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# Norway and its impact on the European Union

## The Internal Energy Market and the licensing and gas directives

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# Abstract

This work is meant to provide theoretical and empirical elements in order to understand the current situation of Norway which given the chance to be part of the European Union (EU) has rejected it twice. However it does not mean that this European country is totally isolated from the integration process. Since 1960 they are part of the European Free Trade Association (EFTA) organisation founded by several European countries, which left it in order to be part of the EU. Since 1994 three from the four EFTA states (Norway, Iceland and Lichtenstein excluding Switzerland, which decided not to be part of it) signed the European Economic Area (EEA) agreement which links them to the EU. The EEA agreement allows all the twenty-eight countries (the now twenty-five from the EU and three from EFTA) access to an Internal Market governed by the same rules. Nevertheless the position of the EFTA states is asymmetrical compared to the EU states, given the fact that in the creation of the legislation for such common market, the former countries can participate in the early stages of the policy making as "policy shapers" but cannot be decision-makers. This does not mean that they have to accept all EU legislation adapting their national legislation; they have the right to veto and can have some influence in informal ways as well, particularly if the policy in question is considered of national interest. In this case, the Internal Energy Market and its policies are very relevant, provided that Norway is a country rich in natural resources and energy. Here two controversial directives will be presented as examples of Norway as negotiator in the framework of the EEA agreement and the impact they had in the final outcome.

*Key words*: Norway, EFTA-EEA, negotiation, influence, energy

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# Introduction

From the states which are part of the European Free Trade Association (EFTA), Norway is the only country which, when provided the opportunity of membership to the European Union (EU), has turned it down twice, one on September 1972 and other in November 1994.

It is worth to mention that Norway and Iceland are the only two Nordic countries which are not member of the European Union and each of them have their own reasons for not being part of it, but both are part of the EFTA and the Economic European Area (EEA) agreement which bond them with the Union. As a short background we have to mention that EFTA was founded in 1960 by the following seven countries: Austria, Denmark, Norway, Portugal, Sweden, Switzerland, and the UK. Finland joined in 1961, Iceland in 1970, and Liechtenstein in 1991. It was in 1973 when the UK and Denmark left EFTA to join the European Community. They were followed by Portugal in 1986 and by Austria, Finland and Sweden in 1995 (http://secretariat.efta.int and Ingebritsen 1998: 81-89). So nowadays the EFTA members are only Iceland, Liechtenstein, Norway and Switzerland.

It is relevant to know that before, in 1992 the agreement of the European Economic Area was signed by the seven member countries of the EFTA in that time (Austria, Finland, Sweden, Iceland, Liechtenstein, Norway and Switzerland) with the European Communities (EC) concerning their participation in the Internal Market. Switzerland at the end decided not to participate and as said before, Austria, Finland and Sweden in 1995 joined the EU almost at the same time when the EEA came into force in 1994. That means that the three remaining countries: Norway, Iceland and Liechtenstein form part of the EFTA-EEA states and participate in the Internal Market of the EU, therefore they have access to the EU's market and to its four freedoms: freedom of movement of goods, capital, services and people. Being part of the EEA but not being member of the EU also represents that they have to accept different types of market regulations but cannot vote on these laws, although this agreement gives them the right to be consulted by the European Commission during the formulation of legislation (ibidem).

In Norway there are several internal interests groups involved that support or are against of being part of the integration process and this debate and discussions about gains or losses of being part of the Union are still very alive. The fact that Norway is part of the EEA which allows them to enjoy of the four freedoms of the Internal Market and that they have to accept several regulations has meant for some scholars (Claes 2002) that there is some degree of Europeanization of their own rules and several other parts of the government administration. I will agree mostly with those scholars that mainly support the idea that what is happening in

Norway and the EEA is basically about adaptation to the new international conditions and it comes with the fact that there is a relation of complex interdependence between Norway and the EU. But this work will not go deeper on the discussions about complex interdependence either Europeanization and adaptation, subjects that have been studied in many other research works, I will basically focus on the situation of Norway (as an EFTA-EEA state) and the negotiations between them and the EU.

The main problem for Norway is the condition they have within the EEA agreement, that at certain level, they cannot have the influence or impact in the legislation which rules the EEA as the members of the EU can. Therefore, Norway not only constitutes a small state on the negotiations for the legislation which will rule the EEA, but also some kind of semi-outsider. That condition of semi-outsider of an integration process like the EU and its Internal Market has its advantages and disadvantages, especially if we study closely each issue area that form part of such process. We cannot forget that this situation for Norway may be taken as prejudicial and/or beneficial in terms of sovereignty (autonomy) and democracy and it would be interesting to study with more detail how deeply these two have been affected, but that would be also matter of another research.

It has been already pointed out by some scholars (Friis 1997) the difficulty of analysing the negotiations and bargaining situations between the EU and outsiders resides in the fact that it is an underdeveloped research area, seen mainly by theoretical perspectives (Friis 1997:36). This work might be also more complex, since as it was said before, Norway is not a complete outsider from the integration process, but a semi-participant and it is not possible to generalise its situation compared to other semi-outsiders such as Iceland and Lichtenstein (part of the EFTA-EEA) and even less so to Switzerland (and its particular position) since all of them are individual and different cases.

Given the limit of space and time for the research, this work will not be a comparison between the member states of EFTA or will it provide any type of generalisation for the situation of all of them towards the EU. It will mainly explain in basic terms the position of the EFTA states within the negotiations between them and the EU and will study a specific case (Norway) in a specific issue area (energy) with two directives as the result of negotiations between the two parties (EU- specifically the Commission and Norway). Therefore, I intend to apply my questions to the study case of the Internal Energy Market, EU energy policies and the controversial licensing and gas directives taking into account that oil and gas are important assets for Norway.

My main research questions are the following:

- Do states which are part of EFTA-EEA have a relevant influence in EU policy-making? How and when does Norway participate in EU policy-making?
- Which are the formal and informal ways of influence for an EFTA-EEA state? More specially, in the case of Norway?

# 1 Methodology and sources

In this research, I will firstly use a deductive method, in other words it will advance from general to particular and this method will continue along the development of the work and in each chapter. It will also start from theoretical to empirical by describing and explaining the situation of Norway as a semi-outsider from the European integration process and its complex relationship with the European Union, relationship which has already been introduced at the beginning of this work. In the very first section of the research the theoretical framework will be established based on literature on theory of interdependence, of small states within and outside the European Union as well as some instruments provided by negotiation theories. In the second part, the background will be based on historical and empirical data which will be analysed at the same time. The third part consists on the explanation and case study of a very relevant issue area for Norway related to the EEA agreement, the Internal Energy Market and within it two specific directives. I will finally use a comparative method to contrast these two more specific cases: the hydrocarbon licensing directive and the liberalisation of the gas market directive. Here, secondary sources will be used and but also include some first hand information provided by an interview and conversations with some civil servants from the Norwegian Ministry of Energy.

In order to understand the further development of the work some theoretical concepts have to be clarified in this section of methodology. Provided that in this research I will analyse the situation of Norway towards the European Union in terms of influence within the decision-making, it is basic to make this concept operational. In other words, it is important to have clear what will be understood by the concept of influence and which are its indicators since this work will intend to measure it through the analysis of outcomes from negotiations in two particular cases (the two directives) by comparing them. The selection of these two directives was made deliberately because for Norway the situation, negotiations and outcomes were different on each of them. It is also relevant to take into account that the impact that Norway may have in the decision-making of the EU depends and varies according to the issue areas and their policies. Therefore I cannot conclude and generalise that the influence and the outcomes in energy is the same as in any other issue area related with the EEA agreement.

The concept of influence cannot be separated from the concept of power, but to explain the meaning of power itself is quite a difficult and complex work, since within the disciplines of political science and international relations there is a very wide variety and of definitions. Therefore, in this research I will not go deeper in the discussions about power and influence as it was said before, those concepts will mainly be defined in order to make them operational.

According to Robert A. Dahl (1957) power is related to the capability of actor A causing actor B to do something that the former would not have done given the case (in simple words, A had influence and B was influenced by A). There are several dimensions of power which worth taking into account: firstly the scope, referring to the part on the behaviour of actor B which is affected by actor A (here is also important to know that the behaviour might vary depending on the issue treated); the domain as the number of actors influenced by another specific actor; the weight as the probability of change in the behaviour of actor B affected by actor A (the reliability of A's influence); the costs, for both actors if it is costly or cheap to influence and/or to comply and finally, the means which can be subdivided on: symbolic (normative symbols, information), economic (augmenting or reducing goods, services, loans etc.), military (military force) and diplomatic (a wide group of practices, including negotiation and representation) (Baldwin 2002: 178-179). This multidimensional aspect of power makes the measurement of the concept more complex but gives us an idea of the possible indicators of influence from one actor to another.

The measurement of power is a difficult task, but not impossible if we have operational indicators; as Baldwin notes quoting Dahl and Frey:

"measures of the power of A with respect to B (domain) and with respect to C (scope) can be made on the following dimensions: (1) the probability of B's compliance; (2) the speed with which B complies; (3) the number of issues included in C; (4) the magnitude of the positive or negative sanction provided by A; (5) the costs to A; (6) the costs to B; and (7) the number of options available to B" (Baldwin 2002: 181).

