

Norway's rejection of EU membership has given the country less self-determination, not more

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Norway rejected membership of the European Union in a referendum in 1994, but participates in the single market through the European Economic Area (EEA) agreement. [Erik O. Eriksen](#) argues that while the referendum campaign was won largely on the basis of an appeal to democracy and the principle of the country retaining power over its own laws, the opposite has occurred in practice. He writes that Norway has become deeply entangled in the European integration project and is, for all intents and purposes, part of the EU, but without any influence.



In 2014, Norway celebrates not only the bicentennial of its [Constitution](#), but also the 20th anniversary of the EEA Agreement as Norway's permanent form of affiliation with the European Union (EU). This is a celebration with an aftertaste.

Although the language and symbolism of the Constitution today may appear archaic and odd, its principles and ideals remain modern and radical. The Constitution is therefore interesting, and not only for historical or nostalgic reasons. It is meant to have prominence. The Constitution defines the basis and boundaries of political power. It decides who will decide.

The Constitution of 1814 was important to establish and ensure national sovereignty. It firmly established the principles of independent rule and self-determination, and the democratic chain of rule was gradually established in accordance with the ideals of the American and French Revolutions. It was in the latter that the members of a European state came to be regarded as political and social equals for the first time.

Thereafter, a constitution came to be regarded as a horizontal union of free and equal citizens who govern themselves through law and politics. This interpretation is shared by all modern democratic states and has been fundamental for the European integration process. Only democratic states can become members of the EU.

The constitutional context, on the other hand, has changed radically. Since World War II, the main issue has not been how self-declared nations should rule themselves, but how they should avoid harming each other. This gave rise to an unprecedented experiment in integration: the EU.

Shared sovereignty

The EU system is organised so that the different 'peoples' of a community rule themselves through institutions to which they have direct access and through which they can exert influence. As a political system, the EU has clear experimental features since it establishes its own criteria of legitimacy while not being a state in itself. It is based on the same type of democratic constitutionalism that Norway adheres to. The very same ideals of popular sovereignty and human rights that were introduced by the American and French Revolutions and that inspired the Norwegian Constitution have produced a European order in which the states relinquish state sovereignty to ensure peace and increase their capacity to act.

In contrast to Norway, most other European countries have formally relinquished partial sovereignty to the EU through constitutional amendments. The EU countries have closed their ranks in international affairs, in locked-in supranational cooperation, and transformed foreign policy into domestic policy. They have pooled and shared sovereignty between them, and have gained co-determination of common matters in return. They have established a legal and political order, an internal market and a common currency. Europeans are free to travel, work, study and invest wherever they want. The abolition of borders and customs barriers, trade barriers and protectionism has

made Europe the largest market in the world.

Responsible Norwegian politicians could not disregard this order and this market. Despite a majority of 'no' votes in the referendum on Norwegian EU membership in 1994, the [Agreement on the European Economic Area](#), which entered into force earlier the same year was kept. This is the most comprehensive agreement Norway has ever entered into. The EEA Agreement provides access to the EU's internal market for Norway, Iceland and Liechtenstein. The agreement is continuously upgraded and expanded. A large number of issues are relevant to the free movement of goods, services, labour and capital. The number of EU legal acts, regulations and directives has grown at an exponential rate.

'No legislation without representation'

The EEA Agreement has constitutional implications, because in reality it means that Norway participates in the internal market on an equal footing with the EU member states. Every government since 1994 has brought Norway closer to the EU, and a number of additional parallel agreements have been signed. These include agreements on border controls (the Schengen Agreement), asylum and police cooperation. Norway even puts troops at the disposal of the EU's battle groups. Approximately three quarters of the legislation that applies to the member states applies also to Norway. New agreements have been established over time, and existing agreements have been developed and expanded. Their cumulative effects are large and convoluted.

When considering the volume of agreements, the way in which Norway is affiliated to the EU through the EEA Agreement and the establishment of new EU authorities and agencies to which Norway renounces sovereignty; we are not left with any clear impression of national independence and democracy. On the contrary: Norway has relinquished sovereignty in a number of areas through regular majority voting, it pays (through the EEA financial contributions) and is subject to EU law on the same basis as the EU member states.

Norway has surrendered sovereignty without having received anything in return in the form of co-determination that EU membership would have granted. In Norway, the slogan 'no taxation without representation' from the American War of Independence does not apply. On the contrary, Norway obeys and pays, but remains without representation in the decision-making bodies. The democratic principle of 'no legislation without representation' is breached.

Homogeneity and dynamism

The core of the EEA Agreement consists of rules pertaining to the four freedoms as well as competition law, government subsidies and public procurement. Certain additional legal areas are not directly related to the four freedoms, but help increase their effectiveness, as well as a number of so-called *flanking areas*. In the preamble to the agreement it is stated that cooperation shall 'strengthen certain areas of cooperation, specifically research and development, the environment, education and social policy'.

The EEA Agreement is a dynamic framework agreement that does not need to be renegotiated each time the EU adopts a new relevant legal act. Instead, the agreement is updated on a continual basis to ensure that legislation remains uniform within the entire EEA. The dynamic aspect of the agreement is essential to maintain its main objective: conformity of the internal market. A *homogeneity principle* has been made applicable: i.e. the same rules apply to the EEA partners as to the EU countries. This requirement is embedded in the preamble to the EEA Agreement, but also applies as an unwritten principle for the Schengen Agreement and Norway's other agreements with the EU. This means that Norway should not only incorporate EU regulations, but also interpret, enforce and abide by them in the same way as the EU member states.

