does not have to be shown that an agreement actually influenced competition). Both binding arrangements and "guidelines" and recommendations are covered, and cannot be evaded by using the umbrella of an association and its rules. Anticompetitive horizontal agreements may also be caught by the law's provision that the

NCA may "intervene" against "terms of business, agreements or actions" that have the purpose or effect of restricting, or are liable to restrict, competition contrary to the purpose of the law.

Exemptions can be granted where the restraint will increase competition, or increase efficiency, or has little competitive significance, or there are "special circumstances" (*i.e.* the public interest). But unlike EU criteria, it is not necessary to show a benefit to consumers. Exemptions may be granted subject to conditions. The NCA is wary about granting an exemption based solely on efficiency even though that is the basic policy goal, and the public interest criterion too is rarely applied. There is no formal *de minimis* exemption, but the criterion of little competitive significance can be applied, and the NCA will exempt a small-scale agreement without requiring proof that it increases competition or efficiency.

But sanctions, strong in principle, appear weak in practice

Hard-core violations are treated as crimes, and infringement is subject to fine and imprisonment up to three years (and up to six years, if there are aggravating circumstances). But in practice, strong sanctions have rarely been applied. The strongest reported enforcement action (measured by the relationship between the magnitude of the violation and the size of the sanction) was taken under the pre-1993 legislation, against cardboard manufacturers who had tried to maintain their approved co-ordination system after permission for it expired. The fines against the firms and their chief executives totalled EUR 1.75 million, a total which was about twice the size of the gains from the violation – and the companies were required to relinquish the gains, too.

The NCA is now turning to the more challenging problem of enforcement against cartels that are more careful to destroy the evidence of what they are doing. It is uncovering problems in construction-related markets and non-traded services (for example it is pursuing hotels for collaboration on rates). Trade associations and network industries have also been caught. ABB and Siemens were fined a total of EUR 2.5 million in 1999 (the highest fine ever imposed in Norway for an economic violation) for price fixing, market sharing, and bid rigging in the supply of equipment to hydropower stations. But the fine was much less than the companies' turnover in this market (EUR 188 million). Sanctions actually imposed may be too weak for effective deterrence. Equivalent EU sanctions are much stiffer. The NCA has called attention to the need for stronger sanctions. In a 2001 report it considered the issues of optimal sanctions and the institutional framework for enforcement, including the judicial process. For the present, enforcement is weakened by judges whose actions imply a sceptical approach to competition matters.

The prohibition on vertical agreements is moderated by exemptions

The same provisions of the law prohibit vertical as well as horizontal restraints, with some specific provisions for the former (for example, on resale prices and discounts). The market sharing prohibition is used to control exclusive supply arrangements, and the NCA has used it to order suppliers to deal with customers cut off from essential supplies. However exemptions moderate the prohibition, especially for retail co-operatives and franchises, for which resale price agreements are often permitted if they are used only to set maximum prices. As well as the prohibitions, intervention against anti-competitive vertical restraints (such as restricting customer choice) is also possible. Competitive effect often depends on market power, so this avenue is closely related to control of abuse of dominance.

Abuse of dominance is controlled not by prohibition but by applying the law's economic efficiency test, and the EEA route is often preferred

The law does not prohibit abuse of dominance. Instead, anti-competitive conduct that could maintain or strengthen a dominant position is subject to control through intervention. The NCA makes case-by-case rule-of-reason determinations whether conduct on balance impairs economic efficiency. That is, the law's general statement of purpose (see above) is the NCA's guide. Other policies may be taken into account only in an appeal to the Minister. Market power is an element of the analysis in practice, although the statute does not make a legal pre-condition of liability. The NCA's orders are fitted to the conduct. It may apply an order prohibiting the conduct, and might regulate prices if there is exploitation of a monopoly position. In a recent example, banks were required to relax an exclusivity agreement so as to make competition in internet invoicing systems possible. The NCA has so far made relatively few interventions in the telecoms and electricity network monopolies, despite concerns over issues such as access and pricing. There are now sectoral regulators in electric power and telecoms to share responsibility for these problems.

A prohibition-based rule about dominance (corresponding to the EU rule) is available to Norway through the EEA via the EFTA Surveillance Authority (ESA). This applies to conduct that may affect trade between the member states. Stronger potential sanctions under the EEA combined with a clear prohibition approach have led to the extensive use of this route. Parties have gone to the ESA with their complaints about a wide range of network infrastructure access and pricing issues, notably in telecoms and electricity, but it has also reviewed postal services, television and pharmacies among others. Sidestepping the NCA is an implicit criticism of Norway's "intervention" approach that eschews prohibition and financial sanctions.

Mergers are controlled using a similar standard, and there can be ministerial intervention

Anticompetitive mergers may be controlled or prohibited. The standard applied is similar to the standard for intervention to control abuse of dominance. A transaction is subject to control if it "will create, or strengthen, a significant restriction of competition contrary to the purpose of Section 1.1" (*i.e.* the law's statement of purpose). Notification is voluntary, and the NCA must intervene within six months after the acquisition agreement (although that period can be extended). It has the power to stay an acquisition pending its investigation. As in most other OECD countries, few mergers call for intervention, and the outcome of intervention is most often a condition (such as partial divestiture) rather than outright prohibition.

As in other matters, the NCA only considers competition policy, and other policies may become relevant if the case is appealed to the Minister. The NCA has been overruled, for example, to stop the closure of a plant, and failing-firm arguments may be sympathetically received (a notable decision was to permit SAS to acquire Braathens because the latter's failure was inevitable).

Though prohibition is rare, the NCA has tried to prevent acquisitions that could undermine reform. In 2002 it prohibited Statkraft, the leading, state-owned electric power firm, from acquiring substantial interests in two other producers. Both acquisitions were permitted on appeal, provided Statkraft sold other generating capacity. It is not clear how the law provides for merger control over privatisation transactions. In practice, the NCA's

view tends to be checked before the transaction. For example, the government assumed that NCA would review the arrangements for the recapitalisation of Statkraft. It would be helpful to confirm the NCA's role in the law.

State aids and procurement issues are on the agenda

The ESA generally oversees subsidy and procurement policies that might undermine competition. Norwegian law requires prior ESA approval of new support measures, and EEA public procurement rules apply in Norway. One current reform seeks to address the problem of some government procurement practices (corporate discount schemes, framework agreements) that may concentrate purchases among a few large suppliers.

Consumer policy is increasingly detached from competition policy, giving rise to some concern on behalf of consumers

The NCA's main focus is competition policy, defined (see above) in terms of efficiency, and the link between competition and consumer policy is now weak. Consumer protection laws are administered by the *Consumer Ombudsman* and the *Market Council*. A *Consumer Council* is consulted on proposed new rules, and puts forward consumer interests. The main law, the *Marketing Control Act*, prohibits misrepresentations that are likely to influence demand or supply, and covers the usual subjects of unfair competition law such as trademark abuse, discounts, comparative advertising and "free" offers. It is enforceable by fines, which must be imposed in courts. "Cease and desist" orders by the Ombudsman or Market Council have no presumptive effect – courts review the whole case. Consumer problems with firms in investment, banking, insurance and real estate can be taken to informal industry complaint boards under the Consumer Council.

Some consumer pricing issues are covered by the competition framework, but this is changing. The competition law requires transparency of consumer prices, and the NCA can make this more specific. Its main priorities are unit labelling to facilitate comparison, and the monitoring of prices under conditions of change (such as the liberalisation of electricity markets). NCA price surveys have sought to inform consumers in unfamiliar territory. Eight surveys were carried out in 2000. The *Price Policy Act*, which authorises price control in general terms (the law applies the standard that control "is necessary in order to promote socially justifiable price developments", and a test of unreasonableness can also be applied), is also relevant. The NCA may be asked to ensure compliance with orders (such as a price freeze) under the Act. The NCA has some other consumer-related tasks under laws relating to rent control and credit purchase. These consumer and market-surveillance tasks are being reassigned so that the NCA will deal only with competition policy. The consumer Ombudsman has expressed concern that the NCA now pays too little attention to market effects on consumers, and the issue may arise in the upcoming debate on the Competition Act. High prices are a particular complaint.

Competition policy institutions and enforcement

Competition policy depends on the Minister, to whom cases can be appealed from the competition authority

Overall responsibilities for competition policy and enforcement are with the *Ministry of Labour and Government Administration*. The *Norwegian Competition Authority* (NCA), the civil enforcement body, is subordinate to this ministry (which is the appellate body for most of the NCA Director's decisions). The NCA Director is appointed by the government and manages the NCA autonomously.

This structure means that competition policy depends on the ministry, as the NCA's independence is limited by the minister's power to override its decisions. The Minister can shape competition policy by deciding appeals from NCA decisions based on competition law, or other policy considerations (such as employment). As already noted, the latter does happen, the use of the appeal function has been questioned. The ministry also leads on competition issues in proposed new rules, though the NCA may participate.

The NCA has reasonable resources

Staffing at the NCA has declined in recent years (from 132 person-years in 1997 to an estimated 110 in 2002) though the budget remains steady. The changes are due chiefly to the major reorganisation in 2000 to close the regional offices and concentrate the NCA's operation in Oslo. Consumer and price-related functions (see above) have been transferred elsewhere. But the NCA is still somewhat larger than competition authorities in similar countries. The reorganisation also eliminated the NCA's separate "surveillance" department; instead, most of the staff is now organised in terms of sectors. Advocacy too is done by the section that is responsible for a sector, rather than by a separate unit. The proportion of resources devoted to advocacy has declined, though it remains high. The number of actions applying the Competition Act has also declined since the reorganisation; before, the data included minor actions at the now-closed regional offices. Table 2 shows the trends.

Enforcement relies heavily on the criminal law, but serious sanctions have not yet been applied

Application of the competition law is normally an administrative process. In cases of "intervention" the NCA starts with a warning, and may then issue a decision, with reasons (there are no deadlines). A formal and transparent appeal can be made to the Minister, who normally issues a (public) decision within three months. The process has become more adversarial and formal in recent years. Decisions are subject to sunsetting. They normally expire after five years.

The NCA has wide investigative powers, especially as regards infringements. It may demand access to business premises and take possession of original evidence (including from private homes). A court order is required for a dawn raid, but the NCA can obtain the order *ex parte*. Failure to comply with investigative orders is a criminal violation. Enforcement matters seeking fines (or imprisonment) must be sent to the prosecutor, the *National Authority for Investigation and Prosecution of Economic and Environmental Crime (Økokrim)*, a unit of the Ministry of Justice. The breadth of the NCA's investigative powers (which are used for civil cases too) complicates prosecution as Økokrim's case in court must meet stricter criminal procedure standards.

The basic non-criminal sanction for violating a statutory prohibition is an order to relinquish the gain from the violation. Fines or imprisonment may also be imposed by the prosecutor or by a court for violation of a prohibition or an NCA order. Individuals as well as organisations may be fined, and the former face imprisonment up to three years (and up to six years, if there are aggravating circumstances). But serious sanctions such as imprisonment and the confiscation of gains have not yet been applied, though other economic crimes such as large-scale VAT fraud have attracted imprisonment. A relative lack of judicial experience (few cases have gone to court), a lingering controversy over the labelling of conduct as criminal, and lack of resources in the prosecutor's office may explain this.

Table 3. **Trends in competition policy actions by the NCA**

	Prohibited agreements[1]	Exemptions[2]	Abuse of dominance[3]	Mergers	Price surveillance[4]
2002: matters opened	99	73	79	36	55
Enforcement action[5]	4	10			
Other resolution[6]	92	63	6	5	48
Total sanctions imposed					
2001: matters opened	50	113	66	27	133
Enforcement action[5]	3	22			123
Other resolution[6]	39	91	4	2	
Total sanctions imposed					
2000: matters opened	101	147	74	39	983
Enforcement action[5]	4	48			432
Other resolution[6]	50	99	7	2	
Total sanctions imposed					
1999: matters opened	114	85	69	31	976
Enforcement action[5]	1	32			587
Other resolution[6]	20	53	4[7]	2	
Total sanctions imposed					
1998: matters opened	214	131	52	46	2 586
Enforcement action[5]	3	61			1 075
Other resolution[6]	114	70	4	2	
Total sanctions imposed					
1997: matters opened	121	129	79	41	2 970
Enforcement action[5]	1	28			1 581
Other resolution[6]	81	101	11[8]	3	
Total sanctions imposed					
1996: matters opened	189		61	46	2 804
Enforcement action[5]	1				1 559
Other resolution[6]	71		3	1	
Total sanctions imposed					

1. Matters under Section 3-1 (horizontal price agreements and resale price maintenance), Section 3-2 (collusive bidding), and Section 3-3 (market division).
2. Exemptions from the prohibitions against horizontal and vertical agreements.
3. Matters under Section 3-10.
4. Matters calling for information or surveillance about prices; most of these functions have been transferred now to the Consumer Council or Consumer Ombudsman.
5. For agreements, matters investigated by the NCA Corporate Investigation Department and reported to the prosecutor for legal action; for exemptions, exemptions denied or revoked
6. For agreements and price surveillance, warning or other soft enforcement) administrative action; for exemptions, applications granted; for abuse of dominance and mergers, intervention resolutions such as conditional approval or prohibition.
7. Including 1 coercive fine, for failure to comply with an NCA decision.
8. Including 1 coercive fine.

Source: NCA, 2001; NCA, 2002; OECD CLP 2002.

Private lawsuits and EEA law are important

Private lawsuits, which may supplement public enforcement, are also possible. This could be a practical and effective tool in Norway. For example customers followed the ABB-Siemens case with claims for damages which were reportedly settled for nearly EUR 7 million – about 3 times greater than the fine. Prior public enforcement is not a prerequisite to a private suit. Private party access to NCA files on a case is, however, controversial. Costs and delays are not a major issue. The courts are considered efficient, disposing of smaller private cases within a year.

The most important supplement to the NCA's enforcement is the application of EEA competition law through the EEA agreement. This can be used where conduct may affect trade between the member states. The rules (which are equivalent to EU competition rules) are applied by ESA (see above) in conjunction with the European Commission. In general Norway is bound by the agreement to harmonise with EEA law, which governs in the event of conflict.

Competition policy in the international context

The approach is open-minded and co-operative

The Competition Act applies to agreements and actions that have, or are liable to have, effect in Norway, regardless of where the agreement or action took place. An agreement or action with effect only outside Norway could be subject to the law, if the government authorised it. Agreement with another country or international organisation could also extend, or limit, the law's reach. In short, there is no presumption that the scope of a market is national. Competition issues in trade policy are not significant (anti-dumping measures have not been used since 1984). No concerns have been raised about the treatment of foreign firms, and NCA enforcement of the law does not take nationality into account. Enforcement co-operation is well established, in the EEA context and especially with Nordic neighbours. In fact the law was amended in 2000, to authorise the NCA to provide information to other competition authorities, either for its (Norway's) benefit or theirs. Norway is party to the Nordic co-operation agreement, which has been useful in action over cartels. Denmark and Norway have been particularly interested in co-ordination, as they both use criminal processes in competition matters.

The limits of competition policy: exemptions and special regulation

Exemptions pose a significant challenge for competition policy. Competition policy in Norway must establish its priority. There are general provisions for derogation from competition principles, as well as limits on the role of competition policy in several key sectors. In the event of conflict, competition policy generally defers to other interests. Decisions applying the Competition Act "must not conflict" with decisions of the legislature. This rule leads to potential uncertainty about how privatisations are covered by the competition law. The 2002 White Paper on state ownership (see Box 20) promises to clarify this so that future divestitures will be subject to NCA review. The Act also includes a general authorisation for the government to decide case-by-case which authority will deal with an issue.

The Act governs commercial activity of all kinds "irrespective of whether it is private or carried out by central or local government authorities", and the definition of commercial is very broad. Actions by government entities and by public enterprises appear therefore to be subject in principle to the law. The status of the entity – legally separate or part of government – determines whether the ministry or the NCA is competent. The ministry takes the enforcement actions against actions by local government, and experience suggests it is reluctant to intervene.

There are no general *de minimis* exemptions for SMEs, but they may benefit from the general exemption rules, one criterion being that the conduct has little effect on competition. Joint bidding (to allow small firms to participate in large tenders) may also be permitted under certain conditions.

Sector-specific exemptions or special treatment are also numerous. Fourteen sectors are reviewed below.

Telecoms and electricity have been reformed, and co-operation between the competition and sectoral authorities is good, but state involvement remains high

The *telecommunications sector* has been liberalised in accordance with EU directives. But though Telenor's formal monopoly was lifted four years ago, it retains a large market share, and is still largely state-owned. The Posts and Telecommunications Authority (PT) implements the current EC directives and though subsidiary to the Ministry of Transport and Communications, is fairly independent in this role. However its decisions can be appealed to its ministry (*i.e.* not the ministry responsible for competition policy). That said, competition law and sectoral regulation coexist quite effectively. The NCA's co-operation agreement with PT recognises that the Competition Act has a broader application than the Telecommunications Act and covers most relevant issues (such as access and pricing). The agencies work together on an issue, and doubt that a formal jurisdiction agreement is now needed. For example the two agencies have a joint project to look at how competition can be improved in the sector, and have supported each other on specific cases (such as complaints about Telenor's mobile operation), though they can bring different perspectives to an issue. A new law on electronic communication corresponding to the EC regulatory package on electronic communications will become effective in July 2003. As far as the EU-directive and the market conditions permit, the sector specific *ex post* regulations gradually will be reduced and replaced by supervision of the general competition law.

Norway moved early to liberalise the *electricity sector*, in 1991. The retail market is now open for all buyers and sellers of power, there are many competing suppliers, the network (a natural monopoly) is efficiently regulated, and a competitive wholesale power exchange (Nord Pool) is shared with Nordic neighbours. The network is not constrained, and both experts and consumers consider the reform to be a success. That said, there have been some complaints about possible manipulation of the wholesale markets, which are being treated as potential financial and commodity market problems, and there have been only modest changes in ownership patterns. The largest power generator and supplier, Statkraft, is owned by the government, and many other power companies are owned by local governments. Differences in treatment based on ownership have been criticised as deterrents to market entry. Concessions to run hydropower plants are limited to 60 years for private firms, but they are unlimited for public firms. The government proposed to change this to make the treatment consistent (subjecting all concession to the same fixed term), but later announced it will seek advice from a working group about how to proceed. The Storting tends to see hydropower as a resource that must remain under national ownership.

As in telecoms, co-operation between the NCA and the sectoral regulator NVE (Norwegian Water Resources and Energy Directorate) appears to work well. NVE observes the principle that competition issues are handled by the NCA, and where there is overlap or uncertainty about the lead, the two agencies are in touch to sort this out (for example the NCA has agreed not to intervene over the regulation of the grids). They also consult over mergers and other issues such as concessions.

Box 13. **Stratkraft: the conflict between policy and industrial policy**

One important issue has given rise to tension between competition policy and industrial policy. Statkraft is seeking expansion to ensure it remains a strong player in the Nordic market. The White Paper on state ownership (which proposes turning it into a joint stock company) supports this goal, and the Storting provided capital for acquisitions. But in 2002, the NCA prohibited Statkraft from acquiring substantial interests in two other power firms (Agder Energi and Trondheim Energiverk), based on a concern about market power. The decisions were appealed to the Ministry for Labour and Government Administration. Consumers (including manufacturing interests) opposed the mergers. NVE and the NCA did not conflict about the mergers, because the former did not take a position. In the end the Ministry for Labour and Government Administration agreed that both the Agder acquisition and the Trondheim acquisition would create or strengthen a significant restriction of competition in the power market. But it permitted the transactions, on condition that Statkraft sell its interests in other producers, and agree to divest other generating assets if necessary. The Minister rejected the appeal and thus upheld the NCA's position.

Financial markets have been reformed and co-operation here is also good

Reforms have encouraged competition in financial services, and further reforms in insurance are underway. Competition is greater in the services for which there are more foreign-owned firms (this helps small countries, which typically suffer higher concentration). Foreign firms account for 25% and 49% of banking and non-life insurance assets, respectively.

Some banking regulation has competition policy implications or purposes. For example a bank merger or acquisition requires a licence, a condition that seeks to promote both financial stability and effective competition. The NCA and the banking regulator, the NBISC (Norwegian Banking, Insurance and Securities Commission) have a formal co-operation agreement. This does not commit them to the same approach, but they agree to collaborate, exchange information and promote predictability for the market. For example the NCA will not normally grant an exemption before the Ministry of Finance grants a licence. This co-operation appears to be working well, even though (inevitably given their different roles – the banking regulator is concerned about system stability and solvency as well as effective competition) different perspectives may emerge on the same issue.

Agriculture, forestry and fisheries are heavily protected and generally exempt from the competition law

Prices for food products are high in Norway. Exemptions make it difficult to apply competition policy in agro-food industries, and tariff protections limit competition. Producers are exempt from the Competition Act's basic prohibitions against horizontal agreements in connection with the sale or supply of agricultural, forestry or fisheries products (this only covers Norwegian products and does not extend to collusive tendering). The aim is to allow the operation of price support laws. Though the NCA believes it has the power to intervene against other anti-competitive conduct, this has not been tested in court. Co-operatives, which dominate sales of agro-food products, are the main beneficiaries. Import controls are substantial enough to impair the national reputation for market openness. And Norwegian ownership is promoted directly (for example fishing

vessels must be at least 60% Norwegian) and indirectly (for example through concessions that require settlement on the land by the owner).

An important NCA concern is the dual marketing and regulatory responsibility of dairy (and other) co-operatives. One dairy co-operative (TINE BA) is the largest producer, distributor, and exporter of dairy products and includes nearly all the dairy farms in the country. Each farm has a production quota and target prices are determined annually with the ministry, with TINE as the market "regulator" responsible for maintaining these prices. This dual role sets TINE up with considerable advantages over competitors (of which there are a few) in access to dairy raw material for processing. The NCA has made a number of recommendations, not least for separation of the regulatory role, and for abolition of the price regime. It has also recommended separating the regulatory and marketing roles in the grain market, as well as letting prices find their own level.

Public policy goals underlie the support regime for these sectors. Norway wants to maintain the traditional pattern of rural settlement and land use. Conservation and environmental considerations are also at stake. The public has not objected strongly, so far, to high food prices, perhaps because wages are high (though cross-border purchases are increasing). But the system should be examined to ensure that the benefits of protection are not outweighed by the costs of impairing competition and innovation.

Regulation still overly constrains competition in many services, and moves to open markets are cautious

Competition in *postal services* is currently limited by the legal monopoly of Posten Norge AS (Posten) over mail up to 350 grams (though new EU legislation will reduce the monopoly in 2003). The monopoly finances Posten's unprofitable universal services. But Posten also enjoys some advantages over competitors, notably priority on planes and ferries, that lower its costs. The NCA is concerned about this. Posten's priority of ferries is expected to end in 2003.

Competition in *bus transport* is constrained by regulation mainly designed to protect the rail service. A licence is needed, and one criterion for licensing is whether there is enough demand, in relation to the existing service. Despite this competition-dampening bias, some competition has emerged, especially in long distance service, and licensing of parallel routes is starting. A 2002 White Paper argued that protection of the rail service should be less of a factor in licensing decisions. Instead the rail service should be free to reduce or eliminate affected services. The Storting is considering the issue.

Competition in *taxi services* is also constrained by licensing, which is also said to be necessary to ensure firms can perform their service obligation – though moves toward more competition have been taken (for example expansion of licensing areas to make room for more participants). Prices meanwhile are controlled under the Competition Act to avoid abuse, with the NCA as regulator. Price controls have been lifted in the main urban areas, but elsewhere maximum prices still apply. The NCA considers that whilst competition is increasing, the licensing scheme inhibits new entry. The government is considering whether to replace it with a qualification-based scheme, with no limits (which would allow the NCA to lift price controls as new firms enter the market).

Reforms to the licensing of *pharmacies* have opened the market. The only entities now barred from owning a pharmacy are drug companies and doctors. Entry controls were said to be needed partly to prevent "cream skimming" and ensure continuing service to less attractive areas. The wholesale level is now private and competitive. At the retail level,

pharmacists have a monopoly over non-prescription as well as prescription drugs (though other shops will soon be able to sell some of the former) and maximum prices are set for prescription drugs. However, the method for this may weaken the incentive for a pharmacy to seek lower wholesale prices. Still, price competition is increasing.

Professional services do not have an exemption under the Competition Act, and restraints have been the object of NCA action. Lawyers, however, may present a special case because of court supervision and approval of the bar's rules. A commission (including an NCA representative) recently examined how lawyers' rules affect competition. Its main proposal was to improve price transparency. A majority supported government-imposed quality of service rules. Most agreed that persons without formal qualifications should be able to give legal aid outside the court system.

Retail trade in *alcoholic beverages* (other than low-alcohol beer) is an authorised monopoly. Until June 2002, there was also a legal monopoly over liquor production. The firm that had held that monopoly, Arcus, is still 35% government-owned, although sale of those remaining shares has been authorised. The reason advanced for public ownership and monopoly is public health. But the monopoly has little public support (some 40% of consumption evades it by buying from the competing national monopoly in Sweden or other imports), and some competition is allowed through wholesale imports.