In this research it is also important to bear in mind two perspectives of seeing power, the national power approach (or power as resources) and the relational power approach, which represents power as an actual or potential relationship (Baldwin 2002:185) and if this relationship covers some period of time, power can also be considered as a process (Holsti 1983: 146). At the same time, I will consider power as a dependent variable provided that I will use it mainly as an operational concept in terms of whom, how, when and in which issues power and therefore influence are being exercised. The discussion about power, influence, interdependence and negotiations will continue in my theoretical framework.

Besides the definition of important concepts such as power and influence to make them operational, it also valuable to provide the reader with the instruments to understand certain terminology related to the oil and gas industry used in this research. The "upstream industry" refers to all processes related to the exploration and extraction of petroleum from its natural source (for instance, the use of platforms, drilling, instalment of wells etcetera) In the case of the Norwegian pipelines of gas, they are part of the upstream (interview with civil servant from the Norwegian Ministry of Energy). The "downstream industry" refers to the use of transmission pipelines, refinery of petroleum, transportation, storage, gas distribution. A "gas field" is a group of reservoirs of hydrocarbons containing natural gas but insignificant quantities of oil.

# 2 Interdependence and negotiation theories: Norway's influence on the European Union

The fact that Norway is considered a relatively small state compared to other European states, part of the EFTA and not a full participant of the integration process, puts it in an asymmetrical position when it comes to the negotiations between Norway as individual state (or even Norway as member of EFTA as a bloc) and the EU (specifically with the Commission as counterpart) within the EEA areas. In this work and for practical reasons, both the EU and Norway will be taken as international negotiation actors (as units), even it was mentioned before the complexity of taking EU as whole unit in the negotiations (given that the EU itself is a negotiation system is endowed with inside and outside games). It is important to clarify that the purpose of the research is not to study in depth the EU as a negotiator in the sense of those inside and outside games, but to analyse the position of its counterpart (Norway) when it comes to negotiations. In order to do so, I will first explain general concepts of international regimes and complex interdependence just to have a current view about the situation of integration processes without going into deeper discussions about them. Although I will borrow some concepts and perspectives from the liberal intergovernmentalist approach when discussing the part on negotiations, this research has no purpose to go beyond to the study of integration theories. At the same time I will again bring the concepts of power and influence which are linked in a strong way with interdependence and negotiation.

The current situation's explanation will provide us with the necessary framework to understand the position of both parties (Norway and the EU) in their negotiations, which is the second part of this theoretical chapter. Here I will observe basic differences of being insiders, outsiders and semi-outsiders when it comes about negotiation processes and on the last part I will study more specifically the situation of Norway as a small state, semi-outsider of the integration process. As it was mentioned before, even if this study will not go deeper on the discussions about Europeanization and adaptation (which are very important) but they will be taken into account, generally explained in this theoretical chapter and illustrated in the last empirical chapter.

## 2.1 International regimes and complex interdependence: actors' situation, actions and capabilities

Before explaining the situation through the lens of complex interdependence it is useful to clarify of what is understood as an international regime, since it is the environment in which complex interdependence develops. An international regime can be defined as: the "principles, rules norms and procedures around which expectations can converge in a given area of international relations" (Keohane and Nye 1977: 278).

According to Keohane and Nye (1997) pioneers on the theory of interdependence, it is important to differentiate between the concepts of plain interdependence and complex interdependence, given the fact that the first one is a broader term referring to situations where there are reciprocal effects among countries or among actors involved, and the former is an ideal type referring to other types of situations where between countries there are multiple contacts that connect their societies in a deep way; there is no hierarchy of issues treated and military force is not used between governments involved (idem: 271). Therefore in the effort of analysing the relations between states involved in a regional integration process it is more accurate to think in terms of "institutionalised" complex interdependence (even if it is an ideal one and not a complete explanation of reality).

Issues included in situations of interdependence and complex interdependence usually also have internal impact on the states and their different domestic groups' interests. This makes the work more difficult for the governments to define the national preferences and national interests, as the outcome of a negotiation in one determinate issue might be beneficial to one of the interests groups but prejudicial to another in other issue (Michalak 1979: 138). In other words, relations between actors involved in situations of interdependence (and even more so on complex interdependence) usually have a hard time deciding on choices of concessions and give-and-take. That position is also related with the possible effects that the international regimes may have on state behaviour. Generally speaking it is possible to observe two types of effects on states' strategies: first, some states will produce strategies designed to reduce uncertainty and provide guidelines in order to have more agreements and with all this try at least to influence the creation of the rules of the regime. Second, given the fact that regimes sometimes limit states' behaviour, there will be more powerful states that might try to "violate the rules". However, that strategy might cost them their reputation and their ability to make agreements in the long term (Keohane and Nye 1977: 279).

For this work there are at least two contexts of interdependency which are useful to bear in mind: first, situations where the level of interdependence is high and symmetrical (beneficial for all parties involved although changes might produce more costs to one party than other given its external sensitivity) and

second, situations where interdependence is also high but this time asymmetrical and there are conflicts over the relative shares of benefits outcomes of the relationship since sometimes there are unequal distributions of the benefits (Michalak 1979:141 and Pfetsch and Landau 2000: 25-26). In the particular case of the European Union as a whole actor and Norway as another actor, I would sustain that both situations are experienced. The first one in the sense that, even if the EU is composed of many states and Norway is only one small state, in many issues of trade or in programs which involve social participation the relationship is of high and complex interdependence in a more symmetrical way. The former one, which implies high interdependence but a more asymmetrical position of one of the parties also exists if we get a closer look in specific situations. For instance, when it comes to issues of energy, particularly oil, having Norway as a producer and EU as a consumer might put each of them in an asymmetric position towards one another depending on the prices of that important source of energy. Both situations are reflected when it comes to negotiations in the EEA context.

Something very important to have in mind about the symmetric or asymmetric relations during the negotiation process is that just because an actor in a position of more dependency or "weakness" but with strong preferences, it does not necessarily mean that it will make larger concessions in other issues in order to accomplish its objectives. Actually in other situation, even a more powerful actor would not exercise influence if it means to give relevant concessions that diminish its gains (Keohane and Nye 1977: 273). The asymmetry and symmetry might have different significance during the negotiation, but the fact is that "what matters in the end, is whether or not the parties are satisfied with the negotiated result" (Pfetsch and Landau 2000: 22).

In social sciences, especially in political science, when we speak about symmetric and asymmetric relations the concept of power cannot be set aside. If we take power as a material resource, then symmetric relations are based on equal wealth and asymmetric on unequal wealth. However there are several dimensions how power can be expressed: first, the Hobbesian perspective- power as possessions, wealth or resources; secondly the Lockean perspective- power as relation, in which power depends mainly on the relation the actors have with one another and if there is no other actor towards whom power can be executed, then power is useless (to this perspective will belong the operational definition of power provided by Dahl at the methodological part of the work) and power as relativity from the Deutsch school of thought, where the amount of power from one actor depends on the amount of power that the other actor has in the negotiations (what matters here is the perception of power capabilities and resources, in comparison to the counterpart) (idem: 27-29).

The forms of exercising power or influence may be classified in three: coercive, structural, and consensual. Coercive power is based mainly on physical or material strength (I suggest it would correspond more to the definition provided by the Hobbesian school of thought seeing power as possessions, even more so as military capacities), this type of exercising influence will be present in asymmetric relationships and it takes advantage of the asymmetrical situation in form of threats, pressure, sanctions or even employment of force. Structural

power based on the distribution of economic wealth where symmetric and asymmetric relations exist depending on the degree of distribution of economic resources and capacities (this also would correspond to a Hobbesian perspective). And finally, consensual power where there are relatively symmetric relationships between negotiating partners given the fact that there are voluntary agreements and consensus between the actors in the negotiation. There are several ways of exercising influence or power: deliberations, persuasion, discourse, charisma, and authority, although demagogy and populism can also be present (this type would correspond more to the Lockean and Deutsch school of thoughts). It is important to have in mind that the first two ways of influence or exercise power possess better characteristics to be measured quantitatively than the third one (idem: 31).

## 2.2 Negotiations in the European integration process: insiders, outsiders and semi-outsiders

There are several lenses through one may see the negotiation process; realist tradition would put in centre of analysis the state-to-state diplomacy where single states look to pursue its own interest even at expense of others' interests, but in situations of interdependence and complex interdependence process of negotiation is seen as a tool to accomplish mutual benefits for the parts involved rather than just getting out benefits at the expense of the others in a zero-sum game (Hopmann 1996:24). Having this clear, it could be said that this process refers mainly to "the parties' exchange of concessions and compensations in an effort to reach a point of agreement that is favorable and acceptable to each" (Zartman 2000: 8).