The EFTA Surveillance Authority (ESA) has direct authority in issues pertaining to competition, and makes decisions that have a direct impact on Norwegian enterprises, including fines that can be tried and confirmed by the EFTA Court. In these areas, ESA has powers similar to those of the European Commission. In practice, EU legislation takes precedence over Norwegian law. Norway cannot oppose EU directives without jeopardising the EEA

Agreement. A right of reservation exists, but to date it remains unused.

Has the Constitution been overturned? No, not formally, since Norway can terminate the agreement and attempt to continue alone. This is not very realistic, however. For example, access to the EU market of 500 million inhabitants weighs heavily. No responsible politician can disregard this fact. The Norwegian example shows that it is impossible to live in Europe without becoming entangled in the European experiment in some way or other.

With this form of affiliation, Norway has in reality damaged its democratic chain of rule and achieved the opposite of the main objective of voting 'no' to EU membership. Self-determination, government by the people and democracy were the central arguments for a 'no' vote in 1994. The credo said that Norwegians should not be governed by laws other than those decided by the country's own authorities. Paradoxically, however, voting no to EU membership and making the EEA Agreement our permanent form of affiliation have undermined Norwegian self-determination.

The integration trap

Norway has fallen into the integration trap, from which for the time being there is no escape. The way out through membership is blocked because of the prevailing EU scepticism. The EU is all but demonised in Norwegian public opinion, and no political parties have put a new referendum on the agenda. It will take a huge effort to change public opinion, and another solution than a referendum is unthinkable.

The other way out of the integration trap, termination of the EEA and the other agreements, is also blocked. In theory, Norway could protect her sovereignty and democracy by leaving the EEA and establishing a free-trade agreement with the EU. Evidence indicates, however, that Norway is blocked from obtaining a free-trade agreement similar to Switzerland's. The EU has no interest in it and signals that more countries ought to join the EEA model, which is non-bureaucratic and entails little cost.

Moreover, Switzerland, which has a great number of agreements with the EU, seems to have the same problems as Norway in delimiting EU influence. This is because the EU is not an international organisation such as the WTO, NATO or the UN, which solves problems without infringing on the autonomy or identity of its members. The EU is a supranational unit that affects its members and changes their identity from being nation-states into becoming member states that pool sovereignty and share decision-making powers. The EU is not a regular inter-governmental organisation, the effects of which can be restricted. It is rather a quasi-federal organisation.

Incorporation without co-determination

The entire situation is disheartening. While the other countries of Europe convene around the same table to solve common problems, Norway must resort to old-fashioned diplomacy and lobbyism. The Norwegian Prime Minister must go on state visits to her colleagues in Europe to discuss Norway's interests, whichever these may be now that foreign policy has been turned into domestic policy in Europe.

From a national point of view, it appears that Norway has lost sovereignty because of the European integration process. From a European point of view, however, it appears that Norway has rejected the opportunity for co-determination over the integration project in the belief that national sovereignty and real self-governance could be protected. Today, however, it is the EU that defines the framework for Norwegian self-governance.

For all practical purposes, Norway is part of the union, but has no influence. Norwegians must wait in the corridor when decisions are being made that affect them. This violates the entire idea of the enlightenment project and the European integration project. Here, everybody should be equal participants in the exercise of popular sovereignty: instead of the humiliating Treaty of Versailles after World War I, Germany got the status-raising Schuman Plan in 1952. The Germans were treated as equal participants in the decision-making bodies and were given co-responsibility for the reconstruction of Europe after the war.

Many Eurosceptics want the EU to go away. This is wishful thinking, however. No alternative project is in sight in the

age of globalisation. With all its flaws and shortcomings, the EU is here to stay. It is 'the only game in town'. Many EU critics in Europe have recognised this fact, and want to help improve the EU; to make it democratic and solidaristic. More Europe, not less, is their slogan.

However, as cooperation increases in scope and integration deepens, the problems that Norway is facing will grow. Norwegian democracy must lean on the EU for its legitimacy. In this country, the Norwegian Constitution is in fact being increasingly replaced by that of the EU. Norwegian citizens have become second-class European citizens.

Thus, in Norway we can speak not only of the impotence of popular rule in the sense that, like all other countries, Norway is subject to the effects of globalisation; but also of *democratic self-harm* since our form of affiliation is based on choices that could have been different, and that would have been less harmful in a democratic perspective.

The EU system is organised so that the different 'peoples' rule themselves jointly through institutions over which they have direct influence. The states have relinquished sovereignty, pooled and shared it among themselves to rule jointly, while Norway has opted to go it alone to ensure self-determination. This has incurred a loss of democracy, because we have renounced sovereignty without having received the compensation that co-determination provides. This is the Norwegian paradox.

For a longer discussion of this topic, see Erik O. Eriksen and John Erik Fossum (eds) [Det norske paradoks: Om Norges forhold til Den europeiske union](#) (The Norwegian Paradox: On Norway's relations to the European Union), Universitetsforlaget, 2014

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