Master's thesis

NTNU
Norwegian University of Science and Technology
Faculty of Humanities
Department of Historical Studies

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EU and Norwegian financial services

How EU regulations and decisions after the financial crisis impacted the Norwegian financial services market

Master's thesis in European Studies
Supervisor: Kristian Steinnes
May 2019

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Abstract

The financial crisis which erupted in 2007-2008 significantly impacted the global financial industry. The EU, and by extension of the Single Market, and the Norwegian financial services market, had to adapt and make changes in order to ensure that a potential future crisis would not strike with similar strength. This work analyses how the changes implemented by the EU have impacted the Norwegian financial services industry. By examining documents produced by Norwegian and EU public and private institutions, it finds that the EU have impacted the competitiveness of Norwegian financial services and the political and structural relationship between Norway and the EU. However, it also finds that Norwegian policy choices have been consequential for the development as well; by implementing financial regulation prior to deadlines and other EU Member States, Norwegian financial services have been put at a disadvantage; and by joining the EEA Agreement and contesting EU decisions the relationship has been strained.

Oppsummering

Finanskrisen som brøt ut i 2007-2008 påvirket den globale finansnæringen betydelig. EUs, og ved utvidelse av det indre marked, det norske finansmarkedsmarkedet måtte tilpasse seg og gjøre endringer for å sikre at en potensiell fremtidig krise ikke ville treffe med tilsvarende styrke. Denne studien analyserer hvordan disse endringene implementert av EU har påvirket den norske finansnæringen. Ved å analysere dokumenter fra offentlige og private institusjoner i Norge og EU, argumenteres det for at mens EU påvirket norsk finansmarkeders konkurranseevne og det politiske og strukturelle forholdet mellom Norge og EU, har norske politiske valg også vært utslagsgivende for utviklingen; ved å innføre finanslovgivning fra EU før tidsfristen og andre EU-stater har den norske finansnæringen blitt forulempet; og ved å motsi seg EØS-relevante bestemmelser fra EU har Norge bidratt til slitasje på forholdet.

Preface

I developed an interest for the financial services industry during my internship abroad in Brussels, Belgium. However, I didn't realize that it would become the subject of my research until after I returned home to Norway. During my research on this topic, I have not only gained a deeper and more thorough understanding of the relationship between Norway and the EU. I have also developed a tremendous respect for those men and women who work with navigating these technical waters each day.

In these final days, I have found myself filled with awe and gratefulness; to my fellow students for toiling away day and night by my side on their own research while encouraging each other to put one foot in front of the other; to myself, for climbing what seemed like an insurmountable mountain merely six months ago; and last but not least my wonderful counselor Kristian Steinnes.

For his countless hours of plowing through my drafts, ideas and late-night emails; for his excellent feedback and constructive criticism; and for his steady hand guiding me through these stormy seas and safely into port; Thank you.

"O Captain! My Captain! Our fearful
trip is done
The ship has weather'd every rack,
the prize we sought is won."