Those concessions and compensations are the outcomes of the negotiations and can be explained according to Zartman (2000) through two types of theories: end-point theories and security-point theories. End-point theories refers to the situation where the parties make concessions and compensations to get to some specific aim, so during the negotiation process both parties maintain their own goals of trying to persuade the other join in the search of that individual goal. Parties involved have to reinvent or reframe the end-points when the convergence process indicates a deadlock. The second type of theories make emphasis in the use of what is variously defined as security-points (costs of conflict, costs of deadlock, or time costs) as the explanatory factor of concessions. In this bargaining situation, analytical concepts such as BATNA (Best Alternative to a Negotiated Agreement), where an agreement provides better outcomes to the two parties involved than the status quo, is extremely important. Both parties make continuous comparisons between possible alternatives and they concede or reframe depending on those alternatives which can be looked in many ways like for instance, what is to be obtained without even negotiating, what happens if the negotiations are broken, etc. and their respective costs. In short, security points are related with power or at least they can be conceived as sources of power.

(idem: 8-10). Nevertheless, I believe there is a third type of perspective that worth mentioning, since it is more useful in cases of complex interdependence, specifically in cases of integration processes where a zero-sum game is not a convenient option for any of the parties involved: the problem-solving approach. As Hopmann defines it:

"in integrative or problem-solving negotiations, the problem itself is the adversary; therefore, the table may be visualized as one in which both negotiating teams sit on the same side and face the problem head on. Thus, rather that confronting one another, they confront together the problem that creates difficulties for both sides" (Hopmann 1996:77).

For practical reasons and knowing the risks it might bring for the discussions, in this work the EU will be analysed as an international negotiation actor, usually defined as a unit with certain autonomy and actor capability. This means autonomy in terms of internal cohesion and referring to actor capability as the possession of certain structural characteristics subdivided in three different categories or criteria: basic requirements (owning a number of goals and interests and being able to articulate them as well as to mobilise resources to finance the possible commitments, outcomes of the negotiations); decision-making and monitoring system (which be in charge of the final decisions of the negotiations and the implementation of the resulting commitments) and action performance instruments (referring to networks of external agents and external channels of communication) (Friis 1997: 39-40). Without denying that institutions matter, it might be said that in this work I will assume and take a liberal intergovernmentalist approach, since the main actors to consider in the negotiations will be the Norwegian government and the European Commission representing the member states' interests (Moravcsik 1993). Institutions as the European Commission will matter in the sense that they provide security and help to resolve some uncertainties by having established "the rules of the game" (Schimmelfennig 2004:78 in Wiener and Diez).

Before going deeper in the discussion about the negotiations between the EU as a unit with third actors, it is important to bear in mind that the EU is a negotiation system itself and as Elgström and Jönsson (2000) sustain, the EU can be considered as a bargaining or problem-solving arena depending on the issues and contexts given. Bargaining has more to do with individual concern for its own interests, so the incentive to get joint solutions is relatively low and the tendency is more to get the lowest common denominator agreement. On the other hand, problem-solving is related mainly with the search of new solutions convenient for all the players. In a bargain is often seen that there are conflictive versus cooperative behaviours and a win-loose attitude while in problem-solving more cooperative interactions are present which imply a win-win attitude (Elgström and Jönsson 2000:3).

Since early stages the EU has been involved in different types of negotiations with other external actors. This is not rare, since the process itself is not isolated and unaffected from the external world and most on the contrary, once the integration process started to produce results, such as the Single Market, outsiders were encouraged to negotiate and have deals with the members of the "club" (Friis 1997: 35). As it has also been remarked about the negotiations

between the EU and third countries, the very term of inside-outside games implies the fact that it is a dual negotiation, first the EU has to negotiate internally, provided that it is a negotiation system in itself and the negotiations with any outsider and also the granting of their demands usually means that the EU has to adapt its own institutional system, particularly in cases of accession. Thus, any outsider will not only deal with external but internal affairs which mean that these types of negotiations possess (in a certain way) "high politics" qualities (Friis 1998: 325). The difficulty of analysing inside games first comes with the fact that the bargaining and individual states' preference formation are processes which go along simultaneously. Therefore, member states might have to constantly review their own position according to the others' position (Claes 2002 WP 02/12 ARENA) and then coordinate their position in order to have a negotiation with an outsider.

In any type of game, using Moravcsik perspective of liberal intergovernmentalism and its theory of national interest formation combined with negotiation theory we have that given the fact that some states are stronger in terms of bargaining power than others they have more chance to influence the outcomes in the negotiation process. States decide to be part of this process pushed by the international system characterised by interdependence and with it the international policy-externalities. It is said that states' preferences depend much on the policy externalities.

"Policy externalities are defined as situations, where the policy of one government creates costs and/or benefits for socially significant groups outside its national jurisdiction. Only by coordinating their policies can states solve their national problems"(Friis 1997:64-65).

The concept of bargaining power used here and created by Moravcsik has three basic determinants: unilateral alternatives and threats of non-agreement (if there is a negative externality, the actor involved is able to have its own solutions and can reject any other proposal); alternative coalitions and threats of exclusion (here there is a possibility of making or deepen a coalition in order to accomplish the preferences with the danger if not doing so of being isolated in some way) and compromise, side payment and linkage at the margin (the states that really want to accomplish some agreement are willing to sacrifice more than others which do not depend much on that agreement). Therefore it is to conclude that bargaining power depends mainly on the degree of necessity from a government to reach an agreement (idem: 67).

There are at least two main characteristics of these "inside-outside games" that make the analysis of the EU's negotiations with outsiders (and semi-outsiders) more complex: the first one is centred on the speed of the game. Provided that the EU it is in itself an old negotiation system involved since the beginning with many other games, when it comes to the negotiation with an outsider, the outsider has to deal with an historical background of this negotiation system (the shadow of the past) at the same time with the actual games (the shadow of the present) and finally with the possible outcomes and consequences for future negotiations (the shadow of the future). The second one is related with the outcome's quality, in other words the inside-outside games produce usually "ungenerous" outcomes because of three main reasons: one is that the members of

the "club" have been already involved in past games; they have commitments and vested interests in the *aquis* , therefore they do not want to sell out to an outsider; second is that, given the situation of the EU as a negotiation system itself, they can use this position as a bargaining tool *vis-à-vis* the outsider (by for instance, postponing the concessions and using as an excuse the complexity of the system, although it is also important to remark that it depends on with which type of outsider the EU is dealing- it depends on the level of asymmetry), and the third reason rests in the fact that, as EU members, states have provided to the supranational institutions (such as the European Commission) the capability of dealing directly with outsiders, even if these deals were supposed to be part of "high politics" and thus of domestic concerns. This has especially a relevant impact in the implementation by the member states, which assume a more restrictive attitude during the negotiations with the outsider (Friis 1998: 325-326).

In this study I will borrow the model created by Friis which combines the theoretical instruments provided by Moravcsik and his contribution on the liberal intergovernmentalist perspective with her own proposal which makes the model more operational in the inside-outside games. It can be argued that this model works more in a context where there will be first insiders' negotiations in order to afterwards have negotiation games with outsiders. I sustain that this model also works for the case of semi-outsiders like the EFTA-EEA states, and in our specific case of Norway. Friis (1997) summarises three important assumptions from Moravscik in order to understand the bargaining arenas in which the two units of our study participate: 1- Bargaining is voluntary in the sense that there would not be military threats or economic sanctions (here I would add that the economic part could be an exception for a semi-outsider depending on the issue area on the table of negotiations); 2- There is a relatively information rich situation during the negotiation, where all parties can communicate at low costs and know each other's preferences and 3- The negotiations can last a long period of time, so there can be several offers and counter offers at low costs (Friis 1997: 66).

Moravscik's key argument that only power and preferences define the outcome of the negotiations is supplemented by Friis and her assumption that "Negotiations take place in a context, characterised by uncertainty- due to a high degree of issue-density, the enmeshment of national and EU-politics and the fact that the EU is a young system of governance" (idem:79). Therefore, this uncertainty means that the parties on the negotiations do not know the preferences of each other before going to Brussels and it is there at negotiation table where it can actually be developed. This is also relevant for the bargaining strategies to follow, which will help to make the process more clear and also this means that institutions in these games do usually matter, since states can use former institutionalised policy patterns in their formulation of preferences (idem: 79-80).

Some scholars (Friis 1997) suggest four types of determinants in an inside-outside game which, in my opinion can also be applied to the semi-outsiders: the first one- external spill-over determinant (the EU and its integration process have created costs for the outsider than members of the club do not suffer- like for instance the tariffs, therefore the outsider wants to negotiate to reduce costs); the

second one- a more symmetrical interdependent determinant, where both, EU and outsider have found that reaching an agreement will produce not only costs but also benefits and that would be positive for both since that interdependence will be regulated; the third one- more asymmetrical, where the EU as a system of its own (regional and national interests altogether) sees the need to negotiate with outsiders (a self-styled determinant, so to speak) and fourth, where the combination of the previous three determinants is present, is the precedent determinant- if the EU opened up to one country to be a member, it has to open up to others (idem: 89-91).

There is not much written about the role that the semi-outsiders like the EFTA-EEA states can play in the inside-outside games so in this sense, this research could be taken as a small contribution by saying that semi-outsiders can play in two different "teams" so to say. Since they participate in the first stages of the decision-making where initiatives and proposals are being elaborated, it might be well said that they are playing as an insider (in this stage is when they can influence the most) the moment when this proposals pass to other stages, where other institutions such as the Council and the Parliament are involved, then they assume the role of an outsider looking at the proposal going into a black box where they do not know which modifications are to be done. In some sense it can be said that this semi-outsiders can enjoy some of the benefits products of previous negotiations which come from the negotiated system itself and that they can even witness or get information about the inside games and member states' preferences before than any other simple outsider could. That type of information can be taken as an asset for the semi-outsiders who also are in some sort of asymmetrical position since they do not really participate in last phases of decision-making. The situation of being "insider" at some point, also provide them with the opportunity to establish networks with other counterparts. This is very important in the sense of the access to information and the possible formation of alliances. Therefore we can conclude that their influence should be seen through the perspectives of power as relation and as relativity.