Competition in the *retail trade* is somewhat limited by controls on opening hours. The law sets uniform hours, and shops must generally close on Sundays and holidays. But the picture is quite complicated as this does not apply to services or wholesale trade (such as petrol stations), and there are many exceptions (such as shops on campsites). These rules have now been transferred to the Public Holidays Act, ostensibly to encourage greater responsiveness to consumer needs. But the shift will not make much difference in practice, as the Public Holidays Act will continue to restrict retail opening, only at slightly different times. Competitive distortions based on the complex exemptions will remain.

Rules about *media ownership* seek to promote diversity of viewpoints and prevent investor control of content. The Media Ownership Act sets ownership limits (for example one interest cannot control more than a third of the national press market) and other media (such as radio and broadcasting) are also regulated for the same purposes. Appeal from decisions of the media regulator (the Media Ownership Authority) is interestingly not to the minister but to a special non-political body. This is to comply with the Norwegian constitution's guarantee of freedom of the press. It was once suggested to merge the regulator (which is tiny) with the NCA; more recently, it has been suggested to merge it with the bodies that deal with film and mass media.

The oddest regulatory constraint on competition is the municipalities' power to licence *movie theatres*, which they have used to establish local monopolies. The original reason that local government became involved was to secure income and censor contents. Today, regional policy tends to support the local monopoly system – a belief that small towns should have a cinema whether profitable or not. Some privatisation has taken place, as movie attendance falls. Film distribution is the subject of a price-fixing agreement (also justified for regional policy reasons) which has been sustained by ministers despite efforts by the NCA to remove it.

Price-fixing for regional policy and cultural purposes is also permitted for *publications*. An exemption from the Competition Act permits several restraints (for example in relation to discounts) as well as price-fixing, in the Trade Agreement on Books. Bookstores have a

monopoly of selling textbooks (at the Agreement's fixed prices) which helps small rural operations. The stated purpose is to promote Norwegian language and culture. Repeated objections by the NCA to the breadth of the exemption have been overruled by ministers (despite the positive Swedish experience, where the exemption was removed yet bookstores remained).

Competition advocacy for reform

Competition policy is actively promoted by the NCA and ministry, has produced important proposals for reform, but strains to make a real impact

Advocacy is a major feature of the NCA's work. Both the NCA and the Ministry of Labour and Government Administration have been active in promoting competition as a policy objective, especially under the current Minister. The Competition Act explicitly authorises advocacy. The NCA can offer a critique of policies: it "is to call attention to the restraining effects on competition of public measures, where appropriate by submitting proposals aimed at increasing competition and facilitating entry for new competitors". The scope of the NCA's interests is broad, from public monopolies to taxation policy and many other issues. Table 4 shows the trends in the NCA's advocacy activity.

Table 4. **Trends in NCA advocacy activity**

	1996	1997	1998	1999	2000	2001	2002
Cases handled	154	180	159	182	179	245	261
Comments submitted	64	92	60	78	77	85	103
"Calling attention"	4	11	51	17	12	11	14

Source: Norway, 2002; NCA, 2001.

NCA (or ministry) representatives usually sit on committees that are considering issues with competition policy implications. The NCA has examined the competition policy implications of a wide range of other policies. Recent reports have covered agriculture (especially the dairy sector), environmental regulations, and the VAT system. Procurement has been a particular concern. The NCA and ministry have made big efforts to raise consciousness over the search for efficiency in this area, especially with municipalities. As noted, the NCA is promoting reform of government framework agreements that disadvantage smaller suppliers and the establishment of a new enforcement process that would allow a procurement award to be challenged before the contract is signed. Competition between private and public service providers is now a key area of attention. It affects a diverse range of services (driver training, weather forecasting, university institutes among others) and the competition issues are equally diverse (from the fairness of opening balance sheets for previously government functions to VAT treatment).

Nevertheless, the question arises of how far these ideas have spread into actual decisions. Some years ago the NCA contributed questions on competition effects to a checklist for regulatory impact assessment, but is unaware that it has been used. A government-wide review of all regulation that may unnecessarily restrict competition was announced in early 2002, and provides a real prospect of improvement in this regard.

Conclusion

Norway has experienced significant change toward more open markets and enjoys a legal conception of competition policy that promotes efficiency. Cautious moves have been

made from regulation towards competition in many areas. Norway was a pioneer in market-based reforms of the electric power sector. Application of competition law has become more vigorous in recent years. To promote competition principles, the NCA and Ministry of Labour and Government Administration have challenged national icons such as Statkraft and SAS, and the NCA has been remarkably active in reviewing issues and proposing change for trouble spots such as procurement and, notably, agriculture. The focus has now turned to the efficient delivery of public services, an important issue.

However competition policy is not fully integrated in the policy framework, and often struggles to have a real impact. The government has typically retained a measure of public control in the liberalisation process, through ownership if not regulation. Former monopolies still often dominate their sector (in telecommunications, electricity, and transport among others), and competitive neutrality for private sector firms is an issue. A wide range of other sectors (from movie theatres to bookselling) are still protected from full competition. The commitment to competition less than wholehearted. The ambivalence is deeply rooted, as it reflects Norway's commitment to values of equity and regional support that coexist uneasily with the commitment to efficiency enshrined in the competition law. And there are weaknesses in the law. Its scope is undermined by numerous exemptions and uncertain priority. Sanctions may only be obtained through criminal procedures, and have been relatively weak. Appeals from most NCA decisions may be taken to the minister, which opens the door to political influence, and other policy considerations can and do override the competition policy view.

Broad-based support for change is important. The need for further change may not seem obvious at first glance, given Norway's highly comfortable economic outlook driven by its oil wealth. However do the benefits of regulation and protection outweigh their costs? Could regional policy goals be met in other ways? These questions need to be examined. And despite the undoubted high quality of life, the quality of important public services is an issue today, and the sustainability of today's policies, an issue for the longer term. It is a very hopeful sign that strengthening competition policy is a key part of the government's plan to modernise the public sector.

Policy options for consideration

1. Reconsider and reduce sectoral protections against entry and competition.

Several remaining regulatory constraints on competition are difficult to justify. The local government monopoly over movie theatres may be collapsing of its own anachronism already, in the face of new digital technologies and modes of distribution. No harm, and some benefit, would come from simply eliminating it. Controlling entry into inherently competitive services such as express buses and taxis need not depend on a demonstration of unmet demand. Experience elsewhere has shown that this method impairs efficiency and competition, and that there may be more efficient ways to ensure service to underserved areas. To be sure, there may be consumer protection problems in these sectors, but they should be addressed directly. In retail trade, Norway has proposed a modest move toward greater freedom of customer choice, by removing some controls on opening hours. Rules controlling which stores may open on holidays will remain in place, though. These may be more important, as a practical matter, than the rules against staying open late on other days.

The broad protections and exemptions covering agriculture, fisheries, and forestry raise more complex issues. Some interests at stake in these sectors are difficult to assess clearly in a conventional efficiency calculus. But that the task is difficult does not mean that it cannot be attempted. Norway does try to identify the other interests, of long-term resource management, environmental preservation, and regional support. Although Norwegian citizens have proven willing to support these values and policies in the national budget, many are "voting with their feet" in the marketplace by shopping for lower food prices in Sweden. The direct costs of programmes that are said to promote other values are reasonably clear, in the magnitude of subsidies. The costs due to the distortions of competition should also be considered, in determining whether the total costs are commensurate with the benefits sought.

2. Encourage competition and market discipline in the public and publicly-owned sectors.

The current programme to focus attention on how government involvement can distort competition, and on how market methods can improve the efficiency of government services, is important and should be strongly supported. Its goals should be clearly understood. For example, procurement methods that lead to unintended monopolies should of course be reformed. But efficiencies should not be discarded in the process of trying to make more business available to smaller participants. To some extent, aspects of market discipline might be achieved without changing the nature of the providers, by enabling greater consumer choice in areas such as health care and education. For services that involve private sector providers too, the process of reorganising public service providers should not give them inefficient advantages, or disadvantages. These distortions can result not just from formal or informal preferences in getting business through long-standing relationships, but also from how the new entities are capitalised. The same issue is raised in the debate over the appropriate scope and role of state ownership in other economic sectors. Substantial state holdings in a private firm inevitably raise questions about the extent, and value, of an implicit public commitment to provide further support, which can shift the competitive balance, as well as about the risk that the state might intervene through regulation to forestall threats to its investment. Eliminating the most obvious of those risks by removing the state's holdings in business firms that do not have a significant public-interest role is well-advised.

3. Complete the review of existing regulations to identify constraints on competition.

In many countries, a project like the one announced in early 2002, to perform a government-wide review of the regulations in place, would be a Herculean task. Doing it thoroughly may be more important than doing it quickly, at least in the absence of crisis. Norway has done similar reviews before, though, and thus there may be fewer anti-competitive skeletons in its regulatory closets. At least, they may be easier to find.

4. Reform the decision process, to end political intervention in particular decisions.

Providing for an expert-based appeal body, outside the political system, was a principal task of the Committee examining improvements to the Competition Act. Even though the process of appealing to the Minister is transparent and the Minister's reasoning must be publicly explained, the prospect that decisions can be overridden by political considerations inevitably undermines the coherence and consistency of competition policy. Rules to circumscribe the scope of that discretion by limiting the basis for appeal or decision would likely fail to distinguish the special cases from the ordinary ones

consistently. But if an appeal body appears to disregard other policies too much, those policies will reappear through a proliferation of legislated exemptions, which would undermine consistency and coherence too. Independence and long-term consistency with government policies can be balanced through the design of the institution and the appointment process. Norway has models of non-political appeal structures to draw upon, in media and immigration matters. Providing for a collegiate body in the process would be a return to Norway's historic practice in competition matters (as well as its current practice at the Market Council for unfair competition matters).

To ensure consistency of competition policy, creating an independent body to decide appeals from NCA may not be quite enough. Regulation in sectors such as telecoms involves competition matters too. There are plans to create a non-political appeal route from the respective regulator. Consistency, as well as efficiency, would be promoted by using the same body for appeals from regulators and NCA's decisions. (Another approach might be to revise the sectoral laws and regulations so that sectoral regulators no longer have any power to decide matters involving competition. All such decisions would then be handled by the NCA, subject to the appeal process from the NCA's decisions). There are models and precedents for this approach. In Norway, some have suggested creating an expert court or appeal body to deal with competition in all sectors, intellectual property, and consumer issues. Examples of specialist appellate bodies in other countries that cover sectoral regulators as well as competition law include the Competition Commission in the UK and the Antimonopoly Court in Poland.

5. Incorporate European prohibitions, but retain flexibility.

Achieving closer substantive harmonisation with European competition law is another task of the Committee. A principal goal is simplification, for business and for the enforcement agency as well. Incorporating the European versions of the prohibitions against restrictive agreements and abuse of dominance would also help prepare for decentralised enforcement. Even before decentralisation becomes a reality, adding a prohibition against abuse of dominance to Norway's law might increase the NCA's workload. Some complaints that are now going first to the ESA, to take advantage of the EEA prohibition, may come to the NCA instead.

In the process of cleaning out the competition rules, it would be advisable to remove the remaining provisions, still left over from the previous era, that imply direct price monitoring and control. Such rules sit uneasily in a competition policy system based on promoting efficiency and an open competitive process. A European rule about abuse of dominance would be sufficient to deal with exploitation by dominant firms. But it may not be necessary to replace all of Norway's current competition rules with the language of EU articles 81 and 82. The concept of abuse of dominance in European law is more narrowly defined than general, purpose-based provisions such as Section 3-10 of Norway's Competition Act, although cases about abuse of dominance typically deal with the same kinds of problems that draw "intervention" from the NCA. The scope of abuse of dominance is narrowly defined, in part because the consequences of violating the prohibition can be severe. A provision like Section 3-10 can be more general, in part because the consequences are only an order to correct conduct in the future. Because it appeals directly to the policy purpose of the law, a general rule like Section 3-10 can be a resource for dealing with new situations. That process may not often produce concrete enforcement action. But it provides a context for examining new problems and testing the

possibility of solutions. It might, for example, be a vehicle for applying competition principles where exposure to market conditions is a novelty, such as the newly commercialised operations of government offices. When Finland adopted the European competition law toolkit, it retained a similar general provision from its previous law, as a resource and a connection with its established practices. To be sure, most enforcement action since then has been taken under the newer prohibitions.

6. Design enforcement processes that can impose effective sanctions.

Details of the legal context limit the available choices. It appears to be very difficult, though not impossible, to persuade Norwegian courts to impose substantial fines for competition violations. Penalties against individual decision makers are virtually unknown. Both problems appear to result from the reliance on criminal process for enforcement, and one reason for doing so is that it is a necessary predicate for an order to disgorge the profits from a violation. The threat of disgorgement is rarely carried out either. And that threat alone is not likely to be enough to deter misconduct. A would-be violator might be willing to take the chance that it would not be caught and required to relinquish its gains. The benefits of relying on rarely-imposed criminal penalties are unclear. But there may be no alternatives, unless some means can be devised under Norwegian law to impose significant financial sanctions through civil or administrative processes. Perhaps with increased enforcement attention to hard-core cartels, the NCA and Økokrim will learn how to bring more convincing cases more quickly and the courts will be persuaded to come down harder on serious violations. Increasing the possible fine, by setting criteria such as those used by the EU, would enable, and encourage, the courts to up the ante. Narrowing the scope of criminal liability, to cover only hard-core, clandestine, horizontal collusion might also help persuade the courts to punish them more severely. (Expanding it, to make abuse of dominance a crime, would not be well advised. Some abusive conduct deserves strong response, but most matters involving dominant firm conduct do not, and making the necessary distinctions in the drafting of a criminal law would be very difficult). Private remedies are a supplement, and here Norway can build on an unusual, positive experience. Cases of horizontal collusion have been rare, but one of them was followed by a substantial private recovery.

If it is feasible under Norwegian law, a non-criminal, administrative financial sanction should be seriously considered. Dividing responsibility between the NCA and Økokrim can lead to delay and duplication. Presumably, the NCA itself could handle administrative matters from start to finish. The NCA's existing powers of financial "sanction", to confiscate the gains from a violation, are almost never used, in part because it is difficult if not impossible to compute those gains precisely. Calculating a sanction to deter, based on turnover and other relevant factors, could be more straightforward, and consistent with common experiences in other European jurisdictions.

7. Confirm the scope of merger review powers

The principal uncertainty about merger review is whether it covers dispositions of state holdings through privatisation. In practice, the NCA has had an opportunity to review proposals. But the general language of Sections 1-4 about legislative authorisation may undermine the NCA's power to take action if a disposition appears to threaten competition. That is not a necessary reading of the statute, but it might be better to make clear that a law providing for disposition of state assets does not amount to legislative "authorisation"

overriding the Competition Act. Some other aspects of Norway's merger regime might also be examined, although changes are not necessarily called for. Notification is now voluntary. Mandatory, pre-merger notification might avoid problems in implementing post-merger remedies. But no significant transactions appear to have escaped attention or remedy in Norway yet. Norway's substantive standard, of significant lessening of competition, differs from the EU's dominance-based standard. Norway is not the only European jurisdiction to use a different standard, though, and Norway's standard may have advantages over a dominance-based standard, particularly where the competition problem is oligopoly.

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PART II

Chapter 4

Market Openness*

* The background report used to prepare this chapter is available at: *www.oecd.org/regreform/backgroundreports*

Context and history

International trade is an important part of the economy and trade policy is mostly very open

The productive structure of Norway's economy is largely based on natural resources. Oil and gas, hydropower, fish and timber make up its backbone. Up until the 1950s Norway was almost exclusively an exporter of raw materials and semi-processed goods, and these still account for the bulk of exports, which is dominated by oil. Norway is one of the world's largest fish exporters (exporting some 95% of its production) and the world's third largest exporter of oil. Manufactured goods take a large share of imports (Table 5). The country's extensive coastline has also promoted a strong shipping and shipbuilding tradition. It is one of the largest shipping nations in the world (its shipping companies control 10% of the world's merchant fleet) and is strong in specialised shipbuilding such as cruise vessels, gas carriers, chemical tankers and offshore service vessels.

As a result, Norway is highly dependent on international trade and – with some notable exceptions – has a very open economy. Exports accounted for 46% of GDP in 2001, and imports for 30%. Trade policy reflects this and is seen as an important element of economic growth. An open, liberal and predictable trading environment that also contributes to global development is promoted. Tariffs are zero for almost all industrial goods (including fish and fish products) and non-tariff barriers are minor. Norway's WTO

Table 5. **Product composition of Norwegian trade**
(USD million)

	1961	1990	2000	1961	1990	2000
	Imports			Exports		
Food and live animals	135	1 286	1 765	139	2 281	3 748
of which:						
Fish, crustaceans, mollucs, preparations thereof	*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
of which:						
Petroleum, petroleum products and related materials	*117*	*952*	*1 057*	*14*	*13 617*	*32 145*
Gas, natural and manufactured	*0*	*1*	*1*	*0*	*2 461*	*5 900*
Animal and vegetable oils, fats and waxes	11	43	107	38	28	51
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
of which:						
Road vehicles (including air-cushion vehicles)	*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
Total	**1 614**	**27 228**	**34 358**	**929**	**34 043**	**59 899**

Source: OECD.

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GATS (General Agreement on Trade in Services) schedule grants unlimited market access and national treatment for a large number of services. There has been no recourse to anti-dumping or other safeguard measures since the mid-1980s, and virtually no involvement in a WTO dispute since its inception. Norway's liberal Generalised System of Preferences (GSP) also encourages imports from developing countries. Nearly all industrial imports as well as most agricultural products from these countries enter either duty-free or with reduced tariffs, and as of July 2002 all products from least developed countries are granted duty free access to the Norwegian market. Remaining quantitative restrictions on textiles and clothing have been dismantled.

Regulatory reform has also played a part in recent years to promote market openness. Measures to simplify and improve the regulatory environment have directly contributed to a more positive climate for market openness. Though much of this was due to the impact of the EEA agreement (see below), Norway has taken its own steps too. Since 1995, nearly 3 300 tariffs have been eliminated on a Most Favoured Nation (MFN) basis. Another notable example of market-opening reform is electricity. In a pioneering move among OECD countries, Norway liberalised the power market in 1991.

The agricultural sector is a prominent exception to the open trade policy. Agricultural tariffs are among the highest in the OECD. State aid is the second highest in the OECD. It is estimated to have been NOK 19.6 billion in 2001, around 70% of all state aid (despite a reduction of some 25% in real terms over the last ten years). While trade in fish and fish products is not restricted, the domestic fisheries sector is also extensively regulated (the management of stocks justifies this to some extent), including some restrictions on foreign investment (the aim is to ensure ownership of the fleet by active fishermen).

Two distinctive features mark the economy: the oil and gas sector and state ownership

A distinctive feature of Norway's economy is the size of the offshore petroleum sector. As well as making it the third largest exporter of crude oil after Saudi Arabia and Russia, oil and gas production account for nearly a quarter of GDP, and over 40% of export earnings. This has been a huge bonus for the economy and has made it possible to maintain and strengthen an extensive public welfare system. But it has also masked the need to make regulatory reforms that would improve competitiveness and the performance of the public sector. In effect, Norway has a dual industrial structure – offshore petroleum and the mainland economy. Traditional manufacturing industries in the latter are in decline and competitiveness has deteriorated sharply since the mid-1990s.

State ownership is another striking feature of the economy, which may be adding to the problem of competitiveness. The state ownership share of companies listed on the Oslo Stock Exchange is around 40%. This reflects a longstanding tradition, but is currently the subject of an important debate as to whether and how much the state should withdraw. It has been highlighted as a potentially discriminatory element in the economy. But the evidence for this is unclear.

The open trade policy is promoted by international agreements, not least the EEA agreement

Norway's open trade stance is underpinned by membership of a number of international agreements, global, regional and bilateral. It was a founding member of what is now the World Trade Organisation (WTO), and of the European Free Trade Association (EFTA). EFTA has concluded 19 free trade agreements outside the EU.

Norway is, not least, party to the European Economic Area (EEA) agreement which came into force in 1994, and which ensures that EFTA countries are an integral part of the EU's internal market, except for fisheries and agriculture (Box 14).

Box 14. **The 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 possibly 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 labour 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 co-operate, exchange information and consult each other on surveillance policy issues and individual cases. An EFTA Court has jurisdiction in cases where the ESA finds that an EFTA state has acted in contravention to the Agreement. There are also two advisory bodies that participate in EEA consultation: the EEA Parliamentary Committee, and the EEA Consultative Committee (the latter made up from the business and trade union committees).

A central task of ESA is to ensure that the EFTA states fulfill their obligations under the Agreement. In general terms this means that ESA ensures 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 behaviour 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 ESA. 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.

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Trade flows have traditionally been dominated by trade with EU countries. In value terms, some three quarters of exports go to the EU and 60% of imports originate in the EU (Table 6). Yet though trade with EEA countries has expanded significantly since 1994, trade with other countries has grown faster.

The EEA agreement has a major influence on Norway's economy, regulatory structure and processes. Access to the EU market is conditional on the implementation into Norwegian law of EU legislation governing the free exchange of goods and the free movement of persons, capital and services. This requirement is continuous, as Norway must keep up with relevant new EU legislation. It has led to a dramatic increase in the number of regulations adopted – more than twice as many today compared with a decade ago. The scope of regulations has also increased, for the same reason. Some 6% of regulations require changes in primary legislation. Transposition of EU legislation is an important challenge: the sooner the better to maintain uniform legislation within the internal market. Norway ranks above the EU average (in 2002 only 1% of measures had not yet been adopted, compared with an EU average of 1.8%).

The agreement also provides for common rules on competition (see Chapter 3), state aid and government procurement, as well as harmonisation of rules and standards related to health, safety, the environment and consumer protection. Additionally, it provides for co-operation in a number of fields (such as R&D and education). It has had an important impact on public procurement legislation, which aims at providing equal treatment to all suppliers established within the EEA. It has also affected state aid. New support measures have to be approved by ESA (see Box 14), with a view to ensuring that conditions of competition for firms within the EEA are equal. The general rule is that state aid that distorts or threatens to distort competition and affect trade is prohibited. A few exceptions, such as state support for shipbuilding, have been allowed.

The EEA Agreement represents a major challenge for the government. The process by which EU legislation becomes part of Norwegian law starts with the *preparatory phase*

Table 6. **Norway's major trading partners**
(USD million)

	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
Total	**34 043**	**41 984**	**27 899**	**27 228**	**32 974**	**34 358**
of which:						
EU 15	*27 039*	*32 401*	*46 018*	*17 878*	*23 421*	*21 486*
North America	*3 018*	*4 128*	*8 006*	*2 994*	*2 951*	*3 852*

Source: OECD.

(proposals are prepared by the EU Commission), followed by the *adoption phase* (proposals are adopted by the EU Council and Parliament), the *incorporation phase* (they are incorporated into the EEA agreement) and finally the *transposition phase* (regulations are transposed into Norwegian law). The opportunity to influence new regulations is clearly important and the agreement provides for experts to be involved in the preparatory phase – provided that Norway knows what is being planned. Proposals are often circulated at very short notice before expert meetings. A growing amount of EU legislation is handled by special committees, to which access by EEA experts is limited. Also, the EU's broader internal market strategies (notably the Lisbon Strategy) do not include the EEA EFTA countries. And the government notes that the EU Commission is putting less effort into keeping EEA EFTA countries informed.

Various routines and committees have been set up to handle Norway's input, but resources have not increased. The government admits the difficulties of keeping up with new EU initiatives, informing Norwegian players (who are themselves critical of the government and rely more on their own networks), and communicating concerns to the Commission and EU countries (concerns which could be shared by others, though divergence from the EU on important issues such as oil, gas and fish, is probably inevitable). In short, Norway's ability to manage EU internal market legislation is a challenge, and its influence has always been relatively limited (it is not after all a member of the EU). Following the successful conclusion of the EU enlargement negotiations, the simultaneous enlargement of the EEA to cover the new EU member countries is currently being prepared, pursuant to Article 128 of the EEA Agreement.

Inward and outward investment flows are strong

Foreign Direct Investment (FDI) has more than tripled in the past decade (reaching NOK 269 billion), despite the fact that Norway does not have a specific policy to promote it. The EU accounts for the largest share, and the EEA Agreement gave it a large boost. Outward investment flows exceed inward investment, and have increased most to countries outside the EEA (Table 7).

Table 7. **Foreign Direct Investments into and from Norway**
(USD million)

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

Source: OECD Financial Statistics Unit. Based on national sources.

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The EEA agreement made a significant change to foreign investment regulations. Previous important restrictions on foreign ownership have been removed, and a new law is based on equal treatment of all investors, with a few exceptions, for example in the fisheries sector. Financial legislation has also been brought in line with EU legislation, which is based on a "single licence" for the supply of financial services across the EEA area.

The policy framework for market openness: the six efficient regulation principles

In a global economy, regulations need to be market-oriented and friendly toward trade and investment. The 1997 *OECD report on regulatory reform* identified six "efficient regulation principles" for building these qualities into regulations, which are reviewed below.

