



White Paper on Norway's Relationship to the European Union

International investments provide access to new technologies, talent, business models and markets, and allow businesses to re-balance regional risks and opportunities.

Technological transformations and global data flows are accelerating these dynamics. In the C-suite, decisions on international investments are best informed by consideration of applicable legal and regulatory environments.

European countries present unique technical and intellectual capabilities, financial institutions and mechanisms, and market scale. While these factors vary by country, the European Union (EU) provides a common framework for the movement of goods, services, people and capital, through common standards on key facets of business regulation and protection, like General Data Protection Regulation (GDPR).

Less widely appreciated is the extension of EU principles and protections beyond the 27 member states. The Agreement on the European Economic Area (EEA) covers all EU countries and also Iceland, Liechtenstein and Norway, effectively creating a single market across most sectors. This White Paper shines

a spotlight on the EEA and its relationship with the EU by highlighting key member state Norway. It provides executives and their lawyers an accessible overview of the ways in which Norway's investment environment harmonizes and connects with the wider European landscape.

Norway – quietly perhaps – takes pride in its investments in human, physical and intellectual capital, and the wealth of opportunities it presents to global business. A key feature of this outward facing strategy is its high alignment with stable regional legal norms. Norway is strongly reliant on both imports and exports, together with inflows and outflows of Foreign Direct Investment (FDI). As evidenced by its position in the EEA it is strategically attuned to the legal and regulatory aspects supporting global movements capital and talent. With very few exceptions, business sectors across its economy are freely accessible to global trade and investment.

Overview of Norway's Business Environment

The World Bank ranked Norway 7th in its 2019 Ease of Doing Business report (out of 190 countries surveyed), up two places since 2018, and long among the top 10. Norway has a skilled, highly educated population, strong university / technical ecosystems, and deep reserves of public capital to support infrastructure. It's also accessible in terms of language and business culture- the Economist (UK) ranks Norway 3rd highest in English proficiency among non-native speaking countries. Key industries in which Norway excels are closely tied to global growth trends - energy, infrastructure, digitalization, shipping and transportation services, and insurance.

The European Economic Area

Norway is a key party to the 1992 Agreement on the European Economic Area (EEA) between three of the members of the European Free Trade Association (EFTA), established in 1960, and the European Community, immediate predecessor to the EU. Through its historical participation in the EFTA and now the EEA, Norway is demonstrably part of Europe's single market.

The EEA Agreement extends the EU's four freedoms — the free movement of goods, services, persons, and capital – across the EFTA countries. As a result, with few exceptions clarified below, foreign companies considering investments in Norway may expect to encounter a continuous regional legal framework, through the EEA, as with any EU member. In the sections that follow, we highlight the features and operation of this broad alignment.

EEA legislation

For the business executive, the EEA may best be understood as adapting the EU's core treaties, its implementing regulations, and directives. The EEA Agreement tracks changes in EU legislation, providing mirroring updates (as annexes) to the EEA Agreement. Norway's implementing legislation, and accountability to the EFTA Court and the European Surveillance Authority (see below), effectively embed EU principles (and their cross-border harmonization) as in neighbouring EU member states.

EU / EEA Harmonization

- Single market rules – the EEA Agreement forms a continuous single market with the EU. On-going implementation of EU directives and regulations ensures that legislation in the EFTA states is in line with the EU single market. This is the dynamic character of the EEA Agreement.
- Equal conditions for businesses - through level playing fields in competitive bidding, state aid, and government procurement.
- Extensive cooperation and coordination across research and development, information services, education and training, consumer protection, intellectual property protection, employment, environment, enterprise and entrepreneurship, and civil protection. Norway participates in all EU research programmes, key drivers of competition and cost-comparisons with respect to setting up research and development activities and capabilities.

Institutions

The EFTA states' compliance with the EEA Agreement is secured by several institutions. The main enforcement authorities are:

- The EFTA Surveillance Authority (ESA) which has the same surveillance function as the European Commission. ESA investigates possible infringements of the EEA agreement on its own initiative, or on the basis of complaints.
- The EFTA court has the same function as the European Court of Justice. The EFTA Court either deals with infringement cases initiated by ESA against an EFTA Member State, disputes between two or more EFTA states and provides advisory opinions to the courts of the EFTA states concerning interpretation of EEA legislation.
- New EU regulations legislation are implemented through national law – one key difference from EU member states as the EU does not have direct legislative powers in Norway. From a practical point of view, EU law is largely adopted as Norwegian domestic law.