## 2.3 Small States and their influence in the integration process: adapt in order to survive?

Lawler (1997) sustains that Scandinavian countries are considered small states in the sense that they are more vulnerable to the exterior in comparison to others, given the fact that they are more sensitive to the external phenomena since they have small, export dependent economies. And this is exactly what makes them perfectly suitable for the membership to the EU. But this reality is relative; domestic values and collective history makes them react in different ways to external pressures to integrate, homogenize and adapt (Lawler 1997: 587-589).

Qualifying a state as small is only useful when it is made in relation to other, a large state and this characterisation is often made according to the territorial

expansion as well as the size of the population, but I would agree with scholars as Goetschel who sustain that "the significance of smallness depends on the notion of power and on the nature of the international system" (Goetschel 1998: 14).

In this research and in order to understand the position of the small states and their possible influence in the integration process, the "integration dilemma" will not be seen through the glasses of integration theories, although again the states, governments and their preferences are in the centre of analysis and therefore it might be said that the work has more a liberal intergovernmental position. Here, some theoretical elements provided by foreign policy and adaptation theories will be used specially since "this reflects the fact that central actors in this analysis are national decision-makers, intent on striking the best possible bargain for their nations" (Petersen 1998: 34). That also means that we will have some other type of internal-external games but in a different way because the governments will first have to define and negotiate their preferences at a domestic level and then go to the bigger table of negotiation at the European level. The use of elements from adaptation theory provided by Petersen and other scholars (Claes 2002) will provide this analysis with a better perspective for the case studies and as those elements are very important and useful to recognise the position of a small state such as Norway they cannot be left outside of this work, on the contrary, it is relevant to have them clear. However it is not the objective of this thesis to analyse the cases by only taking into account adaptation and Europeanization; that would be subject of another research. According to adaptation theory

"foreign policy consists of policy-makers' actions to manipulate the balance between their society (i.e. the internal environment) and their external environment in order to secure an adequate functioning of societal structures in a situation of growing interdependence" (idem: 37).

There are many different perspectives of the pros and cons of integration and each individual state will judge by itself about the benefits and costs that it could mean, therefore, it would be hard to say that there is only one way of seeing integration. Every government operates differently its integration policies according to factors such as their own international position, domestic structures and ideologies, so what is something helpful and useful to some it might not be for others. But at the end, all the states involved in the integration process will have to deal with what is called the "integration dilemma" and make difficult choices between pros and cons (idem: 34). Depending on their own individual characteristics, domestic structures and compatibility or not and on the issue area treated, the states are more likely to adapt to the European integration process and for instance, if the domestic policy is very alike to the European one, there is no need on "adapt", just to co-ordinate them (Claes 2002 WP 02/12 ARENA).

These choices (and the dilemma) are expressed by the states in different adaptive modes to the external environment (understood here as the EU itself). Much has been written about the small states' as member states of the Union. Therefore, it is a challenge and a risk to write about a non-member or semi-outsider such as Norway. However, I sustain that most of the theoretical models concerning adaptation can also be applied to the EFTA-EEA states. According to Petersen (1998) quoting another scholar (Hansen 1974), the degree of control from a country over its external environment is defined by its influence capability

(IC), variable dependant on different tangible and intangible factors related to power such as military and economic power, prestige, reputation, diplomatic skills etc., and by its stress sensitivity (SS) which is basically the degree of sensitivity to the exterior and its changes. With this, those scholars assume that combining the two variables (capability and sensitivity) there are four adaptive modes with their own strategies. Where there is high IC and low SS, we have a dominant foreign policy, where the state can impose its own values and preferences to others; where there is high IC and high SS then there might be a policy of balance by looking for mutual commitments; low IC and high SS will probably mean a policy of acquiescence, where the governments have to accept reluctantly the influence of others and low IC with low SS will end up as a policy of quiescence, where there will be low participation and activity of the government (Petersen 1998: 38-39).

In the sense of adaptation, there are some concepts that are useful to take into account for this work, defined by Claes (2002) in the policy making there factors of affectedness, policy similarities, bargaining opportunities and arbitration. Affectedness: refers to the degree of impact that the EU legislation might have. For instance, in some sectors there is no impact and the member states can be indifferent to the outcomes from the negotiations. Policy similarities: here mostly is referred in cases where European legislation does affect important issues so it is needed to see in which degree are both, national and European legislation in accordance or not. Bargaining opportunities: in this situation, the European legislation will affect relevant sectors but it is also in contradiction to the existing policy. Usually the state has the chance to express its position and oppose the legislation trying to influence in different ways, sometimes successfully sometimes not. And lastly, arbitration: in this situation the legislation is important and contradicts existing policy, however the state in question does not really have access to influence EU's decision-making so it cannot really bargain. Here it is expected to have a process of adaptation with more complications and sometimes conflicts where arbitrating institutions are needed in order to break the deadlock and then the states will follow the rules established by those institutions, at the end there might be political compromises with legitimacy based on the recognition of the arbitrators' authority by all parties involved (Claes 2002 WP 02/12 ARENA).

### 2.3.1 Oil and gas as useful instruments for Norway: Power as resources

When analysing a small state's adaptation such as Norway to the European integration, there is a very important asset from this semi-outsider that cannot be left behind: its richness of natural resources and the exploration and exploitation of them which have been the key to its growth and development (Sverdrup 1998: 151). It is very important when it comes to adaptation and analysing the position of Norway as a semi-outsider to differentiate which sectors of the economy are being dealt in the negotiation. It can be said that Norway has a dual economy: in

one side there is energy (oil and related industries) which brings them a big amount of profits and on the other the rest of the economic sectors usually very subsidized provided that the fortune of having such richness on energy they have not had the need to rely on competitive skills. A strong economy and the richness of resources have allowed to Norway to maintain its position and when the chance to join the EU arose, it did not have the same need as the rest of the EFTA states (Sciarini and Listhaug 1997: 412 and Ingebritsen 1998: 31).

Smallness is a relative concept depending through which lenses of power we see it. In this case if we take the concept of power as a resource it would not be totally precise to give Norway such characteristic. As a matter of fact, Claes is very accurate when he mentions that:

"The energy sector is the most important sector of the Norwegian economy. The oil and gas activities on the Norwegian Continental Shelf represent more than 22 percent of GNP, 46 percent of the value of exports, and on average over the past five years, more than fifteen percent of state revenues. Furthermore, the accumulated savings in the so-called Petroleum Fund were 73.5 billion Euro at the end of 2001 (…). Until 1990 this system was characterised by state control, ownership and participation (…). The state control over petroleum resources at Continental Shelf and control over conditions for power supply are regarded as issues of highest national importance. The Norwegian petroleum industry is also significant in a European context. Norway accounts for almost half of the total reserves and production of crude oil and around twenty percent of natural gas in Europe. Norway accounts for 18 percent of total oil imports and about 16 percent of gas imports to the EU. In the European energy sector Norway is not a small country" (Claes 2002: WP 02/12 ARENA).

### 2.3.2 Negotiation strategies and alliances: Power as relation

Some scholars sustain that within the institutional framework of the EU, the Commission plays the role of ally to small states (Geurts 1998: 49) and in this sense we should see power as a relation. In the case of a semi-outsider like Norway it can be said that is not totally this way, as it is not completely a member and although at the beginning they can do things insiders do in the sense of being consulted, when it comes to the final negotiations they are an outsiders. The Commission, thus, would not take their interests as important as other member states' interests. In some particular situations, such as the gas directive (which will be further presented in this work) has been said that Norway had important allies such as United Kingdom and Denmark, which helped to modify the directive in issues which Norway considered extremely harmful for their interest (Archer 2005: 129-130). But the fact is that if they want to play successfully in both games (inside and outside), they still have to develop as the rest of the small states, a skill to create well-sustained and well-reasoned national positions to present a coherent opinions and be able to defend them all along the negotiations and decision-making in the several issue areas (Soetendorp and Hanf 1998: 192).

According to Thorhallsson

"the size of a state's administration plays an important part in a state's behaviour in the decision-making process of the EU. The advantages and disadvantages of small administrations have to be taken into consideration when explaining the behaviour of small states in the EU context. A small administration is able to cope with the EU demands because of its special characteristics and because it makes a particular effort to enhance these characteristics. The administrative working procedures of smaller states are characterised by informal communications, flexible decision-making, greater manoeuvrability of officials, and by guidelines rather than instructions to negotiators when dealing with important issues. These features make it possible for a small administration to participate successfully in the EU decision-making system" (Thorhallsson 2000: 106).

That is why is the work of the Mission of Norway in Brussels (as the Norwegian representation to the EU) is so extremely important, as one of their main tasks is to collect information and create social networks, which of course are providers of such needed information (conversation with one civil servant at the Norwegian Ministry of Energy).