1. Transparency: this is basically good but the handling of the EEA agreement and of public procurement need attention

Market openness requires that all market participants be fully aware of regulatory requirements so that they can base market activity decisions on an accurate assessment of costs and benefits. This is especially important for foreign firms, which have to cope with differences in the business environment, such as language and business practices. Transparency requires access to information on regulations and openness of the rule-making process through public consultation. Norway's rule making is basically transparent, with a few weaknesses (see Chapter 2). A notable exception to the good record is the regulatory framework for the agricultural sector, which is perceived as highly opaque both by Norwegians and foreigners. The Ministry of Finance has characterised the "*Farm Agreement*" *(Jordbruksavtalen)* which *inter alia* establishes support levels and market prices for agricultural products as "extremely complex".

- *Transparency in the rule-making process.* Norway has a strong tradition of consultation based on mandatory requirements and informal procedures, which promotes the search for consensus. This reduces friction, but often makes it difficult to promote a clear and coherent strategy. Incremental change tends to prevail. Foreigners are not precluded, and if they are established in Norway will usually be invited (for example foreign companies are regularly involved in discussions on regulations for the petroleum sector). They may however find the process less accessible than Norwegians, unless they participate in the relevant Norwegian business organisations. There is no obligation to publish proposed regulations in other languages. The handling of new regulations under the EEA process does raise issues (see above and Box 15). However, the agreement is likely to have increased transparency for foreigners.
- *Transparency in technical regulations and standards.* Norway complies with EU notification procedures as part of its EEA obligations (Box 16). Five Euro Info Centres have been established which provide information to business, as well as a Web site (in co-operation with the European standards bodies). A public fear that integration with the EU market would lower important social standards (in health and the environment for example) has proved unfounded: it has in fact led to increased protection.
- *Transparency in public procurement.* Regulation is strong but there is a problem of monitoring and enforcement (there are no sanctions, as yet, although a working group set up by the Ministry of Trade and Industry recently proposed the introduction of sanctions). Current procurement regulations, which applies to all government entities, follows from the WTO's Government Procurement Agreement and the EEA agreement,

Box 15. **Promoting transparency in the handling of legislation under the EEA Agreement**

New regulations under the EEA Agreement are in principle subject to the same consultation procedures as domestic regulations. However, the Norwegian tradition of close co-operation and consultation with concerned parties has come under strain as a result of the EEA regulatory process. It is a major challenge for the 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. By this time it is often too late to attempt to influence the formulation of the regulation.

On the other hand, the EEA Agreement may be deemed to have increased transparency for foreign market players. 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. In particular 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. The implementation costs to business of complying with new EEA-inspired legislation is an important issue, which is the reason they wish to have access to the framework documents, to ensure that the government recognises the costs.

The government has indicated that it will intensify its efforts to improve all processes relating to EEA co-operation 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 recognised that it is essential to provide access to information as early as possibly in the regulatory process. 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 considered. Norwegian regional governments have established offices in Brussels in order to keep informed of developments within the EU that may have impacts on them as a consequence of the EEA. Currently two regions, 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.

which contain detailed and mandatory procedures for the allocation of public contracts above certain thresholds. It includes equal treatment of all suppliers established in the EEA. Public procurement accounts for around 15% of GDP. Government administration accounts for 70%, and state-owned entities for the rest. Local government accounts for about half of government administration purchases. Most procurement is believed to

come from domestic suppliers. New regulation in 2001 has extended coverage beyond the EU minimum, simplified the rules, and requires publication of all contracts above NOK 200 000 in a single database (*Doffin*). Procurement plans must also be published, and contestants in a tender notified of the winner before the contract is signed. Less than full compliance with the law, particularly at the municipal level, is an important problem, however. Almost half of the municipalities have not published tender announcements, and a review by the Auditor General found that a number of purchases were being made without due recourse to the law. A public procurement dispute resolution board (to supplement the courts) was established in January 2003, and the number of complaints received (more than 70 in four months) indicates that the board is meeting a demand. Norway is also taking part in an EEA pilot project for facilitating complaint procedures.

Box 16. **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 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 harmonised 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 83/189 provides for an exchange of information concerning the initiatives of the national standardisation organisations (NSOs) and, upon request, the working programmes, thus enhancing transparency and promoting co-operation among NSOs and the European Standardisation Bodies (CEN, CENELEC, and ETSI). Private parties can indirectly become part of the standardisation 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 standardisation work of other SOs.

2. Non-discrimination: the principle of non-discrimination is promoted and generally well-embedded

The application of the non-discrimination principle in regulation, through most-favoured nation treatment (MFN) under which all foreign firms are treated the same, and national treatment (NT) under which foreign firms are treated the same as domestic firms, aims to provide equal competitive opportunities irrespective of the origin of products or services and so maximise efficient competition.

Membership of the EEA agreement has encouraged non-discrimination as a guiding principle for regulation. Through its membership of the WTO, Norway subscribes to the MFN and NT principles. The Ministry of Foreign Affairs supervises observance, and other ministries responsible for regulations have to ensure consistency with trade agreements. A new general trade law adopted in 1997 underlines that trade is freely permitted unless otherwise provided for by specific regulations. It also specifically prohibits the introduction of restrictions contrary to Norway's international obligations. The Prime Minister's Office has issued *Instructions for EEA matters* which require consideration of WTO rules in assessing proposed EEA regulations. Norway's WTO commitments apply to all countries, irrespective of whether they are WTO members. A wide range of services is covered under its GATS commitments. Some preferential treatment is reserved for EEA members, mainly based on minimum harmonisation of national regulations through EEA legislation. Norway also subscribes to the *OECD's Code of Liberalisation of Capital Movements*. One issue under current review is that market access through commercial presence is subject to certain establishment conditions.

However EEA partners are more privileged than others. The WTO has pointed this out, noting that "undertaking liberalisation on an MFN basis and securing it in the WTO would prevent over-reliance on the EEA market". The government recognises the primacy of the WTO multilateral regime for trade, but also sees regional trade agreements as complementary and supportive of broader trade liberalisation.

3. Avoiding unnecessary trade restrictiveness: a number of projects aim to improve the business environment

Where possible regulators should favour measures that have the least restrictive effects on trade, a principle that is included in several WTO agreements. Mechanisms need to be put in place to give effect to this principle, including *ex ante* assessment of the impact of proposed regulations on trade and investment, reviewing them after a certain time, and streamlining procedures.

Two broad initiatives have been launched by the government which offer the prospect of a better business environment. The 2002 *Simplifying Norway Action Plan* (see also Chapter 2) has the ambitious aim of making the regulatory environment and the quality of public services so attractive that it becomes a competitive advantage for businesses located in Norway. Whilst there is no specific focus on the international dimension, it should help foreigners. Fisheries regulation, which as noted is extensive, will be reviewed as part of the project. The 2001 *Action Plan for Competition* (see also Chapter 3) aims to strengthen competition policy among other measures, and this should also help market openness. Other initiatives to reduce administrative burdens on business have been taken. A review to minimise reporting obligations has been launched. This includes a special project, *Altinn,* between Statistics Norway, the Brønnøysund Register Centre and the

Directorate of Taxes, to reduce forms and increase co-ordination between public bodies. Reporting obligations by investors (Norwegian and foreign) were recently reduced.

Regulatory impact analysis (RIA – Chapter 2 reviews this in more detail) is an important tool for assessing costs and benefits of proposed regulation. As in many other countries, Norway's current procedures do not specifically cover trade or investment impacts. But the Ministry of Foreign Affairs considers the impact on trade and investment commitments. The Ministry of Trade and Industry has a Business Impact Assessment Unit which promotes Business Impact Assessment Guidelines within government, but experience of these has been mixed at best, and the business community is critical (criticisms include the fact that they are not mandatory, and too vague and informal). The proposed use of business test panels (advocated by business since 1998) is a hopeful development. One important proviso with RIA is that it is not carried out for EEA regulations (the justification being that they will inevitably be adopted). But those responsible for RIA do not collaborate with those who prepare the framework documents which assess new EEA regulations (see Box 15). So the impact on business of much new regulation goes unhighlighted and undiscussed.

Trade advocacy in the regulatory process does not appear to be a major concern or goal. The trade policy community in Norway is very small and largely engaged in EEA issues. It has an opportunity to comment on regulations but there is no specific checklist to structure its input, which tends to be *ad hoc*. The main check is to ensure that international obligations are not contravened.

Efficient customs procedures are increasingly important, now that tariff barriers in OECD countries are low or non-existent. In an integrated world economy, "just in time" deliveries maximise efficiency, and shipment delays can be costly. Traders shop around ports of entry to identify those that can offer the most efficient and rapid service. The challenge faced by customs authorities is to reconcile the latter with the need to maintain high compliance and protection standards. Norway has used information technology to establish straightforward import procedures. The TVINN electronic clearance system is used, and over 95% of customs declarations are submitted electronically. A project to simplify customs procedures has been launched by Norwegian Customs and Excise (NCE), emphasising service and flexibility, and with a goal for all customs procedures to be based on electronic information exchange. It is estimated that this will save business some EUR 100 million a year. The NCE has a central Web site which includes extensive information in English. The government is also in the process of rationalising customs legislation.

4. Use of internationally harmonised standards: Norway has a good record

Compliance with different national regulations and standards can make the cost of operating in different markets significant, even prohibitive, a major issue raised by the international business community. Internationally harmonised standards offer a solution, and their use has gained prominence with the WTO Technical Barriers to Trade (TBT) agreement.

Norwegian policy takes a clear stand in formal support and implementation of international standards agreements. It is party to the WTO TBT agreement which gives priority to international standards. Standards making and their application is based on the WTO TBT agreement, the EEA agreement and the membership conditions of the European standardisation organisations. The EEA agreement and through it the EU's New Approach directives (under which regulation is limited to defining essential requirements, not

detailed technical specifications) are especially influential. The Norwegian standardisation organisations are members of the European standardisation organisations as well as the international bodies. Membership of the former entails an obligation to implement European standards, and over 95% of Norwegian standards adopted today are European standards. International standards prevail in the petroleum and information technology sectors. National standards are mainly in use in the construction sector and for contractual obligations.

There are currently seven Norwegian standardisation bodies, co-ordinated by the *Norwegian Standards Association*. The latter's Web site publishes information on standards in English, and all Norwegian standards are available on the internet. The government is promoting rationalisation of the standards bodies, as most standards work is now done internationally, and the current system is seen as inefficient as well as generating conflicts and problems for business. The standardisation work performed by four of the seven organisations is expected to be brought together by mid 2003. The European standardisation work does raise an awkward issue, as it may be seen as a barrier to trade by third countries. The US has claimed that "the European standardisation regulatory development processes lack adequate transparency, and remain generally closed to US stakeholders' direct participation at critical points in the regulatory development process". Norwegian business can face the same problem, if the Norwegian standards bodies have not been involved in developing European standards in areas important to Norwegian industry.

5. Recognition of the equivalence of regulatory measures adopted by foreign countries: Norway follows the EEA, and should explore further opportunities for MRAs

Where international standards are not available, trading partners can mutually agree to accept their standards as equivalent. The existence of differing national standards and the need to use differing national procedures for assessing conformity adds to the costs of producers wishing to sell in different markets. Mutual Recognition Agreements (MRAs), which can cover the standards themselves or the procedures used to assess conformity, can help to reduce these costs. Mutual recognition activities are often left to the private sector so that the work is relevant to the needs of evolving markets.

Within the EEA, national technical regulations still exist in a number of sectors, and Norway notifies the ESA (see Box 17) of draft national regulations. Norway has concluded MRAs on conformity assessment procedures with Australia, Canada, New Zealand and Switzerland, and also with Latvia, Lithuania, Hungary and Slovenia (Table 8). The EU has negotiated a number of MRAs which the EFTA countries have yet to duplicate, including MRAs with the US and Japan. MRA negotiations have been initiated with the USA. The process for putting EFTA MRAs in place (even though they duplicate the EU MRAs) can only start after the negotiation of the EU MRAs, and takes time and resources. There is also inadequate understanding on the part of third countries of the importance of such parallel agreements for the well-functioning of the single market. That said, opportunities to develop the range of MRAs should be developed. As regards enforcement of MRAs, the government is not directly involved. It is for the importer to prove conformity with the relevant sectoral authorities.

Norway has no regulations for "country of origin" marking. It has adopted the EU's CE label signifying that the product conforms to EU standards.

Table 8. **Norway's MRA Agreements**

Partner	Partner	Sectors	Effective date	Type
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 devises Pharmaceutical GMP	1 March 2000	CERT
EEA EFTA	Switzerland	Telecommunications equipment Electromagnetic compatibility Electrical equipment and EMC Pharmaceutical GMP Good laboratory practice Medical devices Aircraft Lawnmowers Pressure vessels Machinery Motor vehicles Measuring instruments Toys Personal protective equipment Construction plant and equipment Gas appliances Tractors	1 June 2002	CERT
OECD OECD		Chemicals		Guidelines and Good Laboratory Practices Mutual acceptance of data
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 vessel	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	Singed	CERT

Norway has just one body responsible for the accreditation of laboratories, certification bodies, inspection bodies, etc., *Norwegian Accreditation (NA)*. NA is a signatory to the European multilateral agreements for accreditation of such bodies. It has a central Web site with information in English. Two global organisations also exist for the accreditation of certification bodies and Norway participates in both.

6. Application of competition principles from an international perspective: the principle is equal treatment for foreigners

The benefits of market access can be reduced if anti-competitive conduct is not addressed. From an international perspective, the important issues are commitment to competition principles in law and policy, and the existence of open and effective procedures for hearing and deciding complaints over market access.

Norway (see also Chapter 3) has a competition policy which, helpfully, is based on a legal conception of efficiency, "to achieve efficient utilisation of society's resources by providing the necessary conditions for effective competition". It has also experienced significant change toward more open markets. That said, further effort is needed to incorporate competition policy more fully into the wider policy framework, and a review of competition policy is underway (see above). Internationally, the approach is open and co-operative. Both domestic and foreign firms established in Norway have the same access to the complaints procedure through the Norwegian authorities as domestic firms.

The ESA (see Box 17) offers a second avenue for complaints, where conduct may affect trade between the EEA member states, and it takes precedence over Norwegian law in cases where EEA regulations are breached. ESA has been used for complaints about a wide range of issues. One of ESA's tasks is general surveillance to ensure that the provisions of the agreement are properly implemented into national regulations. The EU Commission can also be involved. Cases concerning breaches can either be initiated by ESA or on the basis of a complaint (Box 17). The share of complaints against Norway has risen (97% of complaints in 2001, which of course also reflects Norway's size relative to Iceland and Liechstenstein, but also the fact that the ESA complaints route is efficient).

Third countries which are not part of the EEA must take complaints direct to the Norwegian authorities, and can also use the WTO dispute settlement mechanism.

Box 17. **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*.

Sectoral trade and investment liberalisation

International market openness and the six efficient regulation principles can also be assessed by looking at key domestic sectoral regulatory regimes: how well do these square up?

Progress in liberalising the telecommunications sector has been in step with EU liberalisation

Norway started a gradual liberalisation of its *telecommunications sector* in the early 1980s and the process has generally followed the EU/EEA schedule. It has also taken part in the WTO Negotiations on Basic Telecommunications, and adopted its protocols. Basic voice telephony service was fully opened to competition in 1998, together with access to the network. A new law is being prepared to update the regulatory framework. It follows EU law and is based on the principle of technology neutrality (market players determine which is the optimal technology). However, the incumbent, Telenor (77% state-owned), has maintained a strong market position, except in the GMS mobile telephony market. The government has characterised the competitive situation as unsatisfactory. The Post and Telecommunications Authority (PT) is expected to apply measures to regulate players with significant market share.

The PT is also the standardisation body for telecommunications and participates in the European and international standards work. Nearly all standards in this sector are harmonised at one or other of these levels (mostly the European level), and no new national standards are being developed. Norwegian regulation refers directly to the European standards, and there is no need for a translation into Norwegian. The regulatory framework for telecommunications equipment is the same as for the EU. Equipment that has not been tested and certified under EEA regulations must be type approved by the PT. The PA has devoted significant resources to the EU regulatory process in this area. One weak spot is that there is no EEA/EFTA MRA for telecommunications equipment with the US, as yet.

The automotive sector is in step with international standards developments

The *automobiles and components sector* has traditionally been the source of considerable global trade tension, because of its dynamism and the interventionist policies of some governments. Automobiles remain among the most highly regulated products in the world (safety, energy conservation and the environment are the main regulatory targets) with divergent national approaches to these issues. Apart from small-scale production of electric cars, Norway has no domestic automotive industry. Regulations are mainly environment, health and safety related. Norway has adopted the harmonised EU safety standards. Taxes on cars are huge (normally over 100% of the import value) and prices consequently very high. The average age of cars is much higher than in comparable countries.

The electricity market is very open though state involvement remains strong

As noted, Norway was a reform pioneer in the *electricity sector*. Electricity generation is nearly all hydropower and consumption is high, driven by the cold climate and energy intensive industries such as aluminium and paper. Extensive changes took place in the 1990s. Since 1998 electricity consumers can change supplier free of charge. About 18% of household and nearly 28% of industry consumers did not have the local dominant company as supplier in the first quarter of 2003, and the market is one of the most competitive in Europe. The Nordic power exchange within the Nordic market, Nord Pool, is

an important feature. However state involvement is strong. The largest power generator (Statkraft) is state-owned and has 35-40% of the power generation market. A large share of remaining power generation comes from municipally owned companies. The Norwegian competition authority has objected to proposed acquisitions by Statkraft, which has an aggressive growth strategy (see Chapter 3). The system for hydropower concessions favours public over private owners (this is under review). The liberalisation of power markets did not cover some government-inspired contracts which currently still account for some 55% of supply to energy intensive industry (these contracts expire between 2004 and 2011).

But agriculture is very protected

The agricultural sector is a prominent exception to the open trade policy.

Conclusion

The picture that emerges of market openness in Norway is basically positive. An important reduction of barriers to trade and investment has taken place over the last two decades and enabled Norway to take advantage of the expanding global market. This has benefited business as well as consumers, and contributed to economic growth. Much of the impetus for change has come from Norway's membership of the EEA agreement which makes it part of the EU's internal market and entails a requirement to adopt EU internal market legislation (fisheries and agriculture are the exception). The EEA agreement has led to improved transparency for foreign market players, a strengthening of the non-discrimination principle for the region, increased use of regionally harmonised standards, increased recognition of the equivalence of foreign measures, and improved conditions of competition (though not a reduction in regulation, in fact the reverse). Norway has developed an excellent record in the use of regional or international standards. Its record on the elimination of tariffs for industrial goods is also laudable.

However one important exception to the open door is agriculture. The prominence of state ownership in some areas, which can give rise to uncertainty about the position of certain companies and generate regulation that creates market distortions, may also be cause for concern in respect of market openness. The same applies for public procurement. While trade is recognised as important for the economy, trade concerns do not play a significant role in the rule-making process. There is only a weak awareness of trade issues among regulators, there are no trade-specific benchmarks for assessing the impact of regulations on market openness, and RIA is not applied to EEA regulations. More generally, despite significant and continuing efforts to simplify the regulatory framework, a strong central policy to upgrade regulatory governance has not yet emerged. Improvements tend to be incremental and *ad hoc*. Also, some regulation which has a distorting effect is perceived as important for key public policy goals such as regional policy. Examination of these issues should be firmly embedded in relevant current government reviews. It is also important to nurture public support for the EEA agreement, and to improve transparency in the transposition of EEA rules. In short, as with most other OECD countries, there is room for improvement.

Policy options for consideration

1. Develop a strategy to ensure that business interests including trade and investment interests are recognised across the board in the regulatory process.

There is a widespread sentiment in the business community that business needs and concerns are not recognised among regulatory authorities. The Ministry of Trade and Industry takes a business perspective, but this is most often seen as 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. Establishing a central unit with broad final authority to ensure that proper assessments are made could significantly improve regulatory processes. There is also a need to assess how the new Business Impact Assessment Unit is working, and whether it is addressing business concerns. Up until now such assessments have been *ad hoc*, have often been based on the administration's assessment, and have not paid due attention to the assessments of business itself.

2. Strengthen transparency in regulatory procedures especially for foreign partners.

Reducing the *ad hoc* and informal nature of consultation and complaints procedures would improve transparency, especially for foreign partners.

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

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 Post 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 also 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.

4. Establish mechanisms to ensure that regulatory decisions are actually implemented, including decisions on regulatory processes.

The introduction of regulations without necessarily establishing measures to ensure and monitor implementation has been the rule rather the exception in Norway. While this may be seen as a positive trait, reflecting a fundamental trust between individuals, market players and the public administration, it is not necessarily well-founded. Experience in implementation of the improved public procurement regulations at municipal level is a case in point. Measures to ensure implementation often imply the need both for monitoring and for sanctions related to non-compliance.

5. Develop a coherent policy on multilateralisation.

The principle of non-discrimination, as applied to market players within the EEA, has received widespread recognition by regulatory authorities. Advantages could be obtained by instilling the most-favoured nation principle into the regulatory mindset. This could for example be done by establishing a check-list for reviews of regulatory proposals. Moreover, where liberalisation measures result in market opening, there should be an express policy to assess whether the openings could beneficially be multilateralised. Today, multilateralisation appears to take place in an *ad hoc* manner, and without apparent

grounding in any extensive assessment of implications of applying liberalisation measures on an *erga omnes* basis.

6. Establish a central contact point for complaints by business, both domestic and foreign.

The experience so far with the EFTA Surveillance Authority, and the number of complaints it has received since its inception, might be an indication that there is a need for such a unit. It could assist complainants in determining which avenues of redress are available, and could also gather valuable information on regulatory practices and regulations which function perhaps contrary to their intention.

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PART II

Chapter 5

Regulatory and Competition Issues in Key Sectors*

* The background report used to prepare this chapter is available at: *www.oecd.org/regreform/backgroundreports*

A. STATE-OWNED ENTERPRISES AND THE COMMERCIALISATION OF GOVERNMENT SERVICES

Context and history

The state's involvement in the economy has grown over time, and is significant

The state has a very significant direct involvement in the Norwegian economy, through its ownership of commercial entities and through direct production at the municipal level of government. The state's holdings account for around 40% of the value of the companies listed on the Oslo Stock Exchange. As in Finland, the state is involved in a diverse range of industrial and commercial activities that go well beyond traditional public service related sectors.

No general strategy has driven this involvement but rather, a number of factors including a wish to control the use of natural resources at the national level, and the need to develop infrastructure and related services linked to the development of the welfare state in a country with a dispersed population and a challenging topography. The state was directly involved, for example, in establishing roads, telephone and postal services, and broadcasting. It intervened in the exploitation of waterfalls for electricity production to safeguard Norwegian interests. Its involvement in these and other industrial activities expanded after the Second World War through the acquisition of German assets. The establishment of Statoil in 1972 highlighted the state's interest in safeguarding natural resources. Other activities – banking, pharmaceuticals and alcohol among others – also came under state control through the twentieth century. State ownership has taken a number of forms, ranging from portfolio investments or capital investments to direct ownership or full or partial ownership. Table 9 shows the extent of current state ownership.

Reforms over the past two decades have reorganised the state's commercial presence, through the commercialisation of public services which were previously embedded within government. This is most marked at the national level. Some privatisation has also occurred. Commercialisation of municipal services has also taken place (in day care, elderly care, technical services and transport) but is less advanced (this report does not cover the local level).

At the same time, Norway has devoted considerable attention to the management of state ownership

Norway has a history of debate on the management of state ownership. From the mid 1980s the focus has been on modernising the public sector, including a reassessment of state ownership in 1989, which promoted two basic forms of commercialisation – statutory state-owned enterprises where greater government control was required, and limited companies. This neat outcome was not actually achieved, but recent reforms have moved many activities further down the road of commercialisation and away from the state. Many state-owned enterprises have been turned into limited companies, and some have been privatised. As in many other countries, it is an evolutionary process. The main

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Table 9. **State enterprises in Norway**[1]

Company	Number of employees in 2001 (including abroad)[2]	Activity	Current level of state ownership (per cent)	2002 White Paper proposal on state shareholding
Norsk Hydro ASA	35 567	Oil and oil-related products, aluminum and agricultural products	44	Reduce minimum to 34%
Norway Post (Posten Norge AS)	32 365	Postal services	100	Maintain current level
SAS AB	31 035	Airline	29	Maintain current level
Telenor ASA	22 000	Telecommunications	78	Maintain minimum at 34%
Statoil ASA	16 408	Oil production and downstream activities	82	Maintain minimum at 66%
NSB AS	10 029	Rail transport	100	Maintain current level
DnB Holding ASA	7 236	Banking	47	Maintain minimum at 34%
Kongsberg Gruppen ASA	4 012	Maritime technology, defense and aerospace	50	Reduce minimum to 34%
Norsk rikskringkasting AS	3 486	Radio and television production	100	Maintain current level
Cermaq ASA[3]	2 686	Fish farming and fish feed	79	Following merger will be about 40%
Nammo AS	1 521	Munitions manufacture	45	Withdraw completely
AS Vinmonopolet	1 461	Retail alcohol distribution	100	Maintain current level
Statkraft SF	1 187	Electricity generation	100	Move towards partial privatisation
Raufoss ASA	1 090	Manufacturing	51	Withdraw completely
Statnett SF	785	Electricity transmission and system operator	100	Maintain current level
Grødegaard AS	700	Catering	100	Withdraw completely
Arcus ASA	466	Alcoholic drink producer and importer	34	Complete withdrawal underway
Norsk Tipping AS	273	Lottery	100	Maintain current level
Statskog SF	248	Forestry	100	Maintain current level
Moxy trucks	220	Heavy truck manufacture	49	Complete withdrawal underway
A/S Olivin	194	Olivine mining	51	Complete withdrawal underway
BaneTele AS	160	Fibre-optic cable network	100	Maintain current level
NOAH AS	102	Waste processing and recycling	71	Withdraw completely
Gassco AS	100	Gas distribution network (main pipelines)	100	Maintain current level
Total (in thousands)	174			
Memorandum items:				
Total employment (in thousands)	2 293			
General government employment (in thousands)	711			

1. Various entities with small numbers of employees reviewed in the White Paper are not included in this table, including various government investment funds and entities based in Svalbard.
2. As reported in the White Paper on state ownership.
3. In early 2002 a proposed merger between state-controlled Cermaq and fish-products groups Fjord Seafood and Domstein is estimated to result in a 40% state shareholding in the new group. 2000 figure, Statistics Norway.