- Walt Whitman, 1856

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Abbreviations and figures

ACER - Agency for the Cooperation of Energy Regulators

BoS - Board of Supervisors

BRRD - Bank Resolution and Recovery Directive

CCP - Central Counterparties

CEBS - Committee of European Banking Supervision

CEIOPS - Committee of European Insurance and Occupational Pensions Supervision

CESR - Committee of European Securities Regulators

CRR/CRD IV - Capital Requirements Regulations/Capital Requirements Directive IV

DGSD - Deposit Guarantee Scheme Directive

EBA - European Banking Authority

EC - European Commission

ECB - European Central Bank

ECJ - European Court of Justice

ECSC - European Coal and Steel Community

EEA - European Economic Area

EFTA - European Free Trade Association

EIOPA - European Insurance and Occupational Pension Authority

EMIR - European Market Infrastructure Regulation

ESA - European Surveillance Authorities

ESFS - European System of Financial Supervision

ESM - European Stability Mechanism

ESMA - European Securities Markets Authority

ESRB - European Systemic Risk Board

EU - European Union

FAQ - Frequently Asked Questions

FSAN - Financial Supervisory Authority of Norway

JCD - Joint Committee Decision

OTC - Over the counter

SCA - Surveillance and Court Agreement

SMB - Small and Medium sized Businesses

SSM - Single Supervisory Mechanism

TLAC - Total Loss-Absorbing Capacity

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1.0 - INTRODUCTION

1.1 – Historical background

Following the second world war, the European Coal and Steel Community (ECSC) was established in 1951. The intention was to ensure a peaceful Europe as well as foster trade and economic growth. Throughout the ensuing decades, the community grew in scope and size, and eventually became what is known as the European Union (EU). In 1960 the European Free Trade Association (EFTA) was established, with the intent of promoting the expansion and liberalization of trade across borders. These two organizations have worked closely since the birth of the latter. In 1992, with the purpose of enabling EFTA member states access to the European Single Market, and to serve as a stepping stone for future potential EU members, the European Economic Area (EEA) was established.

Norway ascended to membership in the EEA while contemplating membership in the EU. A referendum on the latter resulted in the rejection of EU membership, but Norway maintained its EEA membership. Through the EEA Agreement, Norway accepted the four freedoms (people, goods, services and capital) and was granted access to the Single Market. The EU has continued to expand since then, and today consists of 28 members (27 when (and if) the United Kingdom leaves the EU). The EFTA consists of four members (Norway, Switzerland, Iceland and Lichtenstein) and the EEA is comprised of 31 members including EFTA and EU member states.

This has resulted in a vast pan-European market and trading network, where multiple national markets and governments are interconnected. When the financial crisis struck in 2008, this had ramifications across Europe. Following the crisis, the EU began modernizing their financial regulations in order to prevent a similar crisis in the future. Some of these regulations were not only relevant for EU members, but for all EEA members as well in order to retain them in the same regime with equal rules and access to the Internal Market. Consequently, Norway was forced to adapt to a new reality of new regulations and legislative frameworks, and the impact these had on the financial services sector. And this is the focus of this study.

1.2 - Existing literature

This thesis investigates the impact of measures implemented by the EU following the financial crisis on the Norwegian financial services market. To this end, relevant literature covers topics of Norway, European integration and financial services. Existing literature that covers all of these

topics is very limited. However, in recent years studies have been carried out on specific directives or other legal acts issued by the EU. Studies dealing with the EEA Agreement have also touched upon the issue of financial integration.

One such study conducted was by Haukeland and Franklin in 2015 (Haukeland & Franklin, 2015) where they examined the Agreement's development over the 20 years of existence. By reviewing the incorporation of EU legal acts and the EEA/EFTA process of implementing these, they argued that the uncooperative relationship between the EFTA Court and national courts, as well as the EU blurring the lines of the Internal Market, posed a challenge for the EEA Agreement. They argued that the Agreement needed an overhaul if it was to continue running as smoothly as planned. A similar conclusion was put forward by Kinander in 2018 when he examined the Norwegian model of access to the Single Financial Market and passporting rights in light of the Brexit debate and possible options for the UK (Kinander, 2018). He maintained that any non-EU member is challenged by legal obstacles when attempting to obtain access to the internal markets through bilateral solutions. Therefore, he argued, EFTA states submits to pragmatism based on political expediency in order to gain access to the markets. He claims that due to the increased competences being transferred to the European Surveillance Authorities (ESAs), the EEA Agreement is being increasingly burdened. Furthermore, mirroring the view of Haukeland and Franklin on the relationship between the EFTA Court and national courts, he asserts that the lack of a satisfactory resolution mechanism for EFTA States in case of legal challenges is a challenge.