# 3 Background of the Norway-European Union relations

In order to understand the relations between Norway and the European Union, firstly we have to take into account the history of Norway and its formation and development as a state. Norway as a nation was united under a common king as early as 872 but lost its independence to Denmark in the late Middle Ages, which ruled from 1390 to 1814 and then again it was the possession of the Swedish kingdom. The national identity, however, was still very attached to peasant folklore and traditions mixed with some European ideas brought by Norwegian elites related with the exterior (Claes and Fossum 2002: WP 02/29 ARENA). It is often said that by being first a joint kingdom with Denmark and then from 1814 to 1905 with Sweden, Norway was mainly protected from many European events and the external world (Archer 2005: 21). This meant that Norway did not have a direct involvement and influence with the rest of the European continent and the continent itself did not have a direct impact in Norway either.

Although the first approach in order to study Norwegian-EU relations is usually based on economic and material aspects, issues of national identity cannot be set aside, these have also played an important role in the question of become or not a member of the organisation. I sustain that in the understanding of how Norway behaves towards the EU both, identity (culture and history) as well as economic interests cannot be totally isolated from one another therefore I will try to synthesize them in this chapter. However I will not turn the research on the discussion of the weight of identity or identity matters versus structural or material aspects. As it has been mentioned before, this work is going from general to particular so it worth to mention that the study cases are mainly structural or economic and not identity-based but the cultural aspect is also considered.

In Norway, the centre-periphery tension has been always a relevant subject of discussion in domestic politics. Norwegian society has been divided not only in centre-periphery terms but also in rural-urban, producers-consumers, secular-religious and even among classes and linguistic groups (Norway has two official languages: with Bokmål on one side, supporters of counter-cultures- Nynorsk language and even the minority Saami). In order to deal with these disagreements between different groups the political culture of Norway has always been in the search of consensus, so the formation of institutions as a multiparty system based on proportional representation has been extremely relevant (Sciarini and Listhaug 1997: 413 and Claes and Fossum 2002: WP 02/29 ARENA).

Returning to history and cultural aspects it is worth to mention that during the union with Denmark and then Sweden, it was the periphery group which had most against the union and fought for independence (Sciarini and Listhaug 1997: 413).

After its final independence from Sweden, the Norwegian economy was to a large degree based on a limited set of resource exports, specifically timber and fish. It was not until the end of the 20th century that petroleum became the dominant sector of the economy but we can observe either way that the Norwegian commercial interest since early stages of its independence were based on exports and in that sense they were highly dependent on the international markets.
Although Norway does not possess a big proportion of arable land and farming has not been a big sector on which the country can support itself, the farmers have played a very important political role specifically in security aspects by having a wide dispersal of people which meant the possibility of maintaining population in the Northern part of the country and therefore strengthen its border with Russia (Claes and Fossum 2002: WP 02/29 ARENA). So it can be implied that the country has always to deal domestically and externally with two important subjects: one to continue with its exports which sustain its strong economy and usually have the need to expand (being mainly fisheries and petroleum-related industries) and protect its weaker sectors (specifically, agriculture). As it has been well expressed about the Norwegian situation,

"the contradictions and ambiguities in national policies reflected profound socio-political cleavages in Norwegian society, often referred to as a cleavage between the political and cultural centres, which tend to accept modernisation, and the political and cultural periphery, where traditionalism is more strongly rooted. Opinion polls and research on electoral behaviour confirm a profound and remarkably stable socio-political cleavage which have become transparently dividing, in particular when the issue of whether to integrate or deepen international interdependence has been part of the political agenda"(Frøland 1998: WP 98/25 ARENA).

After their independence and the modest but constant development of Norway as full state, the shadow of the two World Wars was present and especially, the Second World War and the German invasion of Norway on 1940 reminded them of their vulnerability to the exterior by not being able to repel the enemies by their own. It was with the help of the allies, especially from the United Kingdom when after the war the exiled Norwegian government was re-established (Archer 2005: 28-29). This relationship between Norway and the UK would become more important in the next twenty years when they created an alternative to the European Community (EC): the European Free Trade Association (EFTA). During the post-war period, it was clear the formation of different economic alliances between European countries such as the EC in order to achieve the reconstruction of the damaged continent. Meanwhile the EC was being finally established and mainly sustained by two countries (France and Germany) which are nowadays pillars to the stability of the European Union in 1960, EFTA appeared as a response from the United Kingdom which was not very convinced about the EC since they considered the EC was politically oriented.

## 3.1 Norway in the European Free Trade Association (EFTA). From the creation and development of EFTA to the nowadays EFTA-EEA: "the Norwegian method" of European integration

While the EC had a political vision of how it could be its development since the beginning, EFTA was defined mainly as an economic project which goals were constrained to eliminate tariffs on most industrial goods among its members. That is why this organisation was more compatible with the neutrality from some of its original members and also a good alternative for those who were more sceptical to a closer union (Egeberg 2003, WP 11/03 ARENA and Ingebritsen 1998: 81-82). EFTA was in total integrated by the founding members: Austria, Denmark, Norway, Portugal, Sweden, Switzerland headed by the UK in 1960. Finland joined in 1961, Iceland in 1970, and Liechtenstein in 1991 (http://secretariat.efta.int and Ingebritsen 1998: 81-89).

It is very interesting to realise that Norway has applied four times for membership into the EC/EU- in 1962-63, 1967, 1970-72 and 1992-94 but it is said that none has been sustained by a well considered and firm policy based on domestic frameworks. At the three initial applications, Norway followed the UK and Denmark (France vetoed the two first ones) and on the fourth in 1994 it followed Sweden. The fact that they have not developed a consistent policy based on their own particular situation has confronted the governments with difficulties on the acceptance of the membership to the Union (Frøland 1998: WP 98/25 ARENA and Egeberg 2003, WP 11/03 ARENA).

When finally in the third attempt the EC welcomed the memberships of UK, Ireland and Denmark in 1972-1973, Norway remained outside because the government decided to put the subject into a referendum and the membership was turned down by a narrow majority of 53.5 percent of the voters. The economic sectors which were more problematic during the negotiations were fisheries regime and the non-competitive agriculture and the final outcome of the referendum showed that the voters were not convinced entirely on these issues. Moreover, there was still a big scepticism towards becoming part of another union, the Norwegian people still had the negative memory of both the union with Denmark (1380-1814) and the union with Sweden (1814-1905) (Egeberg 2003, WP 11/03 ARENA).

Between the third application for membership in 1972 and the fourth on 1994, many things changed in Norway; the country became richer and with a growing urban society. The economy was more open to outside influence (especially in words of capital) and the exploitation of offshore oil became one of the most important economic activities for the country, since it gave Norway big profits and helped to sustain its standard of living when there were economic crises affecting most of the West European states (Archer 2005:54). Before

discussing the fourth and last application from Norway to the EU, is important to have in mind and explain the Economic European Area agreement (EEA) which is the link between the EC and the EFTA, agreement which has provided with the instrument for what is has been called the "Norwegian method" of European integration (Eliassen and Sitter 2003: 137).

After the UK, Denmark in 1972 followed by Portugal in 1986 out of the EFTA and now members of the EC, the rest of the small states from EFTA were confronted with the possibility of being isolated and excluded from the single market created by the EC (Sverdrup 1998: 152). These economic concerns were shared and understood by the EC, and since middle of the 1980's Ministers from both organisations agreed on creating a "European Economic Space" or European Economic Area (how it is called currently) which would link both of them. But it was not until 1990 when the negotiations really started (Archer 2005: 56, Sverdrup 1998: 137 and Ingebritsen 1998: 84-85). It is very relevant to notice that for the members of EFTA, EEA had different meanings; meanwhile for one group (Sweden and Austria) it meant the stepping stone to a full membership to the EC, to other group (Finland and Switzerland) was a waiting room for the membership, which will allow them to wait and see how it develop and to the last group (Norway and Iceland) it was the alternative to the EC membership, since it would provide them with the access to the four freedoms of the market without risking political autonomy using institutional mechanisms which also would help to protect national interests (Ingebritsen 1998: 86).

In Norway, the access to the EC market meant opening new opportunities of exports, and for some groups pro-membership was the ideal way to prove their point of the convenience of being part of the EC to the public which with the time, would accept the full membership. Those hopes were vanished when almost at the same time that the EEA was given the final touch in 1991, the Nordic partners Sweden followed by Finland submitted their applications for the full membership. After the fall of the Soviet Union and the disintegration of the Warsaw Pact neutral states like Finland, Sweden and Austria, which had abstained from membership in the EC/EU (because of political reasons) saw the chance to form part of the organisation for their benefits, particularly because the two first had experienced economic problems in the early 1990s. Norway did not want to be left behind and at the beginning of 1992 announced that they will also apply for full EC membership. The accession negotiations were completed just after the EEA agreement had come into force and then is when the three Nordic countries arranged a referendum on the membership to the EC/EU. It had the following results: in Finland, 56.9 percent supported the membership, in Sweden 52.3 percent and in Norway 47.7 percent approved Norwegian inclusion to the EU. That meant another defeat to the Norwegian government in the issue of membership and amazingly the results from the first referendum in 1972 and 1994 where very similar (Sverdrup 1998: 153**,** Egeberg 2003, WP 11/03 ARENA and Archer 2005: 57).