Source: Norwegian Government White Paper, Reduced and Improved State Ownership, 2002.

constraint on commercialisation in Norway has been the desire to maintain national control of resources or assets. The country's oil wealth also means that there is no strong fiscal pressure for privatisation.

The commercialisation process

The commercialisation of public services has evolved through several stages

The commercialisation of public services can be defined as the process by which a government entity which directly provides goods or services to the public without charge is transformed into an independent entity with separate accounts that charges for its goods and services while remaining in state ownership. In Norway, the process has taken a number of forms and progressed through different stages, depending on the sector. There has been no overarching policy, beyond a broad commercialisation goal. Norway shares this goal with many other OECD countries but as Box 18 shows, no single model exists for its achievement.

The first organisational form to emerge which addressed commercial activities was the *administrative enterprise (forvaltningsbedrifter)*. This is an entity, created by statute, that is functionally separate from the state, with its own management structure and operating according to "business principles", but which remains legally part of the state and within the government budget. The Parliament fixes its budget and other important parameters such as investment levels and service standards, and its employees remain civil servants.

Box 18. **Reforming public enterprises: international experience**

The OECD undertook a study on "Reforming Public Enterprises" in 1998 by examining the reform experience in Australia, Netherlands, Spain, Switzerland and the UK. The following draws out some issues that are reflected in the Norwegian experience.

In the Netherlands, privatisation has been launched through extensive consultation processes that must address mandated questions about the rationale for initial government involvement in an activity and whether that rationale still exists. While this has aided coherence of the programme, actual implementation has been hampered by a slow legislative process and other technical requirements. Employees are protected by a right of transfer to a continuing civil service function.

In Spain, non-strategic government companies were privatised in the later 1980s. This was followed by a period of commercialisation of state entities aimed at efficiency until 1996 when a new government was politically committed to privatisation leading to a very significant reduction in state ownership of commercial activities.

In Australia, commercialisation and privatisation progressed on a case by case basis but were in some respects hampered by the federal structure where the distribution of tax powers was different to the ownership of government enterprises. One unique element of the reform programme was the adoption in 1995 by all Australian governments of the National Competition Policy reform. NCP had the effect of co-ordinating further reform by laying out a blueprint of principles for competition related reforms (including reform of public enterprises), an implementation timetable and a system of "competition payments" designed to share the benefits of reform among the different governments. These "competition payments" were made contingent upon actual implementation of the required reforms.

In the UK, all state enterprises have been corporatised and most privatised. Reform started earlier in the UK than most countries. One of the early lessons was the need to give considerable weight to competition conditions in privatisation so as not to create industry structures with significant market power.

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But it still has more operational independence than the state agencies that it generally replaced. This form was initially used for the network industries (post, telecoms, railways). The organisation of these sectors has since evolved to sharpen the distinction between commercial and regulatory functions: the latter have generally become statutory or incorporated (limited) companies (see below) and the former have become regulatory authorities. Few administrative enterprises remain (they include the Norwegian Public Service Pension Fund and the Norwegian National Coastal Administration), and no new ones are being created. The administrative enterprise form has generally been a transitional stage to company form.

The *statutory enterprises (statsforetak)* are separate legal entities and their capital and income are not part of the central government budget. They are allowed to operate on almost the same terms as private companies, but with some limitations. They must be wholly owned by the state, and the state has unlimited liability for loans incurred before 1 January 2003. There are limitations on the companies' activities, often established in the letters of association, that are related to sectoral policy obligations the companies are expected to carry out. The Government exercises proprietary authority through the annual meeting (equivalent to a limited company's general meeting). The annual meeting (foretaksmøtet) is comprised of the ministry representatives, the managing director, head of board of directors and the company auditor. Only the Ministry has voting rights at the annual meeting. The annual meeting appoints the Board of Directors. The Office of the Auditor General supervises these companies. The Act governing these companies specifies that the companies must provide board-records to their ownership ministries and all actions which could significantly alter the companies' activities must be presented in writing to the responsible ministry prior to decision or enactment. In addition, article of association for the company can specify which types of decisions must be cleared with the ownership ministry. This has particularly been used to ensure that significant sectoral policy decisions are cleared with the ministry.

The EFTA Surveillance Authority (ESA) termed the previous conditions governing the provision of government guarantees to these enterprises as trade distortive and in contravention of the EEA Agreement. An amendment to the Act governing these companies entered into force 1 January 2003. The amendment removes the State liability for all new obligations and the statutory company will have to pay a guarantee premium on the existing loans in order to remove the element of subsidies. Statkraft SF, the State electricity production company, Statnettt SF, the State electricity network company, and Statskog SF, the State forestry management company, are all examples of statutory companies.

The *state-owned incorporated company (limited company) (statsaksjeselskaper)* is the preferred form for commercial and industrial activities which do not generate particular sectoral or public policy considerations or which form part of a competitive market. Such companies may be wholly or partly state-owned. Some of today's largest companies such as Norsk Hydro, Telenor and Statoil take this form. Public services – including network services such as telecoms – that can be part of a competitive market have also become state-owned companies. This enables them to compete with private providers which reinforces the pressure for efficiency gains, and the company form gives management the latitude to take action in support of this. A key advantage of the company form is greater flexibility to respond to changes in the business environment.

The Companies Act applies to these companies. For those which are wholly state-owned, specific provisions (including a government power to overrule decisions relating to a change of activity) also apply. For partly owned companies the government's influence on operations is limited to participation and voting at the annual general meeting. The main operating goal for all these companies is profit, but the government may impose special responsibilities (for example universal telecoms service).

Hybrid companies are a composite group whose common factor is that they are established under their own special legislation. They have generally emerged where a monopoly exists. Examples include the state wine and spirits retailing monopoly, and more recently the regional health authorities set up in 2002.

Personnel issues are an important consideration in commercialisation. Enterprises operating under commercial constraints and in competition with the private sector may be disadvantaged relative to private competitors if they cannot adjust labour to market conditions. Competitive neutrality is the goal. Personnel has not been a major issue in the Norwegian experience of commercialisation, but issues have nevertheless emerged in the move from administrative enterprise form to company form. Employees of the former, as noted, remain civil servants which retain unemployment benefits unreduced for a longer period of time and have a preferential right to new positions in state service if made redundant. Consideration of employee interests has played a role in decisions to opt for the hybrid company form, which enables special legislation to be enacted in relation to employee conditions (for example Norway Post became a hybrid company in order to maintain the right of priority and severance pay – though it has now undergone a further transformation into a limited company).

Reorganisation has so far had little impact on staff numbers. Some state-owned companies –particularly Telenor and Norway Post – have shed staff, without significant dispute. Labour market shortages have helped the process. But the unions remain wary of further commercialisation, and favour the retention of a significant minority share in privatised companies, essentially as a form of insurance against potential future decisions that may affect staff negatively (such as relocation). So far this "insurance" has not been used.

Recent reform initiatives

Two important and wide-ranging reform proposals have been tabled

Two important reform initiatives have been promoted recently which strongly reinforce earlier efforts at promoting a more competitive context for the provision of public services. The White Paper "*Modernising the Public Sector in Norway – making it more efficient and user-oriented*" was tabled in January 2002. It promotes four objectives: a less complex and more efficient public sector; public services adapted to individual needs; a public sector that promotes productivity and efficiency; and an inclusive and motivating human resources policy (see also Box 6). Keynotes are delegation and decentralisation. The aim is to give state public service providers increased autonomy, and users greater choice and service quality, via more competition. In addition, municipalities are to be given greater freedom in the organisation and provision of public services together with improved influence on their own income. Private service providers should be allowed to provide services where this would be beneficial (healthcare, education, transport and communications, support for the unemployed and disabled, and state property

administration are identified). Public service provision should be more clearly separated from administrative work, so as to improve its user-friendliness.

Another landmark White Paper "*A Reduced and Improved State Ownership*" was tabled in April 2002. This proposes the consolidation and reduction of ownership interests, which would help to clarify and separate the government's roles of regulator, owner, and service provider. It summarises key policy goals thus:

- State ownership is not a goal in itself. But the state is likely to remain a considerable owner and shareholder.
- Enhancing the clarity of, and increasing the distance between, the state's role as owner and regulator is important. The state will follow "good governance" principles and guidelines in the exercise of its ownership.
- Private owners will generally be better placed to meet the requirement for good ownership than the state. The state should only own business activities where such ownership is a sensible investment of the state's savings, taking into consideration return and risk.
- Action should be taken to strengthen private ownership and the state's extensive ownership in Norwegian business should be reduced.

However there is a lack of broad agreement in Parliament on the benefits of reduced state ownership, and the merits of a broad plan. The government has been asked to proceed *ad hoc*.

Reform: four key issues

Four key issues related to Norway's further efforts at reform (issues which are also relevant for other countries) are addressed below.

Separation of commercial and regulatory functions: this has been vigorously pursued

Commercialisation highlights the distinction between the provision of services, and the regulation of those services which may include the promotion of public policy objectives that might not otherwise be met. These functions were previously combined within state agencies. Their separation is especially important where competition exists, to ensure that a state entity does not use regulatory powers to disadvantage competitors. The EEA Agreement has often required this separation in Norway.

The government has moved a long way to implement separation, recognising its importance for competition and efficient resource use. In its ownership White Paper it underlined the value of separation as a means not only of enhancing confidence in the neutrality of government regulation, but also to increase the legitimacy of the state and confidence in state entities. It also notes the value of the EEA Agreement mechanism for raising issues of favouritism. With a few exceptions (for example the Norwegian Mapping Authority) service provision and regulation are now separate. The government has, in particular, taken steps to separate its regulatory role from its ownership of an entity so as to remove the potential conflict between its two interests. The Ministry of Trade and Industry (MTI) has been designated the "ownership" ministry, and now has ownership responsibility for a large number of companies. However, some companies which are considered sectorally important are still owned by their sectoral ministry, including Statoil.

Efforts continue to clarify the two roles. A committee has been set up in the wake of Parliament's response to the ownership White Paper, to consider further improvements in

the management of state ownership, including the transfer of administrative responsibility for companies out of the MTI to specialised administrative companies (though this is not new and potentially controversial – for example it raises the issue of wealth concentration). The committee will present its report in March 2004.

Improved corporate governance of state-owned firms: this is actively pursued, though the government and parliament remain engaged

In its narrowest sense corporate governance is about control of management by shareholders, through objective setting, the means of attaining objectives, and performance monitoring. A broader concept of corporate governance covers the interests of other stakeholders – financiers, suppliers, employees, even customers. Corporate governance systems are designed to improve on market mechanisms by providing an institutional framework that generates incentives for aligning shareholder and stakeholder interests, and punishes unsatisfactory behaviour. Box 19 summarises the main elements of private sector corporate governance systems.

Several factors make corporate governance more complicated in the state sector. First, the wholly state-owned firm has no market value to provide an incentive for monitoring and directing performance. The effect of market value on the performance of partly privatised firms is also diluted by the knowledge that the government is constrained in the management of its shareholding. As market surveillance is weak or absent, this gap needs to be filled another way. Secondly, lenders have reduced incentives to monitor performance if the loan is guaranteed by the state. Thirdly, public sector managers are less

Box 19. **General principles of corporate governance**

The OECD Principles on Corporate Governance were approved by Ministers in 1999 as a common basis that Member Countries consider essential for the development of good governance practice. While they were primarily developed for publicly traded companies they are also to the extent deemed applicable a useful tool for non-traded companies and state owned enterprises. The Principles include guidelines under five headings:

- The Rights of Shareholders: The corporate governance framework should protect shareholder rights to transfer shares, obtain information, vote, elect the board and share in profits.
- The Equitable Treatment of Shareholder: The corporate governance framework should ensure the equitable treatment of all shareholders and the right of redress for violation of shareholder rights.
- The Role of Stakeholders in Corporate Governance: The corporate governance framework should recognise the rights of stakeholders as established by law and encourage active co-operation between corporations and stakeholders in creating wealth, jobs and the sustainability of financially sound enterprises.
- Disclosure and Transparency: The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation, performance, ownership, and governance of the company.
- Responsibilities of the Board: The corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of the management by the board and the board's accountability to the company and the shareholders.

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likely to be dismissed for poor performance, and their remuneration may be less linked to the latter, which weakens the incentive to perform better. Empirical evidence does in fact suggest that state-owned firms perform less well than their private sector counterparts.

Equally challenging is the fact that the state-owned firms are likely have goals imposed on them that go beyond the maximisation of profits (otherwise they would probably be sold), linked to the achievement of public policy goals (for example regional policy, employment, universal service, quality standards). Regulation might also be able to achieve these goals, but ownership leverage may be a government's preferred option. Ownership leverage may also be preferred to regulation for managing monopoly problems. Public policy goals may also change over time, may not be clearly defined, and may conflict (for example efficiency may conflict with universal service provision). The measurement of objectives for such firms is difficult. Another complicating factor is the range of participants in the oversight of these firms (voters, parliament, civil servants, ministers), which is larger than for the private sector.

Though there is no single solution to these issues, a set of general principles can be identified to guide countries in their approach (Box 20).

Norway recognises the importance of good corporate governance, and continues efforts to develop state ownership policies that promote this. The White Paper "Reduced

Box 20. **State-owned firms: principles of good governance**

Better definition of objectives, better measurement of performance, and better alignment of managerial incentives for the efficient achievement of objectives form a good starting point.

Governments have generally put effort into defining their regulatory objectives, and governance frameworks for state-owned firms have tended to focus on efficiency as the key performance criterion. But this approach does not take adequate account of the broader canvas of public policy objectives which may exist for a firm. A number of principles for the governance of state-owned firms can be articulated:

- Private firm governance forms are possible where objectives can be clearly defined and do not vary over time.
- For state-owned firms in competition with private firms, competitive neutrality is essential. This starts with a separation of ownership and governance functions within government.
- Similarly, regulatory functions should be separated from other government roles, and consideration given to independent regulators.
- Corporatisation into a private law company bolsters private sector incentives, and promotes a transparent relationship between the state and the company. State guarantees undermine private surveillance of company performance and should be avoided.
- Performance contracts between the firm and the state are useful, especially where there is little competition which would otherwise guide developments.
- Privatisation is the best solution where there is no overriding public policy reason to retain a commercial function under state-ownership, and/or where regulation could replace state ownership as a means of achieving policy goals, and where the firm is in competition with private sector firms.

and Improved State Ownership" identified ten good corporate governance principles for state-owned firms which broadly reflect the general principles set out in Box 20. There is broad agreement that the state should have an arm's length relationship with state-owned firms, and avoid direct daily interference. Firms should have management flexibility, within set and predictable parameters. For many these are the same as a private company: the maximisation of profits, reflected in the application of the same rate of return principle on investment as for a private company. A good illustration of the serious intent behind Norway's policy is the handling of poor performance. The Board of Directors appoints – and dismisses – managers. There are several cases where managers have stepped down because of poor performance (for example, the manager of the railways, NSB).

Important rules exist to clarify the relationship with the state. State-owned company boards are independent and cannot include civil servants or members of Parliament. Board directors are appointed by the shareholders. Employees can nominate up to a third of the board. Companies listed on the Stock Exchange also have some protection from political interference by the latter's regulations. Under the EEA Agreement, dividend policy must follow the same principles as that for private investors (however Parliament has several times raised the dividend to be taken out – contrary to the recommendations of the company and of the government). Where ownership is used to attain non-commercial goals, these must be clearly stated, there is a reporting obligation, and monitoring arrangements must be possible. Non-commercial obligations should be covered by specific budgetary transfers tied to the latter. In some cases this is being replaced by purchaser/provider arrangements (instead of a budget transfer, the government purchases the service). The Office of the Auditor General ensures that appropriated state funds are used in accordance with the government's or Parliament's intentions.

The government does, however, continue to exercise proprietary authority, to varying degrees. As noted, companies that are considered to have sectoral policy importance are still generally owned by the sectoral ministry. A recent example concerns the media sector, where the Ministry of Church and Culture overturned a decision by NRK (radio and television production national company) to merge a number of regional offices to save costs. The decision was made with reference to section 10 of the Companies Act which stipulates that "all questions that may be assumed to be important, principled, political and of social importance shall be put to the general assembly". The cutbacks were deemed politically important as they would affect NRK's activity as a public broadcaster. The actual use of this authority appears to be limited. However the possibility of intervention may also influence company decisions.

While government manages state ownership, The Parliament nevertheless can intervene in some cases. It can directly influence administrative enterprises, and can influence 100% owned state companies *inter alia* through appropriations and the budget process (for example the dividend policy as noted above). Major changes in state ownership, including the sale of state shares, must have a special Parliamentary mandate.

Competition and competitive neutrality: this is work-in-progress

Competition has emerged in a number of sectors that have been liberalised, particularly energy, broadcasting and telecommunications, though sometimes less strongly than expected. In many markets liberalisation has been triggered as a consequence of the EEA Agreement, and the application of competition rules overseen by the EFTA Surveillance Authority. Norwegian competition law is also relevant: it applies

without exception to publicly-owned or managed enterprises (including state agencies) where these are carrying out a business undertaking. The NCA may call attention to the restraining effects on competition of public measures. But it does not have authority to intervene against public entities (for example by prohibiting their commercial activities or requiring separate accounts). Chapter 3 provides a fuller explanation of the role both of Norwegian competition law and of the competition rules under the EEA Agreement in this context.

The Norwegian government recognises the importance of competitive neutrality, where state-owned entities are engaged in commercial activities in competition with the private sector. The White Paper "Reduced and Improved State Ownership" states "The government's approach to such cases will be to ensure that the state's management of companies does not distort competition between publicly and privately owned companies competing in the same industry". However it does not have an explicit competitive neutrality framework, which exists in some other OECD countries (Box 21).

Competitive neutrality frameworks can help to promote the legitimacy of the state as a neutral regulator for commercial state-owned entities. They also provide a specific and proactive means of resolving issues, which goes beyond the competition law and does not rely on the market to instigate corrections. They can make it easier for private parties to seek to resolve neutrality problems. The public service sector in Norway, for example, lacks an explicit mechanism to ensure that private providers are treated equitably with public providers. Competitive neutrality frameworks promote both equity and efficiency, by addressing issues which confer an advantage on state-owned entities. One important example is where a state-owned entity does not earn a reasonable rate of return on capital employed.

This does not mean that Norway has been inactive. Several important competitive neutrality issues have been picked up:

- The NCA has identified two issues of competitive advantage for state-owned entities, both in relation to power generation. The first is a financial advantage: Parliament provided NOK 16 billion in equity, loans and guarantees to Statkraft, enabling it to pursue an aggressive growth strategy through acquisitions. (An ESA ruling led to the recent abolition of the system of providing preferential loans through government guarantees.)
- The second concerns the unequal ownership rights attached to hydropower resources (see also Chapter 3), which are also under review following an ESA ruling. Cross-subsidisation is another issue which can easily arise when an entity fulfils public functions (such as universal service provision). The NCA has proposed either prohibiting an entity in this situation from offering products in competition with private enterprises, or accounting separation. The government has proposed a third solution: public tendering for services in competition with the private sector.
- The opening balance sheet for state-owned entities affects their basic cost structure and flows through to the prices they can charge. If assets are undervalued, and if debt and equity positions do not conform with private sector norms, the state-owned entity has an advantage over private sector rivals. The government has said that its aim is to assign asset values at the market price. It is difficult to evaluate whether this is being done (accounting systems differ between the public and private sectors, comparable private sector firms may not exist at the outset).

Box 21. **Competitive neutrality frameworks in other OECD countries**

Netherlands

A set of "*Instructions for the performance of commercial activities by central government organisations*" came into effect in 1998. But these were found to be inadequate to address the full range of competition issues since private companies complained of unfair competition from the commercial activities of government organisations. Competitive advantages of government entities can include lower risk, public subsidies or tax advantages or access and privileged relationships with policy makers. Following experience with these *Instructions* and further policy development, the Government decided in 2001 to legislate a framework of formal rules for government commercial activities involving the supply of goods or services to third parties in actual competition with private providers so as to create more equal competitive conditions. The Bill will impose obligations on government organisations (State, provincial and municipal) and organisations with exclusive and special market rights (OEMs), as follows:

- Rules for ***market access*** by government organisations. Commercial activities undertaken by government entities must have a specific statutory basis and result from a decision that has been underpinned by a thorough and transparent, prior assessment of the desirability of the commercial activities by a government organisation. This access rule also applies to the participation of the government in an incorporated company involved in commercial activities where the company is controlled by the government. The benefits of serving the pubic interest (not merely to generate income) through the activity must outweigh any negative consequences for private providers. Interested private businesses can provide input to this assessment, before the government organisation decides to engage in commercial activities, and have recourse to administrative law remedies if they believe the decision was not properly considered. The decision must be reassessed every 5 years. A Government and Market Commission will be an expert, non-binding advisory body for government organisations undertaking this analysis and making the decision. This Commission can also advise any private entity and its advice can enter into any administrative law complaint proceedings and act as an expert witness.
- Rules for ***conduct*** by government organisations and OEMs that aim to prevent unfair competition. Policy functions must be segregated from production functions and policy areas must not grant preferences to production areas. Specific conduct rules include a requirement that all costs attributable to the commercial activity are included in the price for the good or service (intended to prevent cross subsidies) and rules concerning accounting for such costs. OEMs may not use government funds provided to them to perform their function for any other purposes (also intended to prevent cross subsidies to non-exclusive activities). Confidential government data cannot be used in government commercial activities and non-commercial data cannot be used unless it is generally available to all commercial entities. Administrative law remedies are available in the case of misapplication of these rules as they are related to internal administrative functions of the government entity while the Netherlands Competition Authority (NMa) applies the rules of conduct. The NMa may issue a decision of violation in respect of government organisations and may also penalise OEMs.

An administrative law finding against a government entity could form the basis of an action for a civil penalty for damages by a private entity that had been adversely affected by competition from the government.

Preexisting commercial activities and liberalisation programmes are treated under transitional provisions that provide for continuation of existing contractual activities. Existing specific competitive neutrality frameworks – such as in respect of post and energy activities – will continue and after liberalisation be reviewed for compatibility with the Government and Markets Bill.

Box 21. **Competitive neutrality frameworks in other OECD countries** *(cont.)*

Australia

Part of the National Competition Policy Reform implemented in the mid-1990s involved the formulation of competitive neutrality principles and the establishment of special complaints mechanisms to ensure that the principles were applied effectively and the private entities could seek a solution if they had been damaged by unfair competition from a public entity with an inappropriate competitive advantage. The competitive neutrality principles required that significant government business activities should not enjoy net competitive advantages over their private sector competitors simply by virtue of public sector ownership. Consequently, governments committed not to use their legislative or fiscal powers to advantage their own businesses over the private sector. The motivations behind this policy were efficiency and equity concerns. Thus:

"In the public sector, increased attention has been given to the core role of government and how government services can be best delivered in an environment of resource constraint. This imperative has driven reforms ranging from privatisation, deregulation of public monopolies, competitive tendering and contracting to various management reforms, including devolution and accountability frameworks. Competitive neutrality requires that where governments choose to provide services through market based mechanisms that allow actual or potential competition from a private sector provider, that competition should be fair. In this sense, competitive neutrality will operate to ensure the integrity of other reforms to improve the operation of government businesses."

Competitive neutrality requirements are applied essentially to commercial activities, *i.e.* significant government business activities that charge for their services in an actual or potentially competitive environment where the business managers have some discretion in price setting. The requirements do no apply to non-profit, non-business activities.

The principles were elaborated in the following areas:

- Corporatisation. The legal and governance structures of businesses were reviewed.
- Taxation. All tax exemptions were removed or tax equivalent regimes were developed for entities not legally separate from government.
- Finance. Advantages from implicit guarantees could be addressed by a neutrality charge.
- Rate of return requirements. Businesses were required to fully recover costs and earn appropriate rates of return on capital.
- Regulatory neutrality. Special exemptions from regulatory arrangements (*e.g.* safety or reporting requirements) were removed.