In a study of the relationship between Norwegian and European agencies and institutions, Isaksen argues that Norwegian representatives were granted access to and influence on certain policy-making bodies (Isaksen, 2012). Her argument is that merit is weighted more heavily than membership status. This conclusion is somewhat at odds with Kinander's assertion that EFTA states defers to the EU based on the pragmatism of political expediency, as it establishes that submission also grants the benefit of access and influence and not only market access.

However, in his master thesis, Jahreie argues that it is likely that Norway is attempting to avoid implementing the Deposit Guarantee Scheme Directive (DGSD) while simultaneously trying to not use the "veto right" (Jahreie, 2018). His study of the directive and the Norwegian response is based on document studies of EU legal acts and statements by the EU and Norwegian politicians.

It suggests that the influence which Isaksen maintains that Norway is being granted by acquiescing to the EU only reaches so far and cannot realistically alter a course if the EU is adamant on it.

In further studies of specific directives and legal acts, Aas analyzed the Capital Requirements Regulations and 4th Directive (CRR/CRD IV) which was implemented to foster stability on the financial services markets (Aas, 2017). His examination is based on analyzing balance sheets and budgetary data of Norwegian banks and other financial institutions. He argued that while the new regulations issued by the EU will be a benefit to society as a whole *in case of a new crisis*, he also states that his findings conclude that the regulations will entail increased costs for businesses within the financial services market. This conclusion concurs with the findings of Hansen. In 2014 he maintained in his master thesis that the Bank Resolution and Recovery Directive (BRRD) would lead to increased financing and lending costs for financial institutions while simultaneously strengthening the financial system (Hansen, 2014).

In his analysis, Hansen examined banking accounts and balance sheets in order to establish whether or not Norwegian banks were prepared for the requirements in the BRRD. He also argues that most of the larger Norwegian banks were relatively well prepared, while smaller banks would face challenges. This argument is supported by Høyheim. In her master thesis she studied how the EU banking regulations would impact the competitiveness of Norwegian banks (Høyheim, 2014). In her examination of how the different capital requirements for different banks would impact Norwegian mortgage customers she utilized different market models to analyze various factors such as market shares, solidity and budgetary balances. She demonstrated that some banks would be favored by the new legal regime, and that this could potentially open the door for increased competition from foreign-based cross-border banking institutions.

An increased probability of cross-border banking and finance services institutions was one of the findings of Epstein and Rhodes in their recent article (Epstein & Rhodes, 2018). They recently analyzed the European Banking Union and the Capital Markets Union as post-crisis measures implemented by the EU. In their conclusion, they assert that banks and other financial institutions were becoming less dependent on host or home country due to the increased centralization of financial competences in the EU. They argue that the increase of centralization, as a measure to prevent and strengthen the banking sector in case of future rises, has caused a significant increase of harmonization in financial legal acts.

This argument can be traced back already to 2010 in the late periods of the crisis, when Quaglia sought to examine the difficulties of completing the Single Financial Market (Quaglia, 2010). By analyzing the records of the policy-making process, she found a clear dividing line between two coalitions within the EU; one in favor of a market-making direction and one in favor of a market-shaping direction. Her assertion was that national ideological preferences, as well as already existing national legislation, was the root of these coalitions. She concluded that as a result of the crisis, attitude changes allowed for a strengthening of the market-shaping direction, which in turn led the EU onto a path of increased harmonization.

When she analyzed the new post-crisis legislation and changes to existing legislation a few years later, Quaglia stated that the increased harmonization had fostered a "rebirth" of the market-making factions (Quaglia, Financial regulation and supervision in the European Union after crisis, 2013). During her examination of the performance of the post-crisis reforms, she asserted that the EU had indeed become even more harmonized on financial regulation. Furthermore, she suggested that despite the new reforms, the reform process itself, due to the political rather than economic factors involved in it, would still render the EU poorly equipped to handle a potential future crisis.