Something remarkable that cannot be forgotten to mention is the fact that the question of membership since the very beginning has been a very controversial subject in all domestic levels, between and within political parties has caused

divisions and different types of interest groups have supported or been against it creating pressure to society and government. Following the argument of the cultural- identity reasons of not being part of the EU, according to some scholars like Neumann, the success of the "no" side in both referenda in 1972 and 1994 was the skill of using historical arguments (and nationalistic in some way) in their discourse about the "people's representation". Their arguments have been based on the recognition of the Norwegian cleavages but at the same time on the defence on the national identity and autonomy achieved by their independence, the shadow of an occupation was again present on the Norwegian minds (Sciarini and Listhaug 1997: 432, Neumann 2002: 125-127 and Eliassen and Sitter 2003: 127-129). It is at the same time undeniable the structural and economic interests involved: while they are still more reliant on its principal export commodity, the oil industry (and within it the gas production from which the EU is highly dependent), the smaller industries, agriculture and even fisheries (although fisheries is also an export industry which brings them profits) still ask for the high subsidies provided by the petroleum revenues and without them these sectors would have a hard time to sustain their level of life-style (Ingebritsen 1998: 129-132 and Egeberg 2003, WP 11/03 ARENA).

### 3.1.1 Functioning of EFTA-EEA

With the inclusion of Austria, Sweden and Finland to the EU, the double pillar from the EEA (EU countries on the one side and EFTA countries on the other) was now more asymmetrical, having on the EFTA side only Iceland, Norway and a newly small member Lichtenstein. In the particular case of Switzerland they decided to stay out of EEA and have their own bilateral agreements with the EU (this would be an interesting study case but this research will not go further on it since is not the subject of analysis). For some groups, the EEA solution was the combination of the best of both worlds: it gave access to a common market but without a formal loss of autonomy and sovereignty by having a common set of rules that would also allow the protection of sensitive economic sectors such as agriculture, fisheries and regional policies (issues which are outside of the EEA agreement) (Andersen 2000- WP 00/4 ARENA and Eliassen and Sitter 2003: 137). For some others, this has meant a handicap in terms of decision-making since the EFTA states are granted access to the European institutions but not formal powers. Thus, Norway is seen as a decision-shaper but not decision-maker (or as policy taker but not policy maker). Norway is obligated by law to include in their own national legislation all relevant internal market regulations (or EU legislation) included in the EEA agreement. Even if the EFTA states have the option of rejecting the EU legislation, so far they have not exercised this right. Actually even if it could be thought that the quasi-membership situation allows them to be more relaxed on the implementation of the law, this has not been the case, given the fact that EU may punish Norway for non-compliance and a single case of that would have broader implications for the Norwegian authorities

(Andersen 2000: WP 00/4 ARENA, Claes and Fossum 2002: WP 02/29 ARENA and Eliassen and Sitter 2003: 129-130). In the sense of formal ways of influence they can send experts to participate on the early stages of legislation within working groups and preparatory committees under the auspice of the Commission. Officials from EFTA countries may attend relevant preparatory committees in the Commission as well as in a number of comitology (implementation) committees (Andersen 2000: WP 00/4 ARENA and Egeberg 2003: WP 11/03 ARENA). Informally Norway could be able to perform lobbying activities by using the information provided by the involvement with the Commission committees. But according to some scholars (Andersen 2000, Claes and Sverdrup 2004), these lobbying opportunities to pursue their national preferences are not fully used and in general Norway assumes a strategy of adaptation in most of the areas included in the EEA unless they are specific national values such as petroleum industries (oil and gas) and fisheries (salmon export) (Andersen 2000: WP 00/4 ARENA). It is remarkable that this "Norwegian method" of European integration has its limits in problematic areas such as Schengen, EMU and the common and foreign security (Eliassen and Sitter 2003: 137) not only in the sense of influence and adaptation, but mainly because the EU is a "living" organisation and it is changing with the time not only by the accession of new members and all its implications, but also with the significance of having an European constitution.

# 4 EU Energy Policy, the Internal Energy Market and Norway

Since the beginning of the European integration process, energy as a policy issue area has been a very delicate subject due to the conflicts that would result between a common policy and national policies from the country members in such area. In 1987 the Single European Act and the revision of the Treaty of Rome were signs of good will and the base for the consolidation of an internal market and even if it did not contain anything on a common energy policy, it did not mean that energy was to be excluded from the internal market (Andersen 2000: WP 00/5 ARENA).

It was in the late 1980s when there were the most important changes in the energy policy started, more specifically with the internal market initiatives and directives on electricity and gas. In order to understand better the current situation in the Internal Energy Market, and as Andersen (2000) concludes, all these initiatives show the ambition of supranational control in areas that before were basically controlled nationally and liberalisation was a key element. It is important to notice that energy issues can be related with three general perspectives: first, that competition policy has a very relevant role in EU's programme of the internal market; second, the importance of the attempts for a common environmental policy with fiscal measures and third, the European Energy Charter and the Energy Charter Treaty as efforts of the EU to support the former East Bloc and its own energy supplies (Andersen 2000: WP 99/12 ARENA). Actually, the high dependence of the European Union as a whole on oil and gas resources has made energy a constant issue of the Commission's attention. In the signing of the European Energy Charter and the Energy Charter Treaty there has not been a controversy, as the energy supply guarantee has been in all states' interests and even more so since it has been predicted that by the year 2020 the EU's dependency on oil will increase, the hydrocarbon production from the North Sea will fall (Sodupe and Benito 2001: 165-170). For that fact it is important to mention the existence of such treaties, but they will not be deeply studied in this research.

The creation of a single market by the EU involves the concept of "market-building" related with what it is called "negative integration" since it involves the removal of barriers to trade by making some regulatory reforms. So we have that negative integration has to do with the elimination of those tariff and non-tariff barriers, making a reform on regulations and other legislation and ensuring competition (Sbragia 2003:119). In the case of the internal market in energy, it was planned to "build a market" through three different types of policy instruments: first with specific energy directives removing such trade barriers to competition and having a new regulation on that sector; second general internal-

market directives that would also had some impact on energy, such as the directive on public procurement (for obtaining supplies) and lastly the application of the already existing law on competition to the energy area (Andersen 2000:WP 00/5 ARENA) In this case it is important to have in mind the three type of instruments that the Commission had planned for the energy market, but this work is basically going to deal with the specific directives (with the first type of instruments mentioned previously).

In 1988, the Commission discussed energy policy for the EU in a special White Paper where some of the important conclusions were that the downstream oil industry was mostly operating within a free market but that was not the case of the gas and electricity; therefore some new directives were needed. It was also concluded that the industries in the energy sector were in violation of the internal market principles, especially since many of them meant abuses of market power since they were state owned and mainly constituted monopolies in the specific cases of gas and electricity. It is worth to mention again, that in the making of the energy policy of the Union, there were many Directorates General involved, not only the responsible for energy, but also for competition, general customs union, single market and industry and even environment, all of them having important impact on the directives proposed by the Commission (Andersen 2000: WP 00/5 ARENA).

For the energy sector, the Commission had considered a three-stage programme to introduce the internal market directives. The focus was first on the downstream part of the electricity and gas sectors to move on into upstream when the reforms had advanced. The first stage was made to put in operation elements of competition to the distribution of gas and electricity, this would be accomplished with the transparency of prices, investment plans and transit rights for different grid operators. The directive concerning price transparency was uncontroversial and had no problem of being accepted, because it meant that there would be accessible information about prices, pricing systems, consumers and consumption levels. In the case of the proposal for transit right, there were differences between the electricity and gas sectors; its main goal was to ensure that the grid operators would allow the trade and transmission of electricity and gas between states. Meanwhile the directive of transit right in the electricity sector did not have difficulties being approved in 1990 and coming into force the next year, the one concerning gas involved many discussions and a high degree of scepticism from countries like Germany and the Netherlands, which their national monopoly suppliers (Ruhrgas and Gasunie) felt that their interest were to be affected by such proposal. It took almost two years before it was approved and entered into force in 1992 (Andersen 2000: WP 00/5 ARENA).

The second stage in the liberalisation of the electricity and gas markets planned by the Commission involved the introduction of some sort of competition that would mainly modify the relations between suppliers, transmission operators, distributors and consumers. That was very controversial and it was clear that many member states and industries were opposed to such measure. Even if there were special working groups for each industry where there was a committee of experts and another of member state representatives during the consultations,

most of the member states were still against the proposals. It was clear that it was going to be a long and hard task to accomplish the Commission's goals (Andersen 2000: WP 00/5 ARENA). Norway, as an EFTA-EEA state would have to accept also the EU legislation in the energy sector. In the case of the electricity liberalisation it worth to mention that Norway had deregulated its market long before even the Commission made any proposal in that matter, so actually they served as model to follow in that area and the adaptation was merely administrative (Claes and Fossum 2002: WP 02/29 ARENA and Claes 2002: WP 02/12 ARENA). But the case of the gas market liberalization for Norway was completely different here, as the directive proposed by the Commission in 1991 would be source of confrontation and tough negotiation (Claes 2002: WP 02/34 ARENA and Andersen 2000: WP 99/12 ARENA).