The complaints mechanism is an administrative procedure undertaken by specially established complaints bodies in each jurisdiction that can assess whether the competitive neutrality requirements are being complied with. If the complaint is found to be verified, including by means of a public enquiry, and the matter is not then remedied, the complaints body makes a public report with recommendations to the Treasurer who must determine the matter. Investigations have been implemented at the national level in a range of areas including airport services, meteorological services, post, television, security services, railways and job placement services.

- The government has also said that in principle share sales will allow the Competition Act to come into play.
- Taxation is another important issue. Neither public nor private entities have to pay Value Added Tax (VAT) on production for their own use. To save money municipalities have resorted to more own production, disadvantaging more efficient private providers. The government is currently considering a report by a preparatory committee on the issue. The committee recommends a compensation scheme that neutralises VAT on all purchases by municipalities. The government is also considering the possibility of neutralising VAT on central government purchases. Proposals will be presented to Parliament in the 2004 budget proposals.

Reducing state ownership (privatisation): a difficult debate needs to be continued

Norway does not have a broad privatisation goal. Parliament has not endorsed the general goal proposed in the state ownership White Paper to reduce the state's extensive ownership in Norwegian business and to consolidate ownership to sectors "where ownership can act as an instrument to achieve particular and stated targets, or where such ownership is a sensible investment of the state's savings, taking into consideration risk and return". Instead it has directed the government to focus its efforts on how to improve management of state-owned companies and how to stimulate profitable and sustainable industrial growth and development in Norway. It has, specifically, asked for an assessment of the potential drawbacks and benefits of transferring ownership to holding companies or administrative companies. A committee is due to report on this in March 2004.

It is also worth noting that Parliament's focus is not necessarily concerned with improved ownership in terms of good governance, but how to promote a more direct and active state ownership that is conducive to industrial development in strategic sectors. A move in the direction of an interventionist industrial policy would seem to undermine the reforms made in the past two decades and exacerbate tensions related to good governance and competitive neutrality.

Norway has privatised (partially or fully) some 19 – mainly manufacturing – companies in the period 1999-2002. Parliament has also endorsed the sale of shares in a handful of other companies.

Privatisation in many countries has often been motivated by the view that private firms would be more efficient than continuing public ownership, and that the government could reap some of this efficiency gap through sale proceeds. Considerable analysis has been undertaken on the actual effects of privatisation (Box 22).

The government is continuing its assessment of individual state-owned companies with a view to determining whether the political motivation for ownership is still valid, and if so, whether it can be better handled by regulation, financial incentives, or a contractual relationship. It has indicated that it will return to Parliament with specific privatisation proposals, but that at the same time, state ownership is expected to remain extensive, hence the importance of further improvements to corporate governance. Given the strong fiscal situation and the relatively weak private capital market, further ownership reductions can be expected to take time.

Conclusion

State ownership of commercial entities is extensive. This is partly because of important reforms in recent years to commercialise the provision of public services. While

Box 22. **Privatisation: does it improve performance?**

There is now a large empirical and analytic literature on the actual effects of privatisation. These effects are difficult to isolate empirically from the effects of broader regulatory reform because, in most cases, privatisation has been accompanied by significant regulatory or structural change. And there is a complex sequencing of cause and effects where the implementation of a policy is staged over time and is also anticipated by participants. A survey of 61 empirical studies (Megginson and Netter, 2001) concluded that privately owned firms are more efficient and profitable than otherwise comparable state-owned firms; that privatisation works in that divested firms almost always become more efficient, more profitable, financially healthier and increase their capital investment spending; most studies show a fall in employment as a result of privatisation, except where sales increase substantially; and privatisation helps to develop and deepen capital markets and thus improve the general business environment. A substantial collection of work on these issues can be found in OECD (2000) which includes the following points:

- Labour productivity and, in some cases, total factor productivity increases with privatisation.
- Consumers reap part of these gains in the form of lower real prices, and this effect is strongest where there is competition. Regulation of post privatisation monopolies is less successful than competition – regulation is hard.
- Service quality and range improves, often beyond minimum regulated levels set by the state – the important exception to this outcome is where the reform fails due to partial, incomplete or inconsistent reform design.
- Privatisation makes a significant positive contribution to public finances – the pre-privatisation earnings yield from the entities is usually less than the yield the government pays on its debt. The private sector investors recognise the efficiency gains and consequently higher earnings that are possible from more commercial management, and this efficiency gain is partly capitalised into the privatisation price. The state also captures part of any efficiency gain in the form of taxes on increased corporate profits of the privatised firm.

Norway's oil wealth means that privatisation where it happens is not motivated by fiscal considerations, as in nearly all other countries. The rationale for share sales has been evaluated case by case. The main arguments have been improved efficiency, greater flexibility and speed in decision making, improved access to private capital markets, greater opportunities for alliance-building, and improved benchmarking of company value. Conversely, the arguments for maintaining state ownership can be broadly defined into four categories:

- *Sector policy concerns*. Ownership can be seen as an important means of attaining specific sectoral goals. For example, the monopoly on wines and spirits is used to restrict and control availability of alcohol. Regulation of the provision of public services through ownership has also been an important argument for state ownership of infrastructure based companies such as Statnett.
- *Norwegian ownership*. Maintaining Norwegian ownership in strategic sectors such as in the petroleum sector, the energy sector and the financial sector are deemed important for overall business activity. Maintaining the Norwegian presence in Svalbard situated in the polar region, is another example.

Box 22. **Privatisation: does it improve performance?** *(cont.)*

- *Natural resources.* There is broad consensus on the need to maintain political control over the utilisation and extraction of natural resources. Political control is however increasingly secured through regulation and taxation, and the need for direct ownership has been reduced.
- *Head office location.* State ownership ensures that companies establish their head office in Norway, ensuring employment of key personnel and taxable earnings in the country.

this has expanded the range of state involvement in the market, it has also been very beneficial, improving the efficiency and quality of public services. At the same time there is a strong awareness of the need to address the issues which state ownership raises. A number of important initiatives have been taken to promote effective management of state-owned entities, including measures to ensure good governance, and (in many cases) the separation of regulatory from ownership functions. Effective management of state-owned entities could be further improved. Competitive neutrality issues, given that state-owned entities are increasingly in competition with the private sector, merit closer attention, and the corporate governance framework could be made even stronger.

These measures address the management of state ownership, but side-step the more controversial issue of a reduction in state ownership and do not deal with the important question of the proper boundary between the state and private sectors. Norway does not yet have an agreed privatisation policy based on general principles that could guide future developments. The government has rightly sought to raise the debate, however, and it should be pursued.

Policy options for consideration

1. Consider streamlining the number of ownership forms by reducing the number of variations in order to improve transparency.

While the wide variety of state ownership forms and regulatory frameworks has been useful in the Norwegian context in terms of staging the transformation of companies from government entities to fully commercial entities, it does not contribute to transparency in how the state operates as owner/regulator. Consideration could therefore be given to transforming all state-owned companies operating in competition with private operators into incorporated companies. The incorporated company form compels the state to define clearly its ownership goals clearly.

2. Consider implementing an explicit competitive neutrality policy framework to address neutrality problems that arise from the way an enterprise is run, which would also cover entities operating in non-market driven sectors.

The lack of such a framework may led to complacency with regard to the regulation of state-owned companies operating in markets without current competition as there is no focus on anti-competitive effects from the market itself. With a competitive neutrality framework the potential for new entrants into markets will be enhanced.

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3. Consider transferring ownership responsibility of companies that are considered important in a sectoral policy context away from their sectoral ministry. This would also contribute to a greater uniformity in good governance practice.

Separation of regulatory and ownership functions is essential for successful reform. Otherwise new entrants are likely to perceive regulation as a means of protecting the state-owned incumbent. In Norway there has been a marked move to separate ownership and regulatory responsibilities by transferring ownership responsibility to the Ministry of Trade and Industry and by increasing the autonomy of supervisory agencies. Nevertheless ownership responsibility has been retained by the sectoral ministry for major companies that are defined to have important sectoral policy purposes. It is particularly important to separate the ownership and regulatory role for these companies.

4. It would be desirable to take forward privatisation more broadly, as the extensive state ownership of business and industry, even with optimal good governance and competitive neutrality, creates an inference of potential state intervention.

Commercialisation has generally progressed without difficulties and major efforts have been undertaken to ensure good governance. However, the next and final step in the commercialisation process – privatisation – has not been conducted according to a solid and agreed conceptual framework. Privatisation has been careful, often motivated by the companies themselves, staged, and carried out on a case-by-case basis according to the pragmatic circumstances of the moment. Privatisation has proceeded furthest in sectors which are purely commercial and do not have significant public policy elements. The government is advocating a reduction in state ownership based on efficiency considerations, and has raised a debate on the boundaries of state ownership. Given the strong fiscal position and for other reasons too, Parliament has seen no need to establish an overall policy for reducing state ownership. Instead the focus has been on how to improve state ownership. This is a pity as opportunities may be missed to improve efficiency by having a clear general policy, which could start with a decision to move all remaining purely commercial activities into the private sector (reflecting the stance generally taken with the *ad hoc* privatisations so far).

B. CIVIL AVIATION

Context and history

Norway's domestic civil aviation sector has been geared to meeting significant public service obligations

The Norwegian State is not only the overall regulator of civil aviation, but also owns the majority of airports and is part owner of the major dominant airline. The State has also taken on a number of public service obligations in order to ensure the availability of air transport services across the country. In remote areas air transport plays a vital role in enabling people to access education and medical facilities, and is an important means of freight and mail delivery.

Some of the domestic air routes in Norway are among the most traffic dense in Europe. The average Norwegian takes by far the largest number of flights per year of all Europeans. This is a reflection of the dispersed population, geography and topography, but also of the cold climate and difficult surface travel. For example, the flight time between Stavanger and Oslo is 45 minutes, while travel by train or car takes more than 8½ hours. In 2000, 48.6% of all air passengers (some 10.5 million people) traveled on domestic routes.

There have been moves to improve efficiency through commercialisation and competition with respect to regional airports and regional air services. The extreme degree of concentration in the domestic commercial airline sector has emerged as an issue of concern, and the government and the competition authority have introduced measures to improve the competitive climate.

Important developments have taken place in the sector's management and regulation, not least to encourage competition

Until January 2003, the ownership and operation of the bulk of the airport network was vested in an administrative enterprise (see Section A above), Norwegian Air Traffic and Airport Management (NATAM), when it was transformed into a wholly state-owned limited liability company, Avinor AS. The ownership ministry remains the Ministry of Transport and Communication. The transformation is seen as a vehicle for further commercialisation of airport services and management while maintaining state ownership.

The regulatory framework governing commercial airports is set out in *The Aviation Act* of 1993 and related secondary regulations. The gradual deregulation of the internal community market and the EC regulations that were adopted to foster deregulation had already been introduced to the Norwegian aviation market to some extent in 1993, and further in 1994 with the entry into force of the EEA Agreement. The Civil Aviation Authority (CAA, Luftfartstilsynet) is organised as an autonomous regulatory body under the Ministry of Transport and Communication. It is responsible for ensuring safety in the aviation market, controls the quality of material, and issues licences to airports, airlines, pilots and crew.

The regional airport network operates at a loss

Avinor owns and operates the network of 44 airports across the country, 14 in association with the armed services. 17 of these airports are so-called main airports, while 27 are regional airports. Avinor is also responsible for air traffic control services in Norway. It is largely self-financing, but it receives an annual transfer from the government to offset operating deficits from the regional airports. The government transfer for 2003 is NOK 250 million for the 27 airports. Roughly three-quarters of its revenues comes from aeronautical charges which are fixed (maximum charges) annually by the Minister of Transport and Communication. Other major sources of income include property and commercial income from airport-related services and sale of services to non-State owned airports. Avinor operates as a network system where the economic results are considered more optimal given centralised management structures and economies of scale. Only 6 of the 44 airports are profitable. Charges are geographically uniform, based on weight and passengers. Since cost structures vary across the network, the uniform price structure implies cross-subsidisation between regions and airlines.

The commercialisation of civil aviation services in Norway is considered below in the context of:

- The domestic commercial airline sector.
- Regional airports.
- Regional air services.

The domestic commercial airline sector

Significant change has taken place since 1990: the market is now based on regulated competition

Until 1993 the Norwegian air traffic market was regulated through government – granted traffic rights, and price regulation. In this setting, the two carriers SAS and Braathens, operated two almost non-overlapping route networks, unsubsidised on the main airports, whereas the carrier Widerøe (now a SAS owned subsidiary) operated on a network of regional airports, funded partly through a state subsidy. The EU regulations adopted through the EEA Agreement replaced this system with a free access for all EEA air carriers to exercise traffic rights on all routes within the EEA area, in accordance with EU Council Regulation No. 2408/92.

With market opening both airlines pursued increased capacity by entering each others' routes. This continued until 1998 when the new Oslo Airport opened capacity to the previously capacity-restricted Oslo region. Color Air, a low-fare airline, entered the market in 1998, and both incumbents responded by increasing capacity. Less than a year later Color Air went out of business. SAS and Braathens were both slow to reduce capacity, and prices on domestic flights increased by nearly 50% after the fourth quarter of 1999. In 2001 Braathens encountered financial difficulties and the airline was subsequently taken over by SAS. Since that consolidation SAS reduced its capacity by 15% measured in seat/km, by 20% in terms of the number of flights. Prices, have, however, fallen by nearly the same percentage since March 2002, partly due to the removal of the flight passenger surcharge as from April 2002, and the entry of Norwegian Air Shuttle (NAS) into the market (see below).

The market is currently highly concentrated

The Norwegian domestic market is highly concentrated, particularly after SAS's takeover of Braathens in late 2002 (see Chapter 3). While four airlines, SAS, Braathens, Widerøe and Norwegian Air Shuttle (NAS), seemingly provide the majority of domestic services, SAS controls both Braathens (100%) and Widerøe (96.4%), and in practice has a 91% market share, thus leaving large parts of the market practically without competition. There is only competition in a selected number of routes, NAS' total share is estimated at around 5%.

With the entry of NAS into the domestic commercial market in September 2002 competition was reintroduced on the four largest routes. NAS started with six daily flights between Oslo Airport, Bergen and Trondheim and two daily flights between Oslo and Tromsø, and quickly added six daily flights between Oslo and Stavanger (both ways). The entry of NAS was contingent upon the banning of frequent flyer programmes (FFP) for domestic routes from August 2002 (Box 23). This ban only applies to the earning of points. Points earned on international flights can be redeemed domestically, as can points earned prior to the domestic ban.

Important initiatives have already been taken to promote competition

The government has taken a number of commendable initiatives to improve access for new entrants. These include the ban on FFPs for domestic flights, (effective 1 August 2002); the elimination of the air passenger surcharge (1 April 2002); the corporate agreement entered into by the government with NAS from 1 September 2002; and the 90% reduction in surcharges at six airports for international flights.

But further measures will very likely be needed if a competitive market is to be reinstated for domestic air travel. Developments have resulted in a near monopoly situation for SAS. The position of NAS, the sole recent new entrant, is fragile. After six months of service it is still too early to say if NAS will be able to establish a profitable share in the domestic air travel market. It has recently cancelled two PSO routes in the north of Norway which it had been awarded in the PSO tender for three years. The routes together carried an annual average subsidy of NOK 24 million. The company explains that it prefers to focus on low-cost fares on its other routes, rather than having to invest in new aircraft for the STOL routes. And Norway appears to have an average capacity utilisation rate of 56%, which is low by today's international standards, but above the company's own break-even cabin load factor at 50%.

A number of further measures could be pursued

Promoting competition in airline services is not only a challenge for Norway. A report of the Nordic competition authorities has triggered a European-wide co-operative effort to eliminate competitive problems in airline traffic. Issues which warrant a closer look (and which have been picked up in that report) include:

- Corporate discount schemes. Corporate discount schemes are agreements under which large airline customers have been able to negotiate lower (net) fares on all or certain parts of an airline's network. Discounts of up to 30-50% on business class tickets are not uncommon. Such schemes engender important lock-in effects. Large carriers are advantaged compared to smaller ones. Statoil has reportedly entered into an agreement effective 1 February 2003 with SAS that is valued at around NOK 3 billion.

Box 23. **Frequent flyer programmes**

The Nordic Competittion Authorities have drawn a number of conclusions concerning the characteristics and effects of frequent flyer programmes (FFPs) which almost all major airlines offer their travelers. Most have the following characteristic in common:

- "Discounts" are granted not in the form of money, but in the form of free services, not necessarily of the same type as purchased. Frequent flyer points are no ordinary rebate.
- To obtain free flight to more or less distant destinations, the customer needs to exceed certain thresholds in terms of travel purchases. She thus has an incentive to concentrate her purchases on one or a few providers. The closer the customer gets to a threshold, the stronger her incentive to buy another flight from that particular airline or alliance.
- The "discount" is given to the traveler, who – in the case of business travel – tends to differ from the purchaser. This gives rise to a pronounced principal agent problem, by which the decision maker (agent) is faced with a quite different set of incentives from those of her superior (principal). This may lead to a distorted (inefficient) resource allocation.
- Although in principle taxable in many countries, the private use of frequent flyer points earned by an employee is in practice rarely taxed, for lack of information on the part of the government. This tax loophole is likely to aggravate inefficiency due to the principal agent problem.
- Alliance airlines join their FFPs to offer attractive and extended networks to bonus point travelers. Smaller airlines or alliances have a distinct competitive disadvantage. FFPs are thus liable to strengthen any dominant position and to reinforce the anti-competitive effects of hub-and spoke networks.

The Nordic Competition Authorities have concluded that frequent flyer programmes are thus loyalty inducing, giving rise to artificial economies of scope and switching costs. They have welfare decreasing and anti-competitive effects, and are clearly at variance with the spirit of competition law in most countries. The anti-competitive effects are particularly evident in a setting with one or a few established firms and a potential entrant.

Source: Report of the Nordic competition authorities No. 1/2002. *Competitive Airlines. Towards a more vigorous competition policy in relation to the air travel market.*

- Travel agent agreements. Such agreements sometimes provide incentives for an agent to concentrate his sales on one or a few larger airlines. Such contracts may be anti-competitive and contravene the principles laid down by the EU Commission.

The Minister of Labour and Government Administration has instructed the NCA to address these issues.

Ground handling is another issue. Access to ground handling at all airports with at least two million passengers annually is ensured by EU law. The law requires as a minimum that the number of third party providers at such airports should be no fewer than two (one may be controlled by the airport). This may not be enough to prevent barriers to entry. Another barrier may be taxation of ground handling and catering services.

There is some question as to whether national competition authorities have sufficient authority to intervene against abuse of a dominant position, for example through predatory pricing. EU law is potentially relevant (*inter alia*, the Council Regulation which deals with fares and rates for air services allows for intervention against predatory pricing).

Issues of competition also arise in connection with the regional airports and air services:

- While in the past the NCA has urged the Ministry of Transport and Communication to change the system of cross-subsidies between airports, it has recently expressed the view that since all but one conventional airport are owned and run by the same entity, and this entity is required to completely cover it sown costs, it is economically efficient to let the busier and more profitable airports cross-subsidise the less profitable ones. This is, however, based on a number of conditions, such as: lower charges at airports with a low rate of capacity utilisation and hence low marginal costs per passenger, peak load pricing, reduced charges for carriers with reduced requirement on and use of airport infrastructure and charges that are in part proportional to the fare payable by the passenger.
- The network system of airports provides benefits in the form of economies of scale and co-ordination of services. It is, however, a challenge to provide sufficient incentives to generate potential efficiency gains when external subsidies are introduced into the system.
- The degree of competition for each regional route enables a lowering of subsidies on each route. In areas where there is no competition subsidies stay high. Competition over time is difficult to maintain, as runner ups in tendering processes tend to go out of business. Improving auction design – for example through smaller packages – more frequent smaller capacity flights (less than 30 seats) – or the removal of technical constraints might lead to new entrants. Improved auction design has already proven successful in attracting new entrants on some routes. The extension of the concession period for the PSO routes may also lead to an increase in competition. Given the large scale investments needed to run the regional routes a three year contract period is too short to establish a sound footing in the market. The PSO regulations have, however, been determined by the EU.

Regional airports

Regional airports have developed as a vital part of the government's regional policy

The regional airport system consists of 27 state-owned airports. The regional airport network, as noted, is an important means of reaching out to a dispersed population. It is relatively dense, especially along the western and northern coastline. 23 airports are located north of the Arctic Circle. These airports were mainly built between 1968 and 1986 to serve community centers with poor surface transport accessibility. Most of them are STOL-ports (short take off and landing) constructed in difficult terrain.

Most of the regional airports were originally owned and operated by the local municipalities. From 1997 the state, represented by NATAM, now Avinor, took over ownership. The policy change was promulgated as a result of concerns over safety. With the change in ownership capital could be earmarked for lengthening of runway and provision of more sophisticated navigational aid at the peripheral airports.

The economic viability of many regional airports is an issue

In 2001, prior to the start of the 2002 PSO tender process, a broad scale cost-benefit analysis study of ten regional airports, including operational conditions and the scope for further expansion of individual airports, was carried out. The terrain of many of the airports limits large-scale expansion. Given that STOL aircraft are no longer manufactured

and the limitations on airport facility expansion there is uncertainty about the future of a number of the regional airports, particularly if new safety requirements are introduced. The analysis, which studied net benefit to society, concluded that five of the regional airports were clearly unprofitable, and the remaining five were most likely unprofitable. The government subsequently proposed discontinuing PSO services at three of the regional airports. Parliament opposed closure of all three airports, and instructed the government that no further closures would be considered without extensive consultations with all affected parties.

Privatisation of airport ownership – which has occurred in many OECD countries – has not been raised in Norway. Nevertheless, the transformation of NATAM into an incorporated company is an implicit recognition that commercialisation could lead to greater operating efficiency and innovation. In this context it should be noted that Torp regional airport is around 1½ hours drive from Oslo and operates at a profit. Torp is jointly owned by two local municipalities, one county, and a group of private investors, and has remained outside the NATAM network. The airport is now the second largest in terms of direct international flights with low-fare flights to a range of European cities. More than 1 million passengers use Torp annually, around half on international flights.

A number of the larger city airports (Stavanger, Bergen Kristiansand) that are operating with a profit have expressed a desire to be separated out from the Avinor network and to take on a similar ownership structure to Torp. That has, however, not been considered acceptable by the government and Parliament. In connection with the decision to transform NATAM, there was broad agreement that individual airports should not be separated out now. Nevertheless, greater flexibility should be introduced to allow the profitable airports to use part of their earnings to invest in improvements and expansions.

After the transformation of NATAM to an incorporated company, the costs of maintaining services at regional airports will become more visible, as the government transfer to AVINOR will compensate fully for operating deficits attributed to the regional airports and will take the form of a purchase of a service.

Regional air services

One company remains the main provider, though auctions have been introduced to stimulate competition

Widerøe was the original monopoly licensee for regional air services, and received a subsidy from the state to supply a service at a regulated quality and price. Given the STOL status of the regional airports, Widerøe procured special aircraft to operate at these airports to the specified quality level.

EU regulations (which Norway must implement under the EEA Agreement) require that PSO routes be subject to competitive tendering for periods of three years. The PSO sets service standards for each individual route area. If competition proves to be too weak, subsequent negotiations with potential providers may be held. When the auctioning of PSO services was introduced Widerøe was in a monopoly position. It won all concessions in the first public tender held in 1996 for the period 1997-2000. In the tender for the period 2000-2003 it was able to renew most of its concessions, apart from some routes along the west coast which were awarded to Coast Air and one route in the north which was awarded to Arctic Air. The first auction significantly reduced the subsidies paid from the state under the previous single licensee system. The second resulted in substantially higher prices. There

have been allegations in the media that Widerøe engaged in selective bidding, with low prices on potentially competitive routes and higher prices on routes where they have a monopoly given the quality specifications. This is not perceived as a problem, provided it does not represent predatory foreclosure through cross-subsidisation.

A new invitation to tender was made in May 2002, and a total of seven air carriers submitted tenders for the 15 route areas (including one Danish and one Swedish). None offered to operate all routes. In four of the route areas Widerøe was the only one to offer scheduled services. In the other routes the competition varied between two and five airlines. The two major domestic carriers, SAS and Braathens, did not participate. Widerøe won the tender for 9 out of 15 routes and will receive over 80% public funding for the period (approximately NOK 400 million per year).

Conclusion

The government has taken a number of commendable initiatives to facilitate new entry and promote competition. Greater competition is still urgently needed, as the OECD noted in its *2002 Economic Survey of Norway*. In a market with a near monopoly, the NCA should be encouraged to continue its efforts to promote increased competition, including close scrutiny of a number of loyalty inducing measures.

The commercialisation of NATAM should allow for greater flexibility in airport management, particularly with the introduction of the purchasing of service from Avinor for unprofitable airports to be introduced in 2004. This system of government purchasing of a service will contribute to greater cost transparency of the various regional airports, and may result in a revisiting of the potential benefits of closing certain airports.

Restrictions on Avinor's flexibility remain, however, as the Minister of Transport and Communication has stated that there should be no significant partial or full privatisation of Avinor's core activities without prior approval from the ministry.