Mügge, in the 2014 article analyzing Europe's regulatory role as a post-crisis global finance governance actor, repeats these arguments (Mügge, 2014). During his assessment of the EU's role in the larger global picture, he maintained that the crisis had led to increased regulatory harmonization and discontent with EU's regulatory focus. Even so, he suggested that the EU might not have actually ended the crisis, but simply postponed it.

The conclusions of both Quaglia and Mügge are in accord with the assertions of Verdun. In 2015 she analyzed the EU's response to the crisis in a historical institutionalist point of view, examining the design of the existing institutions and the challenges they faced, the responses of national and EU leaders, and finally the new institutions implemented as a measure to address the flaws exposed by the crisis (Verdun, 2015). Her conclusion suggests that the institutional structure was poorly designed, and that the EU's response was hampered by bureaucratic processes. Consequentially, the Member States had to act on their own before the EU stepped in. She maintains the argument of previous scholars: the solution to the crisis, as implemented by the EU, was increased regulatory strengthening and harmonization.

It is therefore interesting, in light of the findings of these articles stating that the EU handled the crisis so poorly, to read the article of Trichet from 2010; in his "State of the Union" on the European Central Bank's (ECB) response to the financial crisis, he suggests that the measures taken by the ECB not only assisted but even was the primary contributor to preventing European financial institutions from breaking down. While he maintains that the need for financial regulatory reform was absolutely necessary, he also promoted the claim that the ECB was invaluable during the crisis management period. The fact that Trichet was the president of the ECB at the time of authorship of the article seems likely to have colored his opinion with some degrees of bias. Seeing how his own conclusion are so contended by large bodies of the literature, Trichet's argument should be carefully considered.

1.3 - Research question

By reviewing existing bodies of literature, I have found that there is a lack of recent scholarly works on the topic. Several authors approach individual or specific regulations and legislative acts or frameworks. These does not cover the wider scope of financial regulation impact on the Norwegian financial services market. A few scholars take a more legal approach to the relationship between Norway and the EU. However, due to the lack of a holistic approach to the topic, I believe that this study will contribute to the literature in a novel manner.

This study seeks to investigate EUs influence upon Norwegian financial services by asking the following research question:

How has EU regulations and decisions in the wake of the financial crisis impacted the Norwegian financial services market?

This is quite a wide scope to cover. In order to ensure a structured approach, the research question has been operationalized by asking three sub-questions. These questions will be examined in their respective chapters:

- *How did the financial crisis impact the EU financial services, and which measures were implemented?*
- *How has these measures impacted the competitiveness of the Norwegian financial services market?*

- *How has these measures impacted the political and structural relationship of Norway vis-à-vis the EU, and how has this impacted the Norwegian financial services market?*

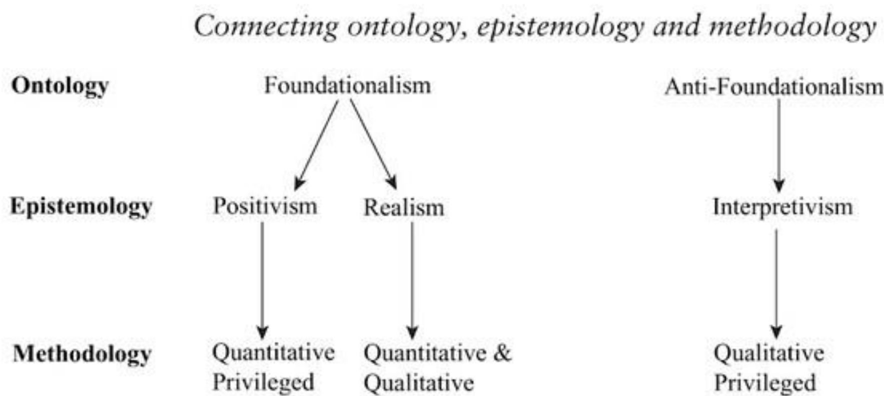
The conclusion in the final chapter is based on the findings in these chapters, and will answer the primary research question.