EUROPEAN UNION



The EU is an economic and political union among 27 European Member States. Collectively, it produces a greater aggregate value of goods and services than the United States of America. 2009's Treaty of Lisbon widened the EU's international trade authority, including with respect to FDI. The EU is the largest exporter of manufactured goods and services, and the biggest import market for over 100 countries.

Norway is not a member

EUROPEAN FREE TRADE ASSOCIATION



EFTA is an intergovernmental organisation among Iceland, Liechtenstein, Norway and Switzerland, that promotes free trade and economic integration between its members. Combined, EFTA is the ninth largest trader in the world in merchandise and the fifth largest in services.

Norway is a member

EUROPEAN ECONOMIC AREA



EEA combines 27 EU countries with 3 EFTA countries into one market of 30 states. The area is governed by the same rules, which enable goods, services, capital, and persons to move freely in an open and competitive environment.

Norway is a member

EURO AREA



The Euro area consists of EU Member States that have adopted the euro as their currency. Around 340 million citizens in 19 countries live in the euro area. Monetary policy is handled by the European Central Bank (ECB), and national central banks.

Norway is not a member

SCHENGEN AREA



Freedom of movement is a fundamental right guaranteed by the EU to its citizens. It entitles every EU citizen to travel, work and live in any EU country without special formalities. The EFTA countries are associated members to Schengen which abolishes border controls.

Norway is a member



Examples of the Operation of the EEA Agreement

Data Privacy: Top of mind in today's international investment landscape are opportunities and risks posed by global data flows, together with corresponding legal protections and enforcement regimes. Whether one views them favourably or not, the consistency and predictability of such protections and regimes is a key factor in FDI decisions. The EU's sweeping General Data Protection Regulation (GDPR) entered into force in 2016 and, following a two-year transition period, became directly applicable law in all EU Member States on May 25, 2018.

GDPR is implemented in Norway and applies in the same way as it does across the EU. The EEA adopted GDPR by Joint Committee Decision on July 6, 2018. The Norwegian Personal Data Act (PDA) further implemented GDPR within Norway, effective July 20, 2018. Further, several sector-specific regulations (e.g. in health sector) – were also updated to ensure compliance with GDPR.

The PDA mirrors GDPR, covering entities operating within national borders regardless of whether data processing takes place outside, and also addressing data relating to goods or services offered to, or monitoring the behaviour of, data subjects within national borders.

Thus, data centres in EU states, and in Norway under the EEA Joint Committee Decision and the PDA, operate within the same regulatory framework, subject to the same basic rules as to domestic and cross-border regulation.

And then there is the U.S. CLOUD Act of 2018, which for of U.S. law purposes provides for discovery of electronic data stored outside the U.S. but controlled by entities subject to U.S. jurisdiction. This includes data stored in Europe and elsewhere by internet service providers subject to U.S. law.

The CLOUD Act is intended to bypass an extant mutual legal assistance treaty (for criminal matters) between the U.S. and the EU, and questions certainly remain as to data access requirements for entities subject to both CLOUD and GDPR. However, consistent with this White Paper's focus on Norway's extensive legal harmonization with the EU (as to both internal regulation and external affairs), companies evaluating investments in Europe involving data storage and access should approach Norway in the same manner as EU member states. The simple answer to the question 'should U.S. companies see Cloud Act / GDPR issues differently as between e.g. Germany and Norway?' is 'no.'

Companies evaluating transfers of personal data between Norway and the U.S. may rely on the same legal instruments as applicable in EU member states, such as EU/US Privacy shield or Standard Contractual Clauses (SCC) for data transfers between EU and non-EU countries.

Non-tariff barriers: A Norwegian provision which would discriminate against other EEA member states, or makes it harder to import goods or provide services in Norway, would be treated as a restriction on the free movement of goods and services. To avoid any such uncertainties, Norway has the same packaging, labelling, product standards as the rest of the EU, for example.

Rights: EEA entities are entitled to participate in government contracting (public procurement) without having established a Norwegian legal entity, and EEA entities hold rights according to the Public Procurement Regulations. Any company within the EU/EEA area are granted rights according to the public procurement rules, and the Norwegian database for notices on procurement competitions is www.doffin.no. Procurement competitions above the EEA thresholds (which depend on whether the competition concerns purchase of services, goods or construction works) are also notified in the EU database TED (www.ted.europa.eu).