The technical specifications for the regional air services open for tender should be revisited with a view to removing requirements that may restrict competition or new entrants, in extension of the measures already taken.

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C. HOSPITALS

Context and history

An important reform to improve hospital management and services has been carried out

A key feature of the Norwegian health care system, as in the other Nordic countries and the United Kingdom, is the predominance of tax-financed public provision of services. The system has succeeded in securing universal coverage and quality service throughout the country. It is also costly. Norway spends more than NOK 50 billion annually on hospitals, making it one of the European countries with the highest level of public spending on health service per capita.

Reform of the hospital sector had been debated many times in recent years. The reform was launched in January 2002, following Parliamentary approval. Ownership responsibility for the hospital sector (the reform also covers most county specialist health services) was transferred to central government from the counties. Around 350 specialist health institutions, including 85 hospitals, were transferred. This represents a break with a tradition dating back over thirty years under which hospitals were owned and run by the counties.

The reform was implemented very quickly – proposed by the government in April 2001, passed in June 2001, and enacted in January 2002. Consultation revealed that there was broad support in the hospitals and among the regional doctors for a change of ownership structure.

Reform was motivated by a search for greater efficiency, as well as a more uniform quality of service

A number of factors promoted the reform. These were:

- Increasing use of resources, and growing financial problems.
- Increased growth in the number of patients treated, but stable or growing waiting lists.
- A strong rise in the number of health professionals, but an apparent lack of health care professionals.
- An inability to create a flow of patients in order to utilise capacity where it is available.
- Variation in the services offered, depending on the place of residence.
- A great disparity between hospitals as regards use of resources.

The state remains responsible, but with greater operational autonomy for the new hospital framework

The reform has created a new organisational framework. The health sector is now divided into five regions run by separate legal entities (regional health authorities) organised as hybrid companies subject to special legislation (see Section A). The hospitals

have been made into statutory companies, organised into 33 health enterprises reporting to, and owned by, the regional health authorities.

The goal behind the reform is to enhance co-ordination and efficient utilisation of resources nationwide, but also within and among the regions. State ownership is perceived to ensure equity of access to health services irrespective of place of residence in the country. Overall responsibility for the provision of specialist health services therefore remains with the state. Policy goals will be established centrally by government, with the approval of Parliament. State ownership of the regional health authorities rests with the Ministry of Health.

At the same time, an important aim of the reform is to provide hospitals with opportunities, responsibilities and freedom to organise services in the manner they find most patient-oriented and cost-effective. This includes the opportunity to use, or co-operate with, private service providers. It stops short, however, of introducing direct competition with private service providers. A fundamental principle underlying the reform is that private purchasing power should not affect access to public health services. Nor does the reform represent a privatisation of the hospital sector, as the law establishing the health authorities explicitly prevents the sale of hospital services without prior consent of Parliament. The private (commercial) hospital sector in Norway is marginal, but has expanded from seven very small private hospitals to currently eleven. (Norway also has several private non-profit hospitals, often founded by religious or charity organisations. These hospitals have for a long period been publicly financed, and integrated into public health plans).

Key elements of the reform

- *Central government control and responsibility*. The new organisation will give the Minister of Health greater opportunity to intervene directly in the setting of main health policy goals and frameworks. Such direction is to be provided through the articles of association, budget priorities or by means of decisions reached at the company meetings ("general meetings"). Day to day operations will be the responsibility of management.
- *Clearly defined responsibilities for the regional health authorities*. They have both a provider role and a purchaser role. As purchasers they have an overall responsibility for ensuring that specialist health services are available in the region; either through its own hospitals, or other hospitals (including abroad). As providers, they have a direct responsibility as owners of the health enterprises authorities in the region. It is, however, the health enterprise that is the actual provider.
- *Increased operational flexibility*. The individual hospital companies will be responsible for their employees and finances, with the restriction that they may not go into voluntary liquidation.
- *Financing*. The reform includes a new accounting system, but does not involve any change to the previous system of funding, where approximately half is provided through block financing and the other half by matching grants based on factors such as the number of patients treated. Future financing of specialist health services has been reviewed by a special committee that presented its report in December 2002. The report from the committee is currently subject to consultation that expires in March 2003. The government is expected to present a proposal for a new financing system, to be implemented in January 2004. Budget deficits have emerged in all regional health

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authorities, which have been offset by additional funding through the national budget. Around half of the increase was tied to higher activity than projected.

- *Employment*. The reform entails a transfer of the hospital employees from the county level to the health authorities. Approximately 100 000 employees are affected by the reform. For most the transfer does not alter their status.
- *Hospital choice*. The reform maintains the patient's right to freely choose freely which hospital she wishes. Transport costs are covered for the patient, subject to a contribution of NOK 200.

The government has indicated that it intends to introduce performance criteria to assess the five regional health authorities. As part of this process it is currently studying strategies to respond to health authorities that fail to meet these criteria. Some of the regional health authorities have already established criteria to link performance of the regional health board with re-appointment (4 year terms).

Both the regional health authorities and the hospitals have their own executive boards and managing directors. The regional health board (executive boards) are appointed by the Minister of Health in the annual enterprise meeting (general assembly). They represent both the private and public sector, but are not civil servants. The directors of the regional health authorities are appointed by the regional health boards. Their remuneration is decided at the annual enterprise meeting. The Office of the Auditor General has access to general meetings both at the regional health authority level and in the subsidiary health authorities.

Outcomes

The reduction in average waiting times is encouraging, but it is too early to assess outcomes

The latest statistics on health queues show a small, but persistent, reduction in the waiting time of approximately 2 months for the whole country. The system provides for hospital choice (an "implicit voucher") and also for treatment abroad in cases where the medical treatment cannot be provided according to the patients' legal rights. A new proposal aims at specifying a guaranteed treatment time-period based on medical criteria. Despite extensive queues, however, utilisation of patient choice has not been significant, nor have hospitals used the opportunity to send patients for treatment abroad to its full capacity. This may be a reflection of the fact that health is a difficult market (for example there are large information asymmetries between doctor and patient). The reform provides for improved co-ordination at the regional level and for increased information efforts to provide patients with information on available services. Efforts along these lines are continuing.

A number of the regional health authorities have experienced management turnover over the first year (3 out 5 Board Directors have resigned, and a number of directors have resigned). The most recent CEO to quit was the head of the Northern Health Authority, citing management difficulties *vis à vis* the heads of the hospitals owned by the enterprise. She called for a reassessment and clarification of the division of responsibilities at the regional level, and pointed to the need for clarification of the future financing system.

Conclusion

The reform is a significant step forward in the promotion of improved patient choice and patient rights, as well as greater efficiency. But, unlike the reforms in many other OECD countries, it does not go very far in promoting market mechanisms, though it does set up a company structure which should improve efficiency and flexibility. Though it provides for decentralised management and delegation of financial responsibility, the Minister of Health can in theory instruct the regional health authorities and overturn Board decisions in all cases. The reform appears to represent a break with the stated goals of greater subsidiarity (decentralisation and delegation) under the modernisation programme for the public sector. The government has explained that the reform represents a decentralisation of the management process alongside a centralisation of control, in its own words "centralisation of policy and decentralisation of delivery responsibility". A key challenge will be to find the right balance between local autonomy and central government control.

The reform does not sufficiently separate the state's roles as purchaser and provider. The regional health authorities are specifically tasked to maintain both roles. This can lead to the pursuit of one to the detriment of the other. For example tensions may arise in relation to whether the regional health authority should focus its main efforts on providing the service or on purchasing it.

A potential efficiency problem with the reform is tied to the fact that hospitals and primary health care are financed by two different government layers. The supply of preventive and outpatient care may remain lower than it should be, and continue to strain hospital resources.

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D. LABOUR MARKET INSTITUTIONS

Introduction

Norway has, in contrast with most other European countries, not suffered extensive unemployment the past decade. The unemployment rate remains relatively low at around 4%, although there has been a marked increase in recent months. Registered unemployment currently stands at approximately 93 000 – the highest level since 1997 – and is projected to increase to around 110 000 in 2004.

Labour market policy is a state responsibility in Norway. Funding is provided through the national budget. The Public Employment Services (PES, Aetat) receive yearly allocations from the Ministry of Labour and Government Administration. The Minister of Labour and Government Administration sets the targets for PES activity annually. The volume of Active Labour Market Programmes (ALMP), which covers wage subsidies, work practice, and training for ordinary unemployed, is one such target. In 2001 the PES was staffed by approximately 3 500 employees (measured in man years), and administered approximately NOK 18.6 billion), spread between administration (NOK 1.7 billion), unemployment benefits (6.6 billion NOK, ALMP for ordinary unemployed (NOK 3.8 billion), and measures for vocational rehabilitation (NOK 6.4 billion). PES funding was increased to allow for extra staffing in the 2003 budget; and an extraordinary increase has recently been approved by Parliament to deal with the increased work-load resulting from the increasing number of unemployed. Parliament also adopted an extraordinary increase in ALMP of NOK 276 billion.

The PES' main task is to place and qualify the unemployed. The agency is both a provider and a purchaser of services in addition to administering unemployment benefit payments. In recent years the PES has been substantially reorganised – a big reduction in staff, and the introduction of new IT tools to improve efficiency. Morale is reportedly low, as indicated by an almost record level of sick leave among employees, allegedly related to the reorganisation, the introduction of some new benefit rules and of elaborate IT systems, and increased numbers of claimants. The negative publicity for the PES – particularly in 2000 in connection with the discovery of exaggerated data (24-30%) on the number of job placements reported by the organisation – has very likely also contributed. A major government review of the PES and of labour market policies is underway.

Commercialisation of services

The market for labour market institutions was deregulated in July 2000. The monopoly on placement services was abolished, and the ban on hiring out labour in areas other than the office sector was also abolished. More than 400 firms were offering placement service or hiring out labour in 2002. Market entry is regulated. Charging unemployed for placement services is prohibited. Private providers (excepting share companies, municipalities and labour unions) must also hold a bank guarantee.

In parallel with deregulation, efforts have been made to improve PES efficiency through, *inter alia*, commercialisation:

- The PES no longer runs labour market training centres. Instead it purchases courses by tender invitations. Both secondary schools and private training providers can participate. The PES defines the type of labour market training, sets the syllabus, and chooses the participants. The course modules are short.
- Job seeking courses are increasingly run by private actors selected through tender processes. The PES is not allowed to participate in such tenders.
- The PES has reduced its share of activity in the ALMP area (16% of the unemployed participated on average in 2001), and has shifted a larger share of its activities to the vocationally disabled. This is to some extent a reflection of the composition of the registered unemployed. In 2001 the average monthly numbers of vocationally disabled was slightly larger than the number of normally unemployed.
- It has started an experimental programme in a few counties where the unemployed are allowed to choose between different private providers in searching for employment. The private providers are pre-selected by the PES after tender, yet are given broad leeway in designing the search for employment. The target group for this programme is the vocationally disabled and the long-term unemployed.
- Funding related to results/outcomes has been introduced on an experimental basis in some areas to improve PES efficiency. Allocation of funding is, for example, based on the extra number of disabled being considered for employment and on the number of placements by private agencies of unemployed from the public sector.
- Performance measurements have been introduced, but are not directly linked to budget allocations. For 2002, the PES had fourteen input and output targets, which may blur the setting of priorities. In addition, pursuing too many targets makes it difficult to establish a link between actual performance and budget appropriations. There is also a danger that performance measurements – if not carefully defined and monitored – may create incentives to retain, for example, people on disability pensions enrolled in labour market programmes rather than facilitating their return to the labour market.
- The possible future use of vouchers is currently being assessed by the Ministry of Labour and Government Administration. It is still unclear which, if any, areas of activity are suitable for such vouchers and what arrangements should govern their possible use.

With liberalisation the PES entered the commercial market for short-term workplacement hiring out labour on an interim basis, with the creation of a subsidiary (Aetat Bedrift). Parliament supported this move, provided the commercial activities were separated from the state funded activity, and provided that the activity did not contravene EEA-competition law. The unit was closed down in December 2001 as it proved difficult to establish a framework for operations where the activities were not cross-subsidised by PES' government funded activities. The PES has, however, continued its short-term workplacement activity but without charging for the service. However this practice may distort competition in the short-term placement market. The Norwegian Competition Authority has found that this activity, while not directly substitutable, nevertheless reduces the total market for private short term placement.

The Norwegian Competition Authority has evaluated the market for hiring out labour and found that it is characterised by high market concentration (two companies,

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Manpower and Adecco, have a market share of 50 and 25%, respectively). Yet competition is seen as satisfactory given the profitability, the large number of agencies, and the availability of substitutes.

Challenges

The public employment services face a number of challenges that are currently subject to a government review, and which are covered in a White Paper to Parliament presented in December 2002 (SATS). Parliamentary debate was due to take place in June 2003, but discussion has been postponed. A parliamentary committee has asked for renewed consideration of the establishment of one agency for social assistance, social insurance and labour market services. The government has indicated that it intends to present a White Paper on all labour market policies later this year.

The lack of co-ordination across government layers has been pointed out as one important challenge. "Some municipalities have complained about their lack of control over the public employment service (PES) strategy to reduce the number of unemployed and to respond to new demands for active labour market programmes. Their main concern is that, because the PES fails to internalise the cost of social benefits paid by municipalities, it could under-invest in active labour market policies" (OECD 2000). In 2000 one-third of social assistance recipients were also registered as unemployed or vocationally disabled at the PES. Several municipalities have started their own placement schemes in order to assist difficult social assistance clients who are not served by the PES.

A second and related challenge is the composition of the unemployed. Norway has in the last decade witnessed a growth of people on disability pensions. The disability pension scheme is large. About one quarter of 55 to 59 year olds and about one third of 60 to 66 year olds are recipients. Total spending is equivalent to about 2½% of GDP, among the highest in the OECD. Only about 1% of those with disability pensions in Norway leave the rolls each year, a figure relatively low by international standards. The political focus has turned toward how to keep people with weak productivity at work through, *inter alia*, individual programmes, and increased co-operation with the social insurance authorities and social assistance programmes at the municipal level.

The three entities have not been well co-ordinated in their support schemes to date, with resulting conflicts in goals and strategies. A unanimous Parliament requested in 2001 that the government consider establishing one agency for social assistance, social insurance and labour market services. The recent White Paper addresses three options for reorganisation:

- Merging the agencies at the state level, but leaving municipalities the same responsibilities as today.
- Changing or redistributing the responsibilities at state level without altering county responsibilities.
- Giving the state responsibility for securing income and municipalities responsibility for the production of services.

The White Paper concludes along the lines of the second model. The government proposes to establish a new "work agency" and a new "pension agency" to replace PES and the Social Insurance Authority. The responsibilities of the municipalities will remain unchanged. It also proposes to establish a joint first contact service point in co-operation with the municipalities' social services. The goal of the proposed reorganisation is to

increase the number of people employed and reduce the number of recipients of social insurance or social assistance. Efforts to co-ordinate services between the PES and social assistance at the state and municipal level have, nevertheless, already started. The goal is to improve satisfaction at the user level, and prevent users/clients, particularly those with complex needs (for example disabilities or social problems in addition to unemployment), from falling between the cracks of the various agencies.

If approved and implemented, the reorganisation will entail one of the most extensive reforms of the Norwegian public sector in recent history.

These proposed changes are in the wider context of the goal of modernising the public sector. In a statement to Parliament in January 2002, the Minister of Labour and Government Administration laid out the principles governing the reform programme. These included the importance of distinguishing more clearly between administration and service provision, and between responsibility for financing public services and the actual production of these services, allowing the possibility of exposing service production to competition and also enabling the agency financing a service to impose requirements on the provider.

Conclusions and recommendations

Reflecting trends in other OECD countries, liberalisation of labour market services has led to increased user choice. The separation of the provider and purchaser role for labour market training for regularly unemployed within PES has led to improved flexibility of services, and the use of tenders has increased cost-effectiveness. The availability of training provided by widely accredited institutions is also likely to have improved job prospects for the unemployed.

The PES as such, and the greater part of PES activities, have not been commercialised. It is difficult, within the framework of this report, to assess which services are contestable and suitable for outcome-based financing. There does, however, appear *primae facie* to be room for a greater separation of the purchaser and provider roles in other areas than labour market training. Efforts underway to identify such services could usefully be pursued. Consideration could also be given to applying the "money follows the user" principle as recommended in the 2002 *OECD Economic Survey of Norway*. Increased use of performance measurements and outcome-based financing is likely to lead to improved efficiency. Analysis of experience in other countries suggests that key issues are: adequate systems for measuring placement outcomes, the right system for assessing the relative performance of different providers and paying (or selecting) providers according to performance; and indirectly allowing commercial providers influence over whether job seekers meet conditions for benefit entitlements. The efficiency gains from commercialisation depend on finding the right solutions to these and other detailed issues of implementation.

Active labour market policies have contributed to maintaining Norway's low levels of unemployment. Norway's PES emerges well in international performance comparisons. But the social insurance schemes and social assistance service are under increasing strain from people in their "labour productive years". The increased co-operation underway with the Social Insurance Authorities and the social assistance schemes administered by the municipalities to improve user friendliness could also help to improve incentives to work and increase cost effectiveness.

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PART II

Chapter 6

Modernising Regulators and Supervisory Agencies*

* The background report used to prepare this chapter is available at: *www.oecd.org/regreform/backgroundreports*. Given time constraints, this report was reviewed by the Norwegian authorities but was not peer reviewed by an OECD official body.

Introduction

A striking trend of recent years in the public governance of OECD countries has been the establishment of independent agencies. These new bodies play an increasingly significant role. They have been set up, broadly, to improve the efficiency and effectiveness of specialised government activities. They can take a number of forms, and carry out different functions which range from management, to supervision or regulation, when they are generally known as "independent regulators" or more broadly, supervisory agencies. A key characteristic is often an arm's length relationship with the executive. They have been increasingly deployed as part of policies to develop competition in previously monopolistic sectors, such as the network industries, and are often an essential component of regulatory reform.

Independent regulators offer a number of benefits: from preventing political interference and the influence of special interests in markets, to improving regulatory transparency, stability and expertise. But there are risks too. They may slow structural change, for example the convergence of sectors, and policy (notably competition policy) may become fragmented. They are not immune from capture and accountability is an issue. To avoid these risks, they need to be carefully designed and set up.

This chapter, as well as taking a broad international perspective of independent regulatory agencies, focuses on a selection Norway's supervisory agencies called "*tilsyn*". *Tilsyn* include agencies with management as well as regulatory functions, and other types of agency such as inspection commissions, as well as economic regulators. They each have specific characteristics and functions. They have been set up *ad hoc,* so there is no single blueprint. Some of the first were set up early in the last century, others are very recent. A large number of functions have been delegated to the 39 *tilsyn* that have been set up so far, and they play a very important role in the Norwegian governance structure. The selection for this report covers 11 *tilsyn* which fall into three broad categories: risk monitoring, protection of civil liberties, and economic regulation.

No definitive methodology yet exists in the OECD for analysing independent regulatory agencies. The approach in this report draws on Norway's own approach in its recent review of the *tilsyn*. Two key structural axes are considered. The first (vertical) axis is independence and accountability, defined broadly by the relationship between the ministry and the *tilsyn*. How can these two be effectively balanced? The second (horizontal) axis covers function, sectoral coverage and co-ordination between *tilsyn*, powers, and performance evaluation.

Recent developments and reform proposals

Tilsyn are rooted in Norway's distinctive decentralised public administration

Norway has a distinctive model of public administration. It is highly decentralised, reflecting the trust-based approach to decision making (see Chapter 2). The approach for many years has been to focus ministries on policy making, and to devolve technical and administrative tasks to agencies. A strong and active Parliament creates agencies and

makes ministers accountable for their results. The courts play a minor role compared with other countries. But this approach has also evolved under the influence of major internal and external developments, notably the government's market reforms of the late 1980s and early 1990s. The need to adopt EU legislation through membership of the EEA Agreement has provided a further boost for change, as many EU directives (such as the directive on privacy) encourage reform. Accordingly, new types of agency have been set up, and others have been remodelled.

There is a growing need for more independence

Market opening has generated pressure for greater independence. Traditionally, Norway's governance has been based on a high degree of mutual trust shared between the public, companies and other organisations in the market, and public institutions.

But the move toward more open markets and away from the monopolistic supply of services generates conflicts of interest which did not exist before, making a trust-based system of governance harder to manage. Conflicts of interest arise between the state as regulator of a market and as owner of key market players (Norway has not favoured large-scale privatisation – see Chapter 5), to which independent regulation is the answer. The transformation of many services previously provided by government into state enterprises and state-owned companies, together with the market entry of new companies (including foreign) has underlined the importance of reform. New entrants are naturally suspicious of a ministerial authority that is simultaneously responsible for defending its ownership interests in the historic operator and for promoting competition.

Evolution toward greater independence is therefore necessary to meet this challenge. It is, however, still "work-in-progress". Some agencies (such as the financial regulator) have established a strong reputation for independence. But generally, independence is undermined by the current appeal mechanisms for decisions, the possibility of giving instructions and also to a lesser extent by other design issues such as agency financing.

Major reforms to strengthen the tilsyn are underway

The government acknowledges the need for reform. Its 2002 programme "*Modernising the Public Sector in Norway*" (see Box 6) underlines the need for less complexity, more consistency, and improved confidence in the public sector with a sound division between its various roles. The implementation of this programme, overseen by a cabinet committee, generated a fundamental review of the *tilsyn*, and a White Paper released in January 2003 called for their increased independence, a redefinition of some boundaries, and better horizontal co-ordination, as well as location changes (Box 24). A core common basis for all *tilsyn* is envisaged. It is worth noting that this reform has not been prompted by any major crisis, unlike many reforms in OECD countries.

Independence and accountability

Today's tilsyn have a limited independence, though with important variations between them

The proposals for change currently under discussion envisage a move toward greater general independence for the *tilsyn*. The 1967 Administrative Procedure Act determining the legal relations between authorities governed by public law is the current reference point, laying down the principle of subordination of administrative bodies to ministers. That said, important differences exist between the *tilsyn*, reflecting the historical *ad hoc*

Box 24. The 2003 White Paper for improving the quality of the institutional framework of the *tilsyn*

The 2003 White Paper was prepared as a report to the Parliament (Storting), in order to present the pathway to modernising the institutional framework for the *tilsyn* in Norway and will be followed by proposals of law amendments to be submitted for Parliament's approval. The White Paper has been prepared under the auspices of the Ministry of Labour and Government Administration after consulting with the relevant ministries. The objectives of the White Paper are to:

Increase the independence of the tilsyn in relation to supervising ministries

In particular, the White Paper proposes:

- To distinguish between the political role of Ministers, in terms of weighing social considerations and priorities, and express these into general norms approved by law. The tilsyn should be more focused on the implementation function, with clear and unambiguous technical objectives, leaving the major trade-offs to the ministers. Their role is to enforce their resolutions and professionally guide or instruct the objects under supervision, in order to act more efficiently.
- That the possibilities of ministries of instructing supervisory agencies be cut off and that the decisions of supervisory agencies only be referred to special appeal bodies that will be set up. In cases or areas where specific important and/or fundamental considerations commend, the law would allow the whole government (King in Council) to alter the decision of the supervisory agencies and the special appeal body.

This will apply to the working life of the new supervisory authority, the new petroleum agency, the subordinate agencies to the ministry of transport and Communication (Railway Inspectorate, Civil Aviation Authority), the Ministry of Trade and Industry (Norwegian Maritime Directorate) and the Competition Authority currently under the Ministry of Labour and Government Administration.

Improve the clarity of the horizontal design of the tilsyn

The White paper proposes to:

- Establish a new Petroleum Agency to perform and co-ordinate safety and Working Environment Supervisory activities in the petroleum off shore industry and a few land-based sites in the same industry. This agency will include the area of safety and work environment from the Norwegian Petroleum Directorate and resources from the Directorate for Civil Protection and Emergency Planning and the Norwegian Labour Inspection Authority.
- Replace the electrical safety directorate and the Directorate for Civil Defence and Emergency Planning by the Directorate for Emergency Planning and Public Safety, in charge of organising industrial safety and security, and under the Ministry of Justice instead of the Ministry of Labour and Government Administration.
- Establish a "Norwegian Working Life Supervisory Authority", which will be given the co-ordinating role for all supervisory agencies concerned with activities related to business, trade and industry, and will no longer have a board involving social partners.
- Draw a borderline between the tasks of the competition authority and the tasks of sectoral agencies, such as the NBISC, the Norwegian Post and Telecommunication Authority, and the Norwegian Water Resources and Energy Directorate. The competition-oriented role of sectoral regulators will be to assist the competition authority in its function with sector-specific considerations. Sectoral specific regulation for finance, post and telecommunications will also be downsized.

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approach to setting them up. Some *tilsyn* have complete decision-making independence *vis-à-vis* their ministry (notably the Data Inspectorate). Others are in effect an administrative agency connected with the ministry, which can overrule them, though with a relative autonomy to carry out their mission (for example the Directorate of Public Roads). Most *tilsyn* are relatively autonomous in their day-to-day functioning, whilst remaining under the hierarchical authority of a minister. Governance also varies from a board to a single director-general (the latter is more prevalent). Terms of office vary: indefinite for a very few (including the competition authority), but generally for a fixed duration. Funding can be from the general government budget or by contributions from the sector which is covered. The "regulator" *tilsyn* have been delegated important rulemaking powers. An important issue is the system of appeal. The 1967 Administrative Procedure Act provides for the possibility of ministerial appeals. Appeal boards for *tilsyn*'s decisions also exist in some cases, not in others.