Having such problems of introducing and approving the second stage, it was logical that the third stage would be delayed. As the Commission had less difficulties and confrontation with the member states in areas of upstream oil and gas than in electricity and gas liberalisation, the situation permitted the proposal of an important directive: the hydrocarbon licensing, with the main objective of regulating authorisation and concessions for search, exploration and production. This directive was extremely relevant in the upstream petroleum and gas activities and especially for those countries which had national or state-owned companies working in such areas, since it implied that there were no possibilities of granting special privileges for those companies anymore (Andersen 2000: WP 00/5 ARENA).

After having now the basis for understanding the situation in the energy sector within the EU and the EFTA-EEA states, the following part of this research will present and analyse the directive on gas liberalisation and on hydrocarbon licensing, as they have been extremely relevant and controversial in Norway. It is worth to mention that those two directives have caused big concerns to all involved in the petroleum sector but especially have contributed to the already ongoing changes from Statoil (the most important Norwegian oil company) (Claes 2002: WP 02/34 ARENA).

## 4.1 Directive on natural gas market liberalisation: an undermined condition for Norway

The controversial gas directive was proposed by the Commission firstly at the beginning of the 1990's with the only support of the UK, the other eleven members of the EU (at that time) as well as the industry, which was involved in the several committees, rejected such initiative. Most of them agreed that "energy was too important to leave it to the market" (Andersen 2000- WP 99/12 ARENA). In few words, the directive for the gas market was similar to the electricity market in the sense that it was supposed to establish common rules for the transmission,

distribution, supply and storage of natural gas. It was made in some way to open up the market between producers and consumers without the constant intermediaries of the gas pipelines' owners (that is referred as a system of third party access). Before the establishment of such directive, the sales of natural gas implied a chain which involved first the producers selling it to pipeline owners who then sold it to the consumers (Claes 2002: WP 02/12 ARENA). In that previous system, the transmission companies had the strongest position since by using their own monopolies, they bought from few producers and sold to national monopolies with high profits having the prices of natural gas according to competing energy, most often oil. The main benefit of this system was that there were long term contracts and that there was the possibility to secure the financing development of gas fields, and with this energy supplies (Andersen 2000: WP 99/12 ARENA).

The gas directive proposal covered several problematic areas: first, the most controversial one was the opening of the gas market to competition which implicated the problem of who would have rights for sending gas through transmission lines, since in the previous system that was exclusive right of the pipeline owners and in the new one the access would be open but regulated by an EU-level authority. Second, the liberalisation on the so-called take-or-pay or long term contracts which have been a key instrument to secure investments on gas fields and supplies (given the fact that they were a mechanism to guarantee the producer's payment even if the demand disappeared provided that the buyer was forced to pay for the volumes included in the contracts even if they could not take the physical gas). Third, discussion about the capability of imposing obligations such as equal price, supply security, environmental protection etc. on all suppliers in Europe and lastly the possibility for establishing separate markets to the different functions from the gas market, given the fact that all were concentrated on hands of monopolies (Andersen 2000: WP 99/12 ARENA).

This directive was designed in order to increase competition and low prices on the gas sector but it implied the reform of the statist structures present on that industry. Those statist structures included a strong national regulation, direct ownership, state companies and the national monopoly of sales. Then the most affected were producer-exporter countries like UK, Netherlands and of course Norway as part of EEA and being the major European country supplying the EU with natural gas. It worth to mention that those states' interests were different, for instance, UK was the promoter of such reform given the fact that they were the first to privatise their state monopoly and the Netherlands had no interest on reforming the system since their production and sales monopoly was based on a partnership between government and private international companies (Andersen 2000: WP 99/12 ARENA).

As an EFTA-EEA country, Norway took very seriously and with concern the gas directive for two main factors. First, because gas production on the Norwegian gas fields need large investments and for them was important to have the guarantee provided by the long term contracts, their main fear was the possibility of finding buyers with the capacity of entering into such type of

contracts (Claes 2002: WP 02/12 ARENA). But secondly and most important concern was the situation of Statoil the Norwegian state-owed company and the gas selling or gas negotiating committee (GFU) which was established by the Norwegian government in order to coordinate their gas exports and to have one main organisation on charge of the negotiations with the buyers. In this committee only Norwegian companies (Statoil, Saga Petroleum and Norsk Hydro) were represented (Claes 2002: WP 02/34 ARENA and interview with civil servant from the Norwegian Ministry of Energy) given the fact that the foreign companies had relevant downstream interests and if included, they could be in two sides of the table. For the Commission, this was in contradiction to the competition rules of the Internal Marked concerning discrimination due to nationality (Claes 2002: WP 02/34 ARENA and Claes 2002: WP 02/12 ARENA) and a future problem will constitute more controversies meanwhile the final details for the gas directive were still being negotiated.

As it was mentioned before, the Norwegian gas sales were co-ordinated by the GFU and its members (Statoil, Saga Petroleum and Norsk Hydro), all of them Norwegian. In 1995 Saga Petroleum decided to apply to the GFU in order to sell gas to the German company Wingas, so the other two companies, Statoil and Norsk Hydro decided not to sell gas to Saga. For the Germans, that meant that the GFU was having cartel behaviour and decided to take the case to the Commission, which requested to the EFTA Surveillance Authority (ESA), which function is to make sure the EFTA states comply with their obligations to EEA in 1996 to conduct inspections and two investigations were initiated towards Statoil, Norsk Hydro and Saga Petroleum. In 1997 the Norwegian government reacts to the inspections by arguing that the GFU is part of the Norwegian resource management so the EEA-agreement should not be applicable to them. The investigations through the ESA were put on hold since the gas directive was being approved in 1998 so it was going to soon be implemented. In June 2001, the Commission made a statement of objections to Statoil and Norsk Hydro arguing that the gas joint sales through the GFU was infringing the EEA agreement and therefore this would lead to large fines for the companies. The Norwegian government had abolished the GFU a week earlier nevertheless the Commission argued that contracts which were negotiated by GFU would still have adverse effects in the European gas market so the case against those companies would continue. Finally, in 2002 the Norwegian government decided to propose to the Storting (the parliament) to accept the gas directive already approved by the EU (Claes 2002: WP 02/12 ARENA and Claes 2002: WP 02/34 ARENA, and interview with civil servant at the Norwegian Ministry of Energy).

From the first draft in 1991 to 2001 the Norwegian government tried to influence the negotiations but mainly they had to accept the conditions imposed by the already approved directive in 1998. According to a civil servant from the Norwegian Ministry of Energy, Norway (from 1996 to 2001, when the implementation of the directive started) had to change its own system in order not to have more conflicts. That means that they had to adapt their own national legislation and it was as Claes (2002) remarks, a case of arbitration, given the fact that the legislation in question was very important but contradicted the national

law. Moreover, unfortunately for Norway they did not have access to influence the EU's decision-making as their own preferences requested. So in this case they could not bargain and the rules established by the EEA agreement made them comply (Claes 2002: WP 02/12 ARENA). Following the theoretical model of Petersen of adaptation, it can be said that Norway had low influence capability and high stress sensitivity so they adopted a policy of acquiescence, accepting the influence of the EU reluctantly. This situation was mainly a bilateral negotiation between Norway and the Commission, since either Iceland or Lichtenstein had strong vested interests (interview with civil servant from the Norwegian Ministry of Energy). In this bargaining arena, although it was voluntary the participation (according to the interview with the civil servant of the Norwegian Ministry of Energy, constant information was provided by the Commission) and the negotiations lasted a long period of time. But Norway's elements of bargaining power did not allowed them to reject the proposal completely and as semi-outsiders there was no possibility of making any type of coalition (even that the civil servant at the Norwegian Ministry of Energy recognized that countries like UK and Netherlands showed their understanding first was the interests of the Union) and therefore they had to comply.

## 4.2 Hydrocarbon licensing directive: Norway as successful negotiator in the EU

As it was said before, the liberalisation of the energy sector had several stages and involved the proposal of several directives. For the Commission was illogical and seemed a contradiction to open competition to the downstream industry and leave the upstream in the hands of monopolies, particularly since the oil producing countries had developed a great state control over the exploration of hydrocarbon. So in 1992 the Commission proposed a directive in order to ensure there would be non-discriminatory and transparent procedures in the granting of licenses for the exploration, prospection and extraction of hydrocarbons. In the first drafts for this directive, although the countries will still have jurisdictional control over its natural resources and would have the right to decide which would be the area for exploration and prospection, the rules for accessing a license would be based mainly criteria on technical and financial capabilities of the applicants (Claes 2002: WP 02/34 ARENA, Claes 2002: WP 02/12 ARENA). In that time, the Commission and the UK, which held the presidency at the first half of 1992, prioritised the license directive since it meant a very important improvement in the development for the Internal Energy Market (Andersen 2000: WP 00/5 ARENA). But there were still very different opinions and positions between the member states and it was particularly important and challenging for Norway as an EEA-EFTA state.