Recognition: As in EU member states, Norwegian legislation treats companies' investments and activities within the EEA area as part of the broader regional regulatory environment. As an example, a pharmaceuticals manufacturer may approach the EU/EEA as a "one-stop -shop" - so long the manufacturer has an authorized representative in the EU/EEA, it is not necessary to also register with the Norwegian Medicines Agency. Mutual recognition procedures established within the EU are also applicable for Norway. For investments and supply of services inside Norway, requirements for permanent establishment (e.g. forming and registering a local company) are similar to what foreign direct investors will find in EU Member States.

Harmonised rules: Companies within the EEA area can expect similar legislation in Norway as the rest of the EU which falls within the scope of the EEA Agreement. For instance, the same rule applies to the labelling of chemicals and goods such as cosmetics and toys.

This is what it means for your business

Norway abides by the same four freedoms as the EU:

- **Goods:** products originating in an EEA may circulate freely within the Single Market. Customs duties and quantitative restrictions on trade in such products are prohibited within the EEA, with the exception of fish and agricultural goods.
- **Persons:** all EEA nationals have the right to work in any other EEA state.
- **Services:** individuals and companies can establish and provide services across the EEA on equal terms.
- **Capital:** enable cross-border investments, transfers, and borrowing without discrimination.

In short, Norway has the same rights and obligations as other EU countries when it comes to:

- Trade
- Investments
- Banking
- Insurance
- Buying and selling services

Thus, Norway adopts and practices EU standards on non-discrimination and equal rules of competition. This is backed up by the EFTA Surveillance Authority (ESA), which supports and ensures Norway's continuous compliance.

Exceptions: What the EEA does not cover

- Common Agriculture and Fisheries Policies, which excludes agricultural goods from the scope of the Single Market (please note that the EEA Agreement contains certain special provisions on various aspects of trade in agricultural and fish products which must be assessed thoroughly).
- A Customs Union.
- A Common Trade Policy; through EFTA, the EEA EFTA states and Switzerland negotiates its own trade agreements with third countries.
- A Common Foreign and Security Policy; but Norway cooperates closely with the EU on foreign and security policy issues.
- Justice and Home Affairs (even though Iceland, Norway and Liechtenstein are part of the Schengen network).
- The Monetary Union (EMU), meaning that Norway has local currency NOK and not Euro.

Summary of key points for your legal counsel

- The establishment of a single market within the EEA area implies that the businesses can expect similar legislation in Norway as in EU Member States.
- Because EU legislation has effect in Norway through the EEA and implementing national legislation, implementation may take somewhat longer than for EU Member states. However Norway's boasts a strong track record on implementation of EU legislation, a harmonization that is not always universally observed across the EU.
- Because the EEA EFTA states are not members of the EU, they are constitutionally not able to accept direct decisions by the European Commission or the Court of Justice of the European Union. Separate EEA EFTA bodies that correspond to these EU bodies have therefore been set up. The EFTA Surveillance Authority (ESA) plays a similar surveillance role to that of the European Commission. The EFTA Court corresponds to the Court of Justice of the European Union.
- Norwegian courts enforce the rights covered by the EEA Agreement.
- Regarding goods, it's always best to confirm whether products originate within the EEA and comes within the scope of the EEA Agreement – particularly so when trading agricultural or fishery products.
- Restrictions on the single market's four freedoms can, in the same way as in the EU, may be covered by certain exemptions in the EEA Agreement. As an example, the following grounds can justify restrictions on the free movement of goods:
 - grounds of public morality;
 - public policy or public security;
 - the protection of health and life of humans;
 - animals or plants;
 - the protection of national treasures possessing artistic, historic or archaeological value; or
 - the protection of industrial and commercial property.

In addition, case law has also accepted other considerations that may justify neutral restrictions (rules or other actions which apply in the same way to Norwegian and other EEA Member State citizens and entities).

For more information:

The mission of Norway to the EU: <https://www.norway.no/en/missions/eu/areas-of-cooperation/the-eea-agreement/>

The European Commission's information on Norway: <https://ec.europa.eu/trade/policy/countries-and-regions/countries/norway/>

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