Although the Norwegian system appears to be relatively dependent on political power, day-to-day regulatory decisions are not generally contested and though the legal possibility of appeal is important, and has played a key role in some publicised cases, it may not be so important in practice. Conversely, regulators may choose on some occasions not to exercise their powers of independence, for example when a decision is political as well as technical, as in the case of the location in the early 90s of a new airport in Oslo by the then regulator.

The move toward greater independence is a challenging issue shared with other OECD countries

The debate on independence, and its practical implementation, still has some way to go across the OECD, not just in Norway. It is a relatively new and challenging, but necessary, requirement in the governance of modern economies and societies. Although independent regulation still involves the exercise, by government, of its sovereign power, this power is no longer influenced by its own direct economic interests, but by the need to secure effective and efficient markets. Current approaches vary. It is noteworthy that in many countries the competition authorities appear to have a stronger independence than in Norway (see Chapter 3). In particular, the appeal system is often handled through courts rather than elected officials.

A key part of the challenge in the move toward independent regulation is a shift from *a priori* trust in government to *a posteriori* trust in independent regulators, who must therefore account for their actions. This is why independence must be accompanied by accountability requirements. The shift has to be adapted to each country's political culture, depending for example on whether the powers of the state have historically been systematically separated, or not. Norway's political culture is built on relatively direct communication between citizens and the government (helped by its population of just 4.5 million), so it has stronger basis than some other countries for developing the new relationships.

Building a stronger framework for independence and accountability: three key tools

The design of a regulatory system must formally guarantee independence and accountability. It is not enough to rely on good practice and goodwill. It is also important to note that certain decisions and issues require complete independence, for example the verification of compliance with safety requirements. Others require a more nuanced approach, as in regulatory decisions affecting the financial sector, where finance ministries also have an important role. Box 25 sets out three key tools for independent and accountable institutions.

Box 25. **The tools for independent and accountable institutions**

There are three ways of ensuring the independence of regulators while ensuring accountability:

- Building appropriate governance structures;
- Designing a proper system of appeal, including which authority will hear appeals. This is a vertical relationship;
- Instituting a dialogue between regulators and Parliament and citizens in order to build institutional trust.

In addition, the relative specialisation of the regulator by sector is another dimension which needs to be considered. Regulators specialised in one single sector may develop a more narrow perspective and are more prone to regulatory capture than regulators overseeing multiple sectors, which are necessarily farther away from the regulatees. This aspect will however be discussed later as part of the horizontal design.

Governance structures are important. The first countries to set up independent regulators, such as the US, created boards or commissions, under which collegial decisions are made. This approach has been widely adopted, even in the UK which started with single regulatory heads. A collegial board is thought to be more conducive of independence than a single director nominated by the government (especially when it is a limited duration appointment). The head of a collegial board is unlikely to be able to take a decision alone and against the majority view of the board. A board encourages internal discussion before a decision is taken, which increases legitimacy and reinforces independence. The complexity of many regulatory issues also argues for the active involvement of several people, and varied expertise, in making decisions.

The governance of the *tilsyn* relies largely on a single head, and rarely on a board. Some of the terms of office are indefinite, which is unusual (these include the competition authority, the posts and telecommunications authority, the railway inspectorate and the civil aviation authority).

The *appeal system* (in its broadest definition which goes beyond the judicial) needs careful design. Laws based on due process give a right of appeal to any person who contests an administrative decision (as part of human rights). Appeal procedures are therefore a legal obligation, a democratic requirement, and a means of ensuring regulatory effectiveness.

Currently in Norway most regulatory decisions are subject to reversal by the minister supervising the *tilsyn* on appeal. This differs from judicial appeals: the minister does not just consider a decision from a judicial perspective, but can alter the decision. In essence, since the minister ranks above the regulator in the hierarchy as defined by the 1967 Act, he/she may exercise the regulator's authority.

The key is to achieve a balance between maintaining the authority of elected officials whilst limiting the scope for direct ministerial appeal. The former is important. Elected officials must defend the ultimate public interest which goes beyond the interests upheld by the regulator, and may also need to decide between conflicting interests. Choosing between conflicting but legitimate interests is a policy not a regulatory decision. For example, a conflict between safety needs and corporate interests in the petroleum industry, which is a huge source of revenue for the economy, must be resolved (as it has

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been) at the political level (and in this case by the whole cabinet). The authority of elected officials may also be needed "in reserve" for cases where interests not covered by the regulator need to be defended. An example would be the closure of a hospital for safety reasons which could lead to a shortfall in emergency care. Finally, ministers not regulators are responsible to Parliament for policy under the Norwegian system (as in many other OECD countries) and it is inconceivable that regulators could exercise an authority for which ministers have political responsibility without ministerial oversight – especially as in Norway many regulators have indefinite terms.

The best way forward is to confirm that regulators have the authority to make individual decisions, within a policy framework which has been set by ministers. The power to make the initial high level rules, within which regulators exercise their delegated and more detailed powers, should rest with ministers. The latter also need to remain responsible for arbitrating high level conflicts of interest which go beyond the remit of the regulator.

The approach argues in favour of abolishing appeals of regulatory decisions to the minister, as proposed in the White Paper (Box 24), except on an occasional basis, in cases where higher level interests are involved. Ministers would also need to desist from instructing regulators. However, dialogue between ministers and regulators would continue to be important, arguably even more so than before. Such an approach is consistent with the Norwegian traditions of consultation.

Special appeal bodies are a good way of preserving the right of appeal, away from the political arena, and without overburdening the general judicial system. Recent reforms have made use of this approach in Norway: an independent administrative authority has replaced the ministry's authority in the case of the *DataTilsynet* (Data Inspectorate). This has been set up as an exception to the 1967 Act provision for overarching ministerial authority, and can call on experts. Norway's legal culture is Germanic: the system tends to judge from a procedural and legal perspective, and is unlikely to substitute its decision for the original decision. Appeals to such a system are likely to have a restrictive scope. Hence the interest in setting up specialised courts which can take a broader view, for example weighing up economic arguments which go beyond the legal scope of the case. Norwegian society is less inclined than some others to go to court, except for tax matters, so this too needs to be taken account in the future evolution of the appeals system. The scope for extra-territorial appeals is another factor. Norway's membership of the EEA and the WTO offers opportunities (see Chapter 4) to take cases to international courts, which is used with increasing frequency.

The third way of securing independence and accountability is through *institutional and democratic dialogue* (see Chapter 2). Norway starts with the advantage of a long tradition of transparent dialogue and mutual trust between the government, the public and interest groups, facilitated by a relatively small population, and legal requirements imposed on supervisory agencies by the 1967 Act. Dialogue needs to be nurtured in two key ways: through Parliament, the branch of government where democracy expresses itself most fully, and through direct dialogue with citizens. Most *tilsyn* present annual reports to Parliament. But improvements could be implemented. A further step could be to organise public hearings via specialised Parliamentary committees able to handle the subject matter. Also, the annual reports could be on one hand, more precise and on the other, complete (without indulging in length). As well as describing the agency's activities, they

could suggest changes to the legislative and regulatory framework (the *tilsyn* not having any rule-making authority), and include some reference material (such as the regulator's operating principles). As regards citizens' dialogue, this is already well covered.

The *tilsyn* are obliged by the 1967 Act to notify all concerned parties before an administrative decision is made and to give the parties the opportunity to express their opinion within a stipulated time limit. These hearings generally involve non-governmental organisations, business and concerned citizens, and possibly other government agencies and ministries. Non-governmental organisations usually have some public funding, and regular meetings are held with regulators. Close contact with business and non-governmental organisations will be an important counterweight to greater *tilsyn* independence, though an appropriate balance needs to be struck between public consultations and the need for confidential dialogue in some cases.

The importance of appropriate financial and human resources for effective regulation

Appropriate financial and human resources are essential for effective regulation. Complaints on the lack of financial resources of regulators are fewer in Norway than in other OECD countries. A number of the *tilsyn* are financed mainly from public funds while others have all or a main part of their income from fees, levied with ministerial approval, on the regulated industry. But the *tilsyn* are not, as yet, able to self-generate and self-manage their resources (in contrast to some agencies elsewhere, such as the French Financial Services Authority).

The right kind of staff is equally important for regulators. Regulators tend to operate in highly technical sectors. Staff is needed with the appropriate expertise to match the technical competence of the regulated parties, to operate effectively and to impose their authority. For example the high esteem in which the financial regulator is held is promoted by a staff with high technical expertise. The tight Norwegian labour market does not appear to constrain the *tilsyn*'s ability to recruit the staff they need when they are based in Oslo: competing opportunities are relatively few. Striking a balance between independence and competence is difficult but important. Regulators need to understand their stakeholders (the regulated sector, and ministers), but not be too close to them. Maintaining the "proper distance" can be helped by geographical location. The 2003 White Paper makes a number of proposals for changing the current location of the *tilsyn*. The ability to recruit in other regions where competing civil service jobs may be relatively attractive needs to be taken into account, one solution being to locate a *tilsyn* near an academic centre (as is proposed for the competition authority in Bergen). The transition issues involved in a change of location need careful handling.

Policy options: accountability should be strengthened as well as independence

Steps to strengthen the independence of the *tilsyn* whilst also enhancing their accountability need to be taken forward. The 2003 White Paper proposes a transition towards greater independence in the exercise of regulators' powers. This needs to go with clear mechanisms to ensure accountability, such as the role of judicial review, mechanisms to assess the *tilsyn*'s performance systematically, and strengthening the dialogue with Parliament and citizens.

Horizontal design

Horizontal design issues – functions, sectoral coverage, and co-ordination – need to be considered as a whole

Horizontal design issues require a "whole of government" perspective. Regulatory structures develop *ad hoc* in most countries. A comprehensive review is usually helpful at some point, in order to assess the performance of the whole regulatory system, and the interrelationships between key elements (such as the relationship with the competition authority) with a view to lightening the regulatory burden, better focusing public resources and improving regulatory effectiveness. This review also needs to take account of the vertical issues covered in the previous section (for example, independence will be stronger if a regulator oversees several sectors, so keeping a greater distance from each of them). Different types of horizontal specialisation can be found across regulatory systems. Regulators can have a single or several sectors, as well as a single or several functions to fulfil in respect of the regulated sector(s). Regulators are rarely single function. For example a telecommunications regulator is likely to have the function of overseeing universal service provisions as well as an economic role.

Norway has a complicated historical legacy of multi-function and often overlapping agencies

Norway has a relatively large number of *tilsyn*. The current complex institutional structure, with overlapping competencies and multiple functions, reflects the *tilsyn*'s historical evolution. Each *tilsyn* has been set up in response to a specific need at the time, but also generally reflects the need for specialisation in government work. Some *tilsyn* have been set up to implement EU legislation. The competition authority and pollution control authority are examples of cross-sectoral agencies with one clear function. But many *tilsyn* are more complicated, especially as regards the number of different functions. For example the Water and Energy Directorate regulates the electricity market but is also responsible for preventing floods. Overlapping responsibilities are an issue: safety is covered by up to nine *tilsyn*, which complicates life for business. Some *tilsyn* are so small as to be almost unviable as separate entities (for example, the Mass Media Authority).

Co-ordination among regulators is important, to minimise the regulatory burden

Co-ordination among regulators can take three main forms: the application of a common doctrine for the application of regulations, co-ordinated timeframes for decision making, and a co-ordinated approach to compliance. Co-ordination helps to minimise the regulatory burden on regulated parties.

The application of a common doctrine is best taken forward through regular meetings and public hearings. This already happens in Norway. Dialogue is, for example, well established between the telecommunications and media regulators, and between non-governmental organisations and the relevant *tilsyn*. However dialogue sometimes falls short of ensuring that the regulatory burden is minimised. For example mainland companies have to comply with nine different authorities and four ministries in the field of safety. The interaction of the privacy and financial services regulators is another weak spot.

Co-ordination between regulators and the competition authority needs special attention

Co-ordination between the sectoral regulators and the competition authority to deal with actual or potential overlap of responsibilities, is a key issue in many OECD countries. Three questions are relevant:

- To what extent can responsibility for competition policy be delegated from the competition authority to others?
- If there is delegation, how are the competition tasks to be divided?
- When the regulator has objectives which are not related to competition (such as prudential oversight of the financial sector) how are conflicts resolved?

Overlap can arise in several ways. The competition authority's role in respect of mergers gives it a natural "across the board" role, especially as regards the economic sectoral regulators. Conflicts can arise (see Chapter 3 on proposed electricity mergers). Beyond the handling of proposed mergers, the issue of monitoring arises: should this be seen as a regulatory tool (and hence for the *tilsyn*), or a procedure for preventing anti-competitive behaviour? Overlap also exists in the handling of abuse of a dominant position. Regulators inevitably become involved alongside the competition authority, as a result of promoting competition in a market dominated by the historic operator.

The simplest solutions are also the most extreme. Either *tilsyn* are deprived of jurisdiction for all cases that fall within the remit of the competition authority, or they are given exclusive authority to regulate anti-competitive behaviour in their sectors. Thus economic regulators could be entrusted with the monitoring of mergers for their sectors, but required to take account of the competition authority's views. But issues, such as the distinction between cartels and abuse of a dominant position, and how to handle a conflict between economic and non-economic objectives (such as media diversity) are not so clear cut in the real world. Norway takes an intermediate approach, based on close co-operation which also includes the relevant ministries. A number of agreements have been set up between the competition authority and sectoral regulators, notably in water and energy, financial services, and telecommunications. The arrangements are sometimes cumbersome, as in telecommunications.

Other forms of co-ordination are also important

Co-ordination at the international level is important. Regulatory systems need to avoid isolation, so as not to be bypassed by companies as has happened in competition cases which can be brought to the EFTA court and to the EU. International regulatory networks such as the Florence Forum for Electricity Regulators have an important role to play in keeping regulators in touch and helping to develop a common doctrine. Other general networks such as co-ordination with the Ombudsman who plays an important role in Norway finding solutions and protecting interests, and co-ordination with the courts are important too. The latter can be difficult to the extent that courts are not specialised, as in Norway, and have their own timescales. Use of the courts in Norway is relatively limited, but co-ordination is well developed through the National Authority for Investigation and Prosecution of Economic and Environmental Crime (Økokrim) (see Chapter 3). More regular contacts between the *tilsyn* and the courts would help, and the latter could systematically obtain regulators' opinion on regulatory matters.

Policy options: consolidation and/or one-stop shops should be pursued

Various options to consolidate the *tilsyn* have been studied by Norway, starting with a categorisation by function. One category is those *tilsyn* with civil liberty/citizen protection responsibilities. Some of these are small and there are clear synergies. Sectoral economic regulators are another category for possible rationalisation. The time is not yet ripe for moving away (if it ever will be) from specialised regulation of some of these sectors, such as electricity. But mergers may help to address the issue of convergence between some sectors, as in financial services. Another approach to consolidation is to merge functions rather than the authorities themselves. This could be done for the authorities in charge of safety, health and the environment: safety functions for example are currently spread across a number of overlapping agencies, and could be put with just one agency, or addressed through a "one-stop shop" arrangement.

One-stop shops are a promising idea to improve vertical co-ordination, especially where an issue involves many regulations. They are a mechanism – institutionalised or not – which allows regulated parties to complete a formality through a single notification and a unified set of rules. They avoid the potentially difficult process of merging regulators themselves. The new EU rules on the relationship between national competition authorities and the EU Commission are a good example, where companies deal with a single authority even though national authorities remain. Norway has moved in this direction with a joint Internet site developed by all the supervisory agencies responsible for health, safety, the working environment and the environment in the land-based industry.

Powers for high quality regulation

A review of the tilsyn's powers in the context of other changes proposed for them would be helpful

Powers are defined as the legal rights granted to regulators: inspection, licensing, authorisation or pricing. The picture varies across OECD countries.

The economic *tilsyn* have powers to enforce economic regulations, such as granting licences. The powers of other *tilsyn* relate to issues such as safety enforcement (in transport and health for example). The powers of some *tilsyn* are defined more loosely in terms of their objectives, and may include the preparation of regulations as well as their enforcement (as for the Petroleum Directorate and the Board of Health). Most *tilsyn* powers can be organised into the three categories below.

The *rule making power* is the power to lay down general rules that will regulate future cases corresponding to the situation referred to in the rule. It is generally vested in a political accountable authority such as a ministry. The *tilsyn* currently have some powers to make subordinate rules (*i.e.* not primary legislation). If they acquired greater independence they would probably have to lose much or all of this power. A pragmatic approach should prevail: use should continue to be made of the *tilsyn*'s sectoral expertise in rule making, wherever possible. Otherwise – a second best solution in terms of clarity – their individual decisions on sanctions or licences could, in effect, "make" the law by setting legal precedents.

Regulators do not often have the *power to settle disputes,* because regulation is usually established separately from existing civil rights, which are assumed to take care of this. This is questionable in Norway, where use of the courts is limited. Some special complaint bodies have been established (for example in banking and insurance). Increasing the *tilsyn*'s power to settle disputes would avoid the need to set up such *ad hoc* bodies and

would be more efficient as they are best placed to find an agreement between parties. The more effective resolution of conflicts would encourage trust in the regulatory system.

The *power to impose sanctions,* necessary in an environment which does not rely much on the courts, is widely enjoyed by the *tilsyn*. Impartiality could be a problem if *tilsyn* continue to have some rule making power.

Maximising the quality of regulatory power is important: regulators as well as the rules should be assessed

Regulatory quality is not just for general rule making. It is equally important to apply regulatory quality principles to regulators themselves. The requirements set out in the 1995 *Recommendations of the Council of the OECD on Improving the Quality of Government Regulation* can be applied to the regulator, as part of an *ex post* evaluation, and to individual regulations, as part of an *ex ante* assessment, including through Regulatory Impact Assessment (RIA). Key questions are:

- Do the benefits of regulation justify the costs?
- Is the distribution of effects across society transparent?
- Is the regulation clear, consistent, comprehensible and accessible?
- Have all interested parties had the opportunity to present their views?
- How will compliance be achieved?

Access to information is a key ingredient to informed decision making which assesses benefits and costs, as well as the distribution of effects. The power to carry out inquiries and investigations is essential. The competition authority and the financial services authority (BISC) enjoy wide investigative powers which is less true for other *tilsyn*.

Transparency allows stakeholders to understand the *tilsyn*'s decision making process. It can help to strengthen their independence, as institutions can become prisoners of their own routines. It also promotes trust, as informed stakeholders are less likely to challenge decisions. It goes beyond the publication principle (where only final decisions are made available). Norway's regulators have taken steps to meet this principle, in particular by indicating the points brought to their attention in informal meetings with ministries, businesses and non-governmental organisations.

Clarity of decision making is a core regulatory quality requirement, especially for technical issues. Transparency may not be enough to achieve this: the decisions of economic regulators may not in themselves be easy to understand. Explaining decisions is crucial to ensuring public support for regulatory actions, for example through public hearings, reports and well designed Web sites. Norway does comparatively well in the OECD.

Consistency and predictability are another key component of regulatory quality. This helps to meet the needs of regulated parties, for which regulations have been designed in the first place. Securing this depends on the system of law. In a civil law system (as in Norway), regulators should seek to comply as closely as possible with the general rules laid down in laws and regulation (though this approach is not so well suited to situations of rapid technological change). Long established *tilsyn* seem to do well on this point.

Due process and consultation with stakeholders are necessary to generate confidence and trust, especially for new entrants, and if informal processes with established operators have taken root. Respecting the procedural rights of participants is also crucial to building trust. Norway's traditions of dialogue are very helpful here.

Last but not least, there is *enforcement and compliance* with regulations. In Norway this is often promoted through the *tilsyn*'s approvals and decision making process with which operators must comply. Another approach used is inspections. Overlapping – but legitimate in terms of the regulatory need – demands for licensing and other issues can be a burdensome problem for operators. Also, *tilsyn* could be helped in promoting compliance through better direct access to the courts (for example the ability to bring proceedings to court themselves, and to lodge appeals against judicial decisions). For this a regulator needs a legal personality (which exists for some regulators in other countries but not in Norway). Norway should keep this possibility in mind.

Policy options: the tilsyn's powers should be reviewed and clarified

The *tilsyn*'s powers should be reviewed and clarified. For example, if they cannot exercise a direct rule making power, they might be able to propose a rule which would become effective upon endorsement by the political oversight body. Regulatory quality appears generally satisfactory, but Norway might consider a further push to reach best international standards, and develop a set of best practices. Some other countries have started this process (Box 26).

Box 26. **Best practice for utility regulation and economic regulators in the UK and Australia**

After reviewing the economic regulators in the UK, the Better Regulation Task Force, formulated 5 recommendations:

1. Regulators' annual business plans should include a clear prioritisation of their different objectives, and should explain how the decisions relate to the objectives.
2. Regulators are required to produce assessments of costs and benefits for proposals with a significant business impact.
3. The boards of regulators should include both executive and non executive members, and be appointed for expertise rather than represent stakeholder groups.
4. Regulators need to promote consultation
5. Regulators should set a programme to review market sectors for lifting price controls and removing outdated licence condition.

In Australia, the Office of Water Management has identified 9 principles of best practice regulation: Communication, Consultation, Consistency, Predictability, Flexibility, Independence, Effectiveness and efficiency, Accountability, Transparency. This needs to be accompanied by a whole government approach, with a small number of regulatory bodies and consistency in their approaches. A Governance Task Force was established on 14 November 2002, to review the corporate governance of Commonwealth statutory authorities and office holders, in order to develop a broad template of governance principles.

Assessing the performance of independent regulators

Performance assessment is necessary for the accountability of independent regulators but is a complex task

Performance assessment helps the whole regulatory system, enabling adjustments to be made in the light of the results, and also promoting the harmonisation of rules through

the use of common evaluation instruments. It also, crucially, underpins accountability for spending and results where regulators are independent. Have regulators' actions been efficient and generated the expected results? But it is a complex task, and ideally rests on both *ex ante* and *ex post* evaluation. The former uses RIA to assess new rules. The latter revisits the regulator's objectives to see how far they have been met. As *ex ante* RIA is not always possible, *ex post* evaluation is the primary tool.

Three pillars of performance assessment can be defined as:

- Financial assessment: the use of funds in conformity with the rules (usually the task of the national audit office).
- Legal review: decision making in compliance with the law.
- A broader review to assess value for money.

The broad assessment can be carried out in different ways: self-assessment, assessment by the supervising ministry, assessment by the national audit office, or an independent assessment by academics. No effective assessment is possible without clear objectives for regulators. These are usually set out in the regulator's mission by law, but multiple and sometimes conflicting goals are sometimes assigned (for example social and efficiency goals). Multiple goals are a particular challenge, and single goals are preferable. Where more than one objective cannot be avoided, they could be hierarchised by law (*i.e.* weighted) to ease evaluation, as well as make the regulator's daily task easier and more efficient. Assessment of external goals can be complemented by assessment of internal processes (for example the speed of decision making). Shortcomings in internal processes justify reform. But shortcomings in meeting external goals may not just be the fault of the regulator (for example unrealistic goals may have been set). A careful approach, which respects due process, is therefore needed for performance assessment.

Norway's current practice gives an important role to the Office of the Auditor General

In Norway, the Office of the Auditor General (OAG) is responsible for assessing the performance of the public sector in broad terms. This goes back a long way to the early 1970s. OAG staffing reflects the need to cover this work, which follows a careful plan from project initiation, a feasibility study, the main analysis, and post audit work to a follow-up plan, and a report to Parliament at the end. Nearly all the agencies considered in this report, or their predecessors, have been assessed since 1996 (Box 27). Interestingly, these evaluations confirm the problem of conflicting objectives in the field of safety.

Responsible ministries also carry out assessments. The Ministry of Labour and Government Administration has studied "institutional governance" as a whole. Independent academic assessments have also been carried out, mostly for the sectors with a significant economic impact, and especially the electricity sector, and airlines.

Policy options: more consistent and systematic performance information would help

Norway does well in terms of transparency and access to information, but the production of quantitative information on a comparable basis over time and making use of international information standards could be reinforced, and regularly disseminated. This would facilitate benchmarking, which is increasingly important on a Europe wide basis. Internal process parameters such as decision-making time could also be consistently recorded across agencies. Information may also be needed on an *ad hoc* basis where shortcomings may exist, through reports publicly commissioned by minister or Parliament.

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Box 27. **Recent assessments by the Office of the Auditor General in relation to the *tilsyn* (1996-2001)**

The labour inspection authority

According to a performance audit conducted in 1999-2000, the inspectorate used fewer resources on inspections than it had planned. In spite of a number of years of work on methods and tools, no common guidelines as to how this could be implemented were drawn up. Some of the guidelines elaborated in certain areas were not followed by local offices. Flaws in the procedures for public procurement were also detected in 2001.