1.4 – Approach

When conducting a study, it is important to be aware of its methodological choices. Depending on the research topic, an adequate approach has to be designed. However, no research design is a priori "better" than others (O'Leary, 2017, p. 10). One methodology or method might be better suited for a question than others. The key is to be aware of the assumptions under which the research is done, and be reflexive of this. A critically evaluation of the purpose of the study and the thematic focus allows the author to tailor a research design that will ensure a strong reliability and validity.

By examining the central terms and concepts linked to methodology, I have chosen to build my research design based on the assumptions of Marsh, Ercan and Furlong as illustrated in figure 1. By building from this, I can make a conscious choice about my approach.

Figure 1 (Marsh, Ercan, & Furlong, 2018, p. 179)



Based on their illustration, I will analyze the ontological assumptions of the research topic. This will provide a pathway which will result in the methodological choice of this study. Based on an ontological position of anti-foundationalism or constructivism, I have opted for a qualitative document study approach.

Ontology

Ontological questions focus on the nature of "being"; ontology is a theory of what the forms and nature of reality is, and what we can know about it (Marsh, Ercan, & Furlong, 2018, p. 178). Put in another way, it looks at whether there is a "real" world uninfluenced by our knowledge and assumptions.

There are two primary schools of ontological positions: objectivism or positivism (foundationalism), which assumes that the world is governed by generalizable rules regardless of our knowledge; and constructivism or relativism (anti-foundationalism), in which the world is a social construct subject to individual interpretation based on observations, experiences and knowledge. The positivistic school of thought emphasizes the use of quantifiable data and methods, whereas constructivists privileges the use of qualitative data and methods (Marsh, Ercan, & Furlong, 2018, p. 179).

The research topic influences which ontological direction the author would benefit the most from. This study will look at the impact of a set of legislative and regulative measures on an industry. Laws and contracts are an idea constructed by mankind with a grounding idea of a civilized society. The financial industry deals with money, an asset which has become valued because we as a society has agreed among ourselves to grant it this value. There is nothing naturally valuable about an inked piece of paper or minted piece of common metal. With these understandings in mind, it is reasonable to take a constructivist ontological stance.

Epistemology

Epistemology is the theory of knowledge; HOW do we know what we know about anything (Marsh, Ercan, & Furlong, 2018, p. 178)? This question is more easily understood by asking two questions; can we identify "real" or perfectly objective relations between two or more social phenomena? And IF so, then how?

The first question requires that we return back to the ontological assumptions (Marsh, Ercan, & Furlong, 2018, p. 178). A supporter of the constructivist/anti-foundationalist point of view in which the world is a social construct cannot, by its own internal logic, believe in perfect knowledge but rather in an interpretivist theory. Furthermore, this entails a belief that no observer can be purely objective because he/she is participating in a social world of constructed realities, leading

us to the concept of the double hermeneutic; the world is interpreted by the actors (first hermeneutic level), and their interpretations are in turn interpreted by observers (second hermeneutic level).

The second question looks at another important issue (Marsh, Ercan, & Furlong, 2018, p. 179); to the degree that we can establish "real" relations between social phenomena, can this be done through direct observations alone, or are there some "invisible" relations which exists but are unobservable? Answering these questions provides a direction for the epistemological choice, as illustrated by the model of Marsh, Ercan and Furlong, as well as the understanding of causality and explanation.

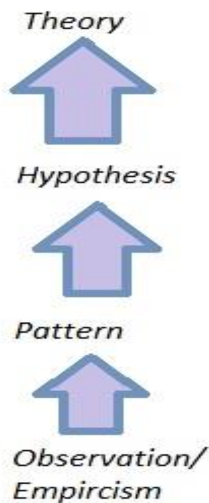
With the ontological idea of constructivism, or anti-foundationalism, as the initial assumption of the scientific nature of the study, it is natural to assume an interpretivist approach to the methodological question.