For Norway there was no sense of having a licensing directive since even before, their own policy in the granting of licenses had been acceptable for the EU and initial rumours that some European oil companies were pushing such proposal in order to gain control over the Norwegian oil resources awaked the media and politicians. Norway has been one of the major suppliers of energy to the European Union, therefore they saw the need and the right to get significantly involved and influence in the policies concerning the energy sector (Claes 2002: WP 02/12 ARENA).

The license directive was not only a risk in the control of natural resources for Norwegian government, but also put Statoil (the state owed company) in a difficult situation. Statoil had been privileged by the government in the sense that they had fifty percent share of all the licenses for the exploration and prospection. From that fifty percent, the Norwegian state owed approximately thirty percent of the shares. Meanwhile Statoil, as company had twenty percent; that was called the state direct participation (SDØE- statens direkte økonomiske engasjement) (Claes 2002: WP 02/12 ARENA, Claes 2002: WP 02/34 ARENA, Andersen 1995: 74 and interview with civil servant from the Norwegian Ministry of Energy).

The lack of margin or space for state control and government involvement for the licenses was also controversial and problematic for another country, this time a proper member state, Denmark (which is also a Western European oil producer). As Norway, they also had interests on modifying that first version of the directive. Denmark achieved to postpone a common position at the Council of Ministers and therefore to give more time to modify and alter the proposal in some way together with Norway. This was possible given the fact that Norway was very much involved in the early stages of the proposal as an EEA-EFTA state, but also because simultaneously it had submitted the application for membership and therefore they were allowed to get involved in a deeper way in all negotiations concerned to this directive (Andersen 1995: 99-108, Andersen 2000: WP 00/5 ARENA, interview with civil servant from the Norwegian Ministry of Energy).

Finally in 1994 the Hydrocarbon licensing directive was adopted and in 1995 entered into force. But not without several modifications which, was the outcome of the successful game played by Norway and its closer ally Denmark. The changes were mainly about the granting of licenses not only based on criteria of technical and financial capabilities, but also some non-discriminatory but unspecified criteria left to the discretion of the states. For the specific case of Statoil and the SDØE, internal adjustments were made but negotiated provisions allowed that arrangement to continue and to still have that company as a licensee on behalf of the Norwegian state Actually it is said that the directive was made to please Norway as a future member (given its position was as negotiated candidate in that time) and its dominant position in the petroleum industry (Claes 2002: WP 02/12 ARENA and interview with civil servant from the Norwegian Ministry of Energy) Actually, after everything it was done, the “no” vote at the last referendum in 1994 came as a big surprise to the EU (interview with civil servant from the Norwegian Ministry of Energy).

The so-called “interim period” was from June until the day after the referendum in November 1994 and that was an important instrument which allowed Norway to participate much more in the negotiations within the EU acting as if it was a member. Actually Norwegian politicians and bureaucrats could participate in several meetings from the European Commission, supported by the Council were also involved with the COREPER. This situation allowed the Norwegian administration to realise how really things work in the inside and how important is the flow of information within the inside games (Sverdrup 1998: 153, interview with civil servant from the Norwegian Ministry of Energy). As said before, this position helped Norway to have more influence in the licensing directive meanwhile in the gas directive was not the case given the fact that even that they tried all along to have a larger impact on the decision-making because it was a very delicate subject. When that directive was approved in 1998 they had already rejected for the second time EU membership and they were no longer treated as full members.

In this case, the level of interdependence of both parties was more symmetrical, since the semi-outsider was not considered as such but as an almost insider. In this situation, even if there were bargaining conditions more than cooperation (given the fact that the issues negotiated were of such national importance to Norway) there was also a problem-solving approach, since both parties EU and Norway were assuming the membership of the former and not reaching an agreement would cause the dissatisfaction to a new member. Norway’s influence capability was higher because of the facts mentioned before and the degree of stress sensibility was also high provided the vested interests involved in that issue, therefore they tried to have mutual commitments with the other states and search for a more balanced policy. This condition made that during the negotiations the degree of exchange of information and contact was higher than in other cases. It also gave more bargaining power and opportunity to Norway, since they could form a coalition with Denmark expressing their opposition and together work to get better outcomes, since for both the European legislation was in contradiction to their polices.

# Conclusions

Given the fact that Norway has applied for membership to the European Union four times demonstrates the importance that this integration process has at a domestic level, but the EU is not indifferent to Norway or the EFTA-EEA states, since the establishment of the EEA agreement was very important for them as well. As it was mentioned before all along this research, there is a relation of complex interdependence where all members and non-members (semi-outsiders) are having such strong links which makes them have constant feedback to one another.

Although Norway participates through the EFTA-EEA arrangement and gets benefits from the Internal Market, it worth again to mention that it is excluded from the very last phases of decision-making for legislation of the market and this is very controversial in terms of democracy and sovereignty internally. As it has been remarked before,

"because EU membership is such a highly divisive issue, most parties are content to let it rest and not address the fundamental democratic and constitutional problems that the EEA agreement raises. Whether Norwegian adaptation to the EU would not have happened without Norway's formal ties through the EEA-agreement is not entirely clear because other factors heavily influence both the Internal Market project itself and the liberalisation of Norwegian economic sectors" (Claes and Fossum 2002: WP 02/29 ARENA).

The issues on democratic deficit and adaptation within Norwegian policies considered as outcomes from the complex relationship between Norway and the EU are worth to remark, but they were not exactly part of this research.

This work concentrated its attention to the negotiations between the EU (the Commission) and Norway within the Internal Energy Market and the EU energy policies which I considered as good example of inside-outside or better said semi-outside games. The study of two particular cases, two controversial directives which had different outcomes for Norway, provides us an idea how they came about in the negotiations. At the first stage the semi-outsider, Norway participated in both proposals for directives more like an insider by providing expertees but particularly in the licensing directive, they were treated as if it was a member state which had to agree in controversial issues. In the case of this directive they were able to influence more because of that simple fact. In case of the gas directive, they were again able to participate as some sort of insider, in expert groups giving opinions, but once the final negotiation came, the member states through the European institutions were at the end able to force the semi-outsider to comply. Although the EEA prevents the EFTA states with the capability of rejecting EU legislation, Norway has never executed the right of veto not even in such stingy issue like the gas directive. But it can be concluded that this is mainly because the semi-outsider is conscious of its situation of complex interdependence and that

they will have to play more other semi-outside-inside games with the EU and it is not convenient to have a "shadow of the past" in the future negotiations.

It is very interesting to see the role of the civil servants from the different states when they come about in the negotiation table. It is usually said that the Scandinavians are characterized by being shy and distant in the negotiations and one might think it could be more so when it comes to a semi-outsider like Norway, but according to some civil servants from the Ministry of Energy, once they have established social networks this situation changes. It is easier to get the information needed and to work together since the civil servants are familiar to each other provided that they are always the same people attending to meetings, working groups on specific subjects etcetera thus, these social relations are extremely important when it comes to the negotiations. It is often sustained that civil servants from member states tend to show supranational allegiances because there is lack of genuine national co-ordination prior EU meetings even more so because there is usually also lack of written mandates from national government institutions which make more likely the appearance of loyalties towards EU institutions.

"Not having clear mandates or instructions to follow, the room for additional supranational allegiances to develop increases. Not being reminded of their 'national missions' on a daily basis in Brussels, the actors more easily loose sight of the nation-state as their primary locus of loyalty" (Trondal 2001 WP 01/5 ARENA).

In the case of the semi-outsiders this is probably different, without making generalisation of all EFTA-EEA states and issue areas; here it can be sustained again by the conversation with Norwegian civil servants from the Ministry of Energy, that the Norwegian participants on the negotiations receive clear mandates from their ministry and before coming into any type of decision they have to consult the ministry, therefore, they do not have a "free mandate" to make the decisions totally on their own. It is worth to observe as Trondal (2001) remarks quoting a document from the Prime Minister's Office from 1997 that "Norwegian officials attending Commission expert committees are intended to draw up instructions considering the following aspects: background and status on the particular dossier, existing national regulations, Norwegian interests on the subject matter, the present bargaining situation, and finally administrative, economic, budgetary and juridical consequences" (idem).

According to Claes and Sverdrup, the influence of Norway as part of EEA to the EU has not been too relevant, actually it has not changed at all since 1994 and with some exceptions this impact has been relatively weak. Meanwhile the EU has been under several reforms (including giving more concessions to the Parliament in the decision-making) and nowadays the intent of forming a constitution, Norway has adopted a passive role and has not even tried to participate as observer in the process of the constitution. The Norwegian government is not the only one who could be able to play an influential role towards the EU: it is mainly through experts that they can actually have some major impact. That is why the authorities have tried to instruct them in certain way to promote certain positions. Moreover, there are also some Norwegian interest groups who had and have some leverage through complaints to the EFTA's Surveillance Authority (Claes and Sverdrup 2004, my translation from

Norwegian), mechanisms that sometimes have and sometimes have not successful outcomes in the search of their interests. It is not the task of this research to forecast what will happen to Norway if they continue being a semi-outsider or with the so-called “Norwegian-method” of integration, but the fact is that Norway should try to exploit better informal mechanisms and all networking resources in order to have a larger impact on the EU negotiations.

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## Interviews

On May 3rd I conducted an interview with a civil servant from the Norwegian Ministry of Energy and had also some conversation with other two civil servants. In order to keep confidentiality I am not mentioning their names.

## Internet

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