In addition, co-ordination issues were detected in the field of health and safety. A 2002 report released by the OAG underlined that there was substantial uncertainty linked to the emission figures of the environmental authorities for chemicals considered a risk to health and the environment. The labour inspection authority did not know which hazardous chemicals were being used in the workplace, and the agricultural inspection service rarely controlled the use of chemicals.

The civil aviation administration

The civil aviation administration' financial management was criticised for deficient budget management, poor control of costs, and under-rating of computing challenges (1999-2000). (This agency was the old supervisory body for government-owned airports and air traffic control, reorganised as Avinor. This assessment refers to this body and not to the civil aviation authority established in 2000). The development of the new airport at Gardermoen in 1990 and the new express railway line were also surveyed, and are given as a case example in the framework of performance assessment issued by the OAG. The audit verified whether the civil aviation administration and the railway state had incorporated the requirement for cost-benefit analysis in their internal guidelines as a criterion for audit assessment. These existing "second order" criteria were then used to assess whether they had actually complied with it.

The directorate of public roads

The public road administration was criticised for unsatisfactory quality assurance in planning in the development of a mainland link to Mageroya and Nordkap. In terms of performance auditing, the management of selected toll road projects were not met with sufficient management resources to ensure responsibility for follow-up (1999).

The board of health

The audit revealed shortcomings in the procedures for handling complaints and raised issues as to whether several of the working methods had been given adequate priority, and whether the legal protection of those involved had been sufficiently safeguarded.

The grid function in the electricity market

The regulatory model was assessed as an appropriate tool for increasing the efficiency of grid functions and for lowering and streamlining prices for subscribers. However, AOG indicated that the data was insufficient to draw firm conclusions.

The pollution control authority

The OAG performed a detailed technical performance auditing of the follow-up with Norwegian national regulation of the OSPAR convention within industry, waste water management and agriculture, where the pollution control authority is one of the major stakeholders. In this performance audit, the OAG reviewed practices and formulated some advice for incremental changes to improve the performance, while not revealing major shortcomings.

Conclusion

The extensive *tilsyn* system has developed without any major crises, and generally copes well with technical tasks. It is also evolving fast, and shows a capacity for adaptation. Good regulatory practice is reflected in the level of technical expertise, the social consensus, public consultation and transparency. However, reforms so far have been partial and piecemeal. A "whole of government" perspective is missing. The *tilsyn* also lack a clear notion of independence and the proper relationship with the political powers. The government's 2003 White Paper appropriately sets out a framework for action, much of which is reflected in this report.

Policy recommendations

1. Strengthen the independence and the authority of the tilsyn.

The current features for ensuring the independence of the *tilsyn* seem relatively at odd with current international practices, mainly for network industries, financial service sectors and the competition authority. The possibility of appealing the decisions to the Minister and of receiving direct instructions from the Ministry stands out in terms of the international perspective. These features have been clearly identified in the 2003 White Paper. However, other features of the governance structure of the *tilsyn* could also be streamlined, in particular in relation to the appointment process and governing structures. The possibility of indefinite terms for the directors of some *tilsyn* is also uncommon. This could be conducive to rigidity, while at the same time the independence of the decisions is not firmly ensured. In many other countries, the practice tends to have boards, and to renew these boards progressively over time.

2. Clarify the institutional framework and the functional responsibility.

Overlapping responsibilities and conflicting objectives assigned to the same agency have blurred the institutional framework, particularly in the field of safety. Independent supervisory agencies need clear and unambiguous objectives to fulfil their missions properly and be accountable for their achievements. In some cases, this requires redesigning the sharing of responsibilities between agencies in order to improve the horizontal design, and render it compatible with increased independence. The 2003 White Paper makes a number of proposals in this respect, which, taking into account the existing institutional constraints, allow for significantly improving the situation.

3. Strengthen the framework for accountability.

Increased independence needs to be accompanied with increased accountability. Establishing purely independent bodies could raise legitimate concerns in terms of their accountability. On the contrary, effective and true independence from the short-term political intervention requires that this dialogue be instituted, so that the supervisory bodies can be responsive to their environment.

The notion of accountability is relatively difficult to translate in the Norwegian setting, where the concept of ministerial accountability prevails. However, the possibility of setting Parliamentary hearings and of organising a dialogue with the public opinion and the citizens, would offer to the Supervisory bodies a possibility to strengthen this accountability. In some other countries, the most independent supervisory bodies are offered the possibility of a report and giving explanations on their conduct and the rationale

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for their decisions to the elected authorities, with a fixed periodicity in time, for example with a report to Parliament once a year. In addition, the Parliamentary resources to monitor and follow this reporting activity need to be increased and strengthened correspondingly.

4. Monitor the performance of the tilsyn.

The tools for performance assessment exist in Norway, but need to be used more extensively and at regular time intervals for more independent institutions. International comparisons with similar countries could be widely used in performing this assessment. Performance assessment involves producing more information, particularly quantitative information on the market outcomes and the economic performance. In addition, performance assessment can result from independent initiatives, either in the academic research, or as a result of parliamentary initiatives. The independence of the expertise providing the monitoring is key, either in terms of funding the academic research, or in giving impartial advice, as is the case with the office of the Auditor General.

5. Establish rules of best practice to accompany performance monitoring.

Norway could establish best practice rules to accompany performance monitoring, in order to move to a continuous process of performance improvement. These rules could also help to accept an increased level of independence, as they would provide a clear framework of how this authority is to be exerted. These best practice rules would also be useful as a reference point and could help to maintain the long-term strategic orientation. The risk which needs to be avoided is to rigidify the practice and to limit further changes. Therefore, the rules should be renewed periodically (*e.g.* every five years).

APPENDIX I

Table 1.1. **Sectoral regulatory reform in Norway**

Industry	Key legislation/regulatory framework	Recent and outstanding reforms	Price regulation	Regulation of entry and exit	Other regulations which may affect competition
Telecommunications	The Telecommunication Act of June 23 1995 gives general rules and principles for all telecommunications activities. The Act does not apply to radio broadcasting and television programme activities or onward transmission of programmes in radio broadcasting and television transmission networks. The Telecommunications Act has been amended several times since 1995.	In February 2001 changes were made in regulations of 5 December 1997 No. 1259 relating to public telecom networks and public telecom services, such that the incumbent Telenor was ordered to give other players access to Telenor's access networks. The telecommunications authority is currently assessing the prices and terms for Telenor's agreements with buyers of access services. The Ministry of Transport and Communications is preparing a new law on electronic communications. This new law is a part of the implementation of the EU Telecom Package. A new law was forwarded to the Parliament in February 2003, and the law is expected to be implemented in July 2003. As regards 3G/UMTS, the commercial introduction of 3G services in the Norwegian market is expected to be delayed. The status of UMTS network roll-out in Norway and the need for changes in the general regulatory framework for UMTS and the licences awarded, are discussed in a 2003 White Paper forwarded to the Parliament (Storting). In the White Paper it is suggested to allow more network sharing.	The current price cap is valid until end 2002. The price cap imposed applies to: • public telephony services; and • leased lines. The price cap was reviewed again during 2002 for the subsequent year with a view to terminating the obligation when there is efficient competition.	The current regulation requires that operators with strong market powers have a licence to offer public telecommunications networks, public telephony and provision of transmission capacity. Operators offering public telecommunications networks, public telephony services and provision of transmission capacity that are not subject to licensing shall only be registered. Frequencies in the electromagnetic frequency spectrum may not be put into use unless authorised by the telecommunications authority.	

Table 1.1. **Sectoral regulatory reform in Norway** *(cont.)*

Industry	Key legislation/regulatory framework	Recent and outstanding reforms	Price regulation	Regulation of entry and exit	Other regulations which may affect competition
Electric power	The 1990 Energy Act sets out the framework for the organisation of the power supply system. It encourages competition within power generation and trading. Under the provisions of the Energy Act, the Ministry of Petroleum and Energy and the Norwegian Water Resources and Energy Directorate lay down more detailed regulations. The Energy authorities follow the development in the power market closely.	In the 10 year period after the 1990 Energy Act came into force, there has been an adjustment to competition in power generation and trading and comprehensive regulation of the monopoly grid activities. (To make sure the law's intention is fulfilled in the future, some amendments were made to the 1990 Energy Act which came into force in 2002).	The Norwegian Water Resources and Energy Directorate determines an income cap for each grid company. This reflects factors that influence costs in the area served, such as climate, topography and settlement patterns. The company's income, which depends on the point tariffs, can not be higher than the figure determined. This system is intended to ensure that grid companies do not make unreasonable profit on monopoly services and that cost reductions benefit their customers. The Norwegian Water Resources and Energy Directorate determines the framework within which the point tariff structure must be developed.	For most of the decisions pursuant to the Energy Act, the authority is delegated to the Norwegian Water Resources and Energy Directorate. The most important licences are: • Local area licence; for construction and operations of lines carrying a voltage of 22 kV or less; • Construction and operating licences; to construct power plants, transformer; stations and transmission lines carrying over 22 kV. • Trading licences; for all that trade electricity or can be in a monopoly position. The local area licences include a requirement for energy utilities to supply electricity to customers within the geographical area to which the licence applies. Regulations can be laid down regarding the quality of supply.	The competition legislation provides the legal framework for the part of the power market that is exposed to competition.
Natural gas – an offshore perspective as there is hardly any domestic use of natural gas	Act 29 November 1996 No. 72 relating to petroleum activities and regulation to this act.	Abolishment of the GFU. Set up of Gassco as a neutral transportation operator. Implementation of the gas directive. The Ministry is currently working on new principles for access to and tariffs in the gas transportation infrastructure.	The offshore gas transportation infrastructure is subject to a regulated rate of return.	The Ministry grants permits and licences, *e.g.* to explore for, produce and transport petroleum.	

Table 1.1. **Sectoral regulatory reform in Norway** *(cont.)*

Industry	Key legislation/regulatory framework	Recent and outstanding reforms	Price regulation	Regulation of entry and exit	Other regulations which may affect competition
Insurance	Act on Insurance Activity of 10 June 1988 No. 39, and the regulations pursuant to this act. Act on Financing Activity and Financial Institutions of 10 June 1988 No. 40.	The legislation was revised in 1993-1994, as a consequence of the EEA Agreement. A proposal on new life insurance legislation was put forward in 2001 (Official Norwegian Reports NOU 2001: 24). The proposal mainly focussed on collective pension cover. The intention is that the new legislative regulation will be included in the Act on Insurance Activity of 10 June 1988 No. 39. The legislative regulation is expected to be brought into force in 2004. Furthermore, there is a proposal on new legislation on financial undertakings (Official Norwegian Reports NOU 2001: 23). The proposal set out certain general rules for activities of financial undertakings.	There are no direct price regulations on insurance in the Norwegian legislation. The authorities may however prohibit the use of premiums which are unsatisfactory or unreasonable.	A Norwegian insurance company may not carry on activity without authorisation from the authorities. Authorisation shall, however, be granted unless there is reason to assume: 1. that the company will not satisfy the requirements set by or pursuant to law, 2. that the initial capital is not in reasonable proportion to the planned activity, or 3. that authorisation will in other ways adversely affect the policyholders or groups of policyholders. Insurance companies with head offices in another state in the European Economic Area (EEA) can establish a branch in Norway, or they can carry on cross border activity. In these cases the EC Insurance directives apply.	

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Table 1.1. **Sectoral regulatory reform in Norway** *(cont.)*

Industry	Key legislation/regulatory framework	Recent and outstanding reforms	Price regulation	Regulation of entry and exit	Other regulations which may affect competition
Railways	Act on the Establishment and Operation of railways, including Tramways, Underground Railways and Suburban Railways, etc., (Railway Act) from 1993 and regulation on the Allocation of Railway Infrastructure Capacity and the charging of Fees for Use of the National Railway Network. These measures implement directive 91/440/EEC and 95/19/EEC regulating the access rights to the national railway network and allocation to train path for railway undertakings.	From July 2002 the parent company of the NSB Group was transformed into an ordinary limited company but where the state by the Ministry of Transport and Communications still own all the stocks. (The parent company of the NSB Group used to be regulated by its own Act of Parliament in such a way that the employed could keep their rights as civil servants.) From 1 January 2003 the ownership of the Airport Express Train will be moved from the NSB Group to a direct ownership by the state. From 2003 Norway will open up for national freight transport on the national railway network and in 2004 open up for competition on passengers transport in some areas by tendering the public service contracts.	The fee is set by the Parliament on a yearly basis and is based on the marginal cost pricing principles where external costs are internalised. Because of an aim of a level playing field between modes, the fee is reduced to the principal of second best, as the competing modes do not pay their external costs. The benchmark modes in the calculations are bus for passenger transport and truck for freight transport. On the new line from Oslo Central to the airport there is an additional fee. The fee is meant to cover parts of the investment costs.	The Railway Inspectorate grants authorisations for the operation of infrastructure, rail traffic control and rail transport services, including licences to railway undertakings which provide such international transport services as mentioned in directive 91/440/EEC.	Train path shall be allocated on a fair and non-discriminatory basis that makes for efficient and optimal use of railway infrastructure. The Norwegian Rail Administration (Infrastructure manager) is the body responsible for allocating railway infrastructure capacity on the national railway network. The Norwegian Railway Inspectorate issues safety certificates.

Table 1.1. **Sectoral regulatory reform in Norway** *(cont.)*

Industry	Key legislation/regulatory framework	Recent and outstanding reforms	Price regulation	Regulation of entry and exit	Other regulations which may affect competition
Air transport	Act No. 101 of 11 June 1993 relating to Aviation (the Aviation Act), and further regulations based on this act. EU regulations regarding aviation (including Council Regulations (EEC) 2407/92, 2408/92 and 2409/92) implemented as Norwegian regulations in accordance with the EEA agreement. 1 January 2000 the Norwegian Civil Aviation Authority (CAA) was separated from the Norwegian Air Traffic and Airport Management (NATAM) in order to separate the roles of regulation and ownership of the infrastructure in the state enterprises. NATAM is to be transformed into a state-owned limited company in January 2003.	Between 1994 and 1997, following the implementation of EU regulations, the aviation market in Norway was gradually opened up to competition. Access to domestic and EU/EEA-area routes is now granted to all licensed airlines from within the EU area.	No price regulation on commercial fares, however prices are monitored by the Norwegian Competition Authority. Prices on handling services are monitored by the CAA	Access to the non-scheduled market is governed by a licensing system. Regarding the scheduled market: 1. Licences are required for domestic and EU/EEA-area services. 2. Concessions and bilateral agreements regulate access to international markets.	Since 1 August 2002, carriers are no longer allowed to grant Frequent Flyer points for domestic flights. A significant number of regional routes have imposed public service obligations (PSO) ref. EEC 2408/92, which limit the access to each route to only one carrier for a three year period.

APPENDIX II

Table 1.2 **Potential impacts of regulatory reform in Norway**

Industry	Industry structure and competition	Industry profits	Impact on output, price, and relative prices	Impact on service quality, reliability and universal service	Impact on sectoral wages and employment	Efficiency: productivity and costs
Telecommunications	Telenor's market share in fixed line telephony traffic was 81% in 2001, and 88.5% when fixed charges are included. Telenors market share in international traffic was 71%. Telenor's market share in mobile, cellular communications was 65%, NetCom's: 25% and Sense's: 5%. In the leased lines market, Telenor had a 72% market share, and a 71% share in the data communicatons market. In the internet services market, the incumbent had a 52% market share in 2001. 7 licences had been granted to 4 licensees as of December 31 2001. 73 providers of either public telecoms services, public telecoms network or transmission capacity were registered as of 31 December 2001. Out of the licenced/registered providers, 38 were active in 2001.	From 1998 to 2001 revenues from fixed line telephony, mobile telephony, leased lines and internet increased by 34%. Fixed Line Telephony's share declined from 64 to 50%, while, on the other hand Mobile Telephony's share increased from 28 to 39% from 1998 to 2001. Leased lines' share remained constant, but internet share of revenues increased from 3.4 to 5.7%. Total telecoms sector margins dropped from 10 to 4% from 1998 to 2001.	The incumbents' fixed line telephony prices were reduced continuously throughout the 90s, and when another mobile operator was licenced in 1993, the mobile tariffs where reduced continuously from 1994 to 1999. In the recent two years, both fixed and mobile tariff elements seem to have stabilised. Fixed network subscription charges increased by 35% from 1997 to 2001. Average per minute charges in fixed network telephony had a 29% decrease from 1998 to 2001. Introduction of one single national charge for geographical numbers and a considerable reduction in international tariffs are the main reasons for this reduction. Average mobile minute charges were reduced by around 15% from 1998 to 2001.	Universal service includes PSTN and ISDN, as well as leased lines of different classes. These services are practically nationwide. Provision of DSL is not included in universal service. Today, approximately 55% of the population has the possibility to connect to DSL services, but the take-up rate is around 10%.	From the end of 1998 to the end 2001, the telecoms sector employment had a 9% increase.	From 1998 to 2001 there has been an increase in revenues per employee at 18% in terms of fixed, mobile telephony, transmission capacity and internet. Taking total revenues into consideration, the revenue per employee has increased by 57%.

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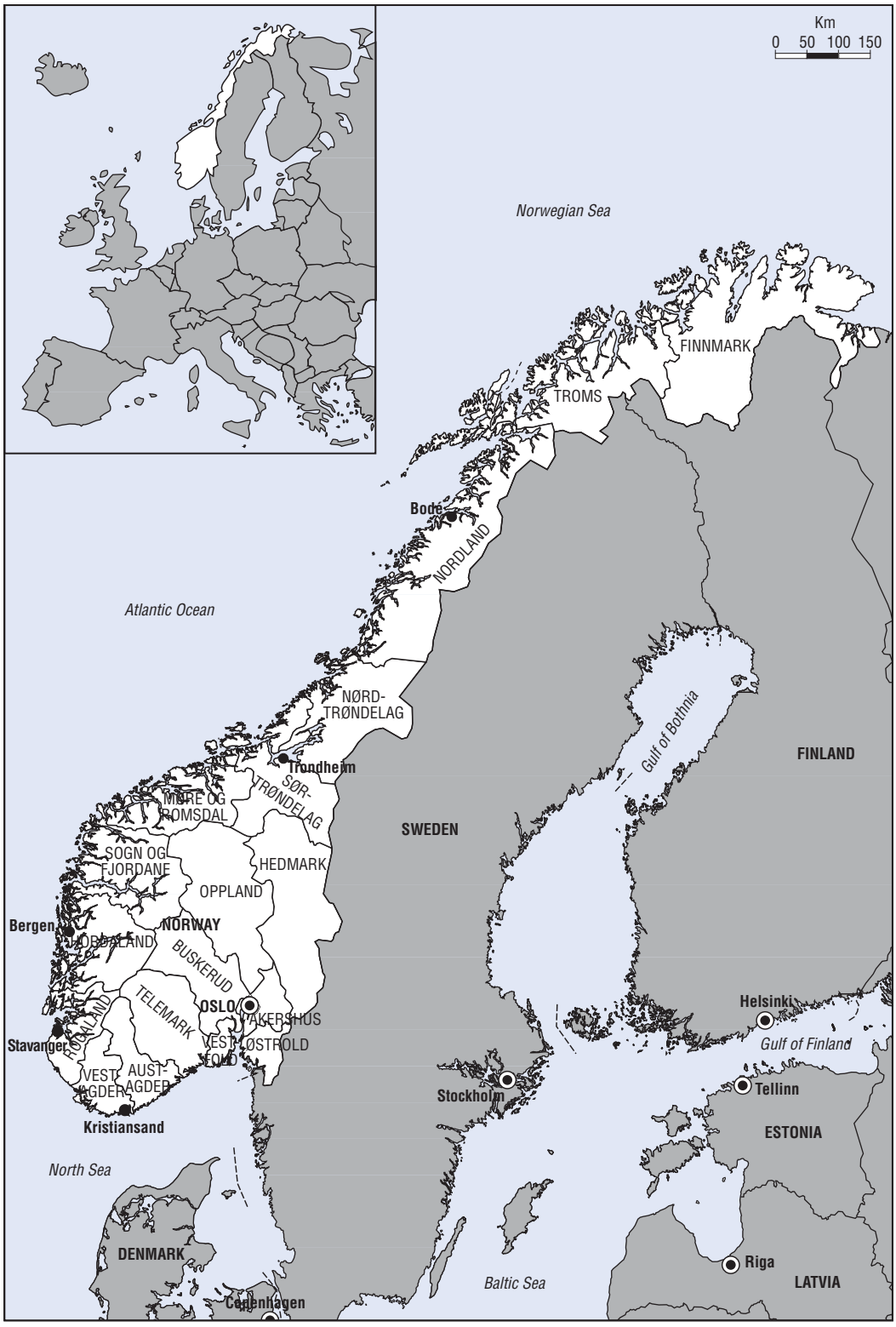
Table 1.2. **Potential impacts of regulatory reform in Norway** *(cont.)*

Industry	Industry structure and competition	Industry profits	Impact on output, price, and relative prices	Impact on service quality, reliability and universal service	Impact on sectoral wages and employment	Efficiency: productivity and costs
Electric power	A total of 156 companies are engaged in electricity generation. The ten largest generation companies account for about two-thirds of total mean annual production. In all, 178 companies are engaged in grid management and operations at one or more grid level. Of these, 42 are purely grid companies, whereas the remainders are also engaged in electricity generation and/or trading. There are 218 companies engaged in trading, and 68 of them are not involved in any other activities. The number of vertically integrated utilities has decreased in recent years.	In 2000, the total operating profit for the power companies was NOK 11.6 billion, compared with NOK 10.5 billion in 1999. The profit for the year 2000 was NOK 6.7 billion, compared with NOK 5.7 billion in 1999.	Considered over the whole period, prices for private households including VAT and the electricity tax have been relatively stable since 1990. However, a cold winter in 1995-1996, combined with low inflow in 1996, resulted in steep growth of wholesale prices and then a rise in household prices from 1996 to 1997. Precipitation was above normal throughout each year of the 1997-2000 period, and hydropower production was relatively high. This is reflected in a general drop in prices during this period. However significant price rises were experienced in the winter 2002-2003.		Not available.	An important element of the income cap regulation is a general efficiency requirement of 1.5% and an individual efficiency requirement of between 0 and 5.2% per year. The efficiency requirement does not make it obligatory for the companies to become more efficient, but their rate of return rises if they can reduce their costs.
Natural gas	Norway has large gas resources and is a major supplier of gas to Europe. About 40% of the gas resources are held directly by the state and the remaining by 28 upstream companies.	Profits are taken out on the producing fields.	Not relevant. Norwegian gas is sold in the export markets.	Not relevant. There is very limited domestic use of natural gas. Norwegian gas is mostly sold in the export markets.	Not available.	
Insurance	Regulatory reform is expected to increase competition in the insurance market. Increased competition may again have an impact on the industry structure.		The impact of regulatory reform on output, price and relative prices is difficult to predict. Increased competition may, however, lead to lower prices.	The intention of regulatory reform is to make products more transparent for the customer. As a consequence, reliability of insurance companies may increase.		

Table 1.2. **Potential impacts of regulatory reform in Norway** *(cont.)*

Industry	Industry structure and competition	Industry profits	Impact on output, price, and relative prices	Impact on service quality, reliability and universal service	Impact on sectoral wages and employment	Efficiency: productivity and costs
Railways	Norway has, in addition to NSB, granted authorisation from March 2003 to 4 railway undertakings for rail transportation services on the national railway network.	In 2002, State purchases of transport services from NSB will amount to over NOK 1.3 billion for passenger transport.	n.a.	The NSB Group is in the process of totally renewing the fleet of trains. Because of this renewal process, the company is expecting to increase capacity and regularity. In the most central areas, the infrastructure will still be a bottleneck for further increase in capacity and improvement of punctuality.	On the operator side the wages are market-oriented. Since 1997, the NSB Group reduced the number of employees by 2 000.	n.a.

APPENDIX III



Source: IEA/OECD.

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Bibliography

Ministry of Finance (2001), "Guidelines for Economic Policy", *Report to the Storting*, Summary in English, No. 29 (2000-2001), Oslo.

Ministry of Finance (2001), "The Long-Term Programme 2002-2005", *Report to the Storting*, Summary in English, No. 30 (2000-2001), Oslo.

Ministry of Finance (2001), *National Report on Economic Reforms: Product and Capital Markets,* Norway, Oslo.

Ministry of Foreign Affairs (2002), *The Norwegian Government's European Policy Platform: Challenges, Goals and Measures*, Oslo, November.

NOU (2002), "The Norwegian Government Policy for Reduced and Improved State Ownership", *White Paper*, Summary in English, No. 22 (2001-2002), Oslo.

OECD (1995), *Recommendation of the Council of the OECD on Improving the Quality of Government Regulation*, Paris.

OECD (1997), *OECD Report on Regulatory Reform*, Paris.

OECD (2000), *Privatisation, Competition and Regulation*, Paris.

OECD (2002), *Economic Surveys: Norway*, Paris.

OECD (2002), "Product Market Competition and Economic Performance", *Economic Outlook*, No. 72, Paris.

OECD (2002), "Fiscal Sustainability: the Contribution of Fiscal Rules", *Economic Outlook*, No. 72, Paris.

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