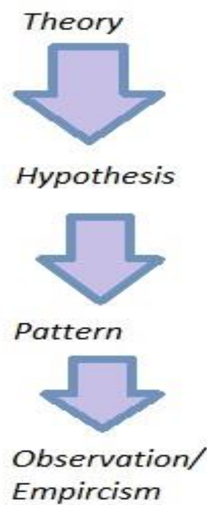
Inductive and deductive logic

Inductive logic means using facts and evidence to reach a conclusion, principle or theory (O'Leary, 2017, p. 330). This entails that the researcher examines the data without a predetermined goal in mind, but rather aim to discover a theory or explain a phenomenon based on the findings of the given information. It is considered a "bottom-up" logic where the researcher derives a final conclusion (theory) from the evidence (empiricism), rather than letting an initial assumption guide the research.

Deductive logic means using an initial assumption or principle to guide the analyses in search for a confirmation or invalidation of the theory. It is considered a "top-to-bottom" logic where the presumed theory or claim is used as a guideline for analyzing the data.

Figure 2





This paper has no founding theory or assumed hypothesis to prove or disprove. Rather, it seeks to examine the evidence and observations in order to answer its' core questions and puzzles. This is in accordance with the definition of an inductive approach.

Intensive and extensive research design

Intensive designs are used to study and understand specific cases, in particular causalities and processes (Gerring, 2012, p. 365). They are best suited when there are few "units" but several variables to be analyzed in order to get a better in-depth understanding of nuances and details.

Extensive designs are used to reach generalizable conclusions, and are best suited when there are several "units" and few variables to be analyzed. As such, an intensive design is best suited for a qualitative study, whereas an extensive design is best suited for a quantitative study.

This study is based on several sources of materials whereas each source will provide few "units" of data. The purpose of this study is to gain a deeper understanding of the impact of the post-crisis EU measures on the Norwegian financial services market. With this in mind, an intensive research approach is best suited for this study.

Qualitative and quantitative approach

Using the previous methodological choices (i.e. ontology, epistemology, inductive and intensive approach) as guidelines, I find that a qualitative approach is best suited for answering the questions of this study.

A qualitative approach relies heavily on non-numerical or unquantifiable data such as words, images, experiences and other observations (O'Leary, 2017, pp. 133, 142). This approach is useful for understanding for example processes, events and developments in specific cases where in-depth analyses of non-numerical details are necessary. However, it can rarely be used to generalize a phenomenon, although it could help develop a theoretical understanding which could be transferable to similar cases. Due to the lack of the black-or-white "truth" hardline that characterizes the quantitative approach, qualitative approaches are often tied to relativistic, constructivist or subjectivist assumptions.

I do not use a quantitative approach in this study, but mentions it in this chapter for comparative and reflexive purposes. A quantitative approach is based on a number of numerical analyses (O'Leary, 2017, p. 133). It seeks to reach generalizable conclusions based on statistical data which are generated through e.g. surveys, national populace registries or other data. While it is the best approach for generating a generalizable, reproducible conclusion, it is not as flexible and interpretive as the qualitative approach, and is characterized by the understanding that there is a single "truth" which is often tied to positivistic or empiricist assumptions.

Method triangulation, reliability and validity

Method triangulation refers to using at least two different points of reference for approaching observations in order to ensure a highest possible degree of validity (Flick, 2004, pp. 178, 180). While this approach has been criticized for ignoring the systematic backgrounds of different methods and the theoretical assumptions therein, it has also been proven useful for double-proofing data or even discovering new observations.

Document analysis

Document analysis is a method of systematic review or evaluation of documents, in both printed and digitalized form (Bowen, 2009, p. 27). It requires that the information and observations from the documents are analyzed and interpreted in order to draw understanding and data which can be used to generate empiricism. The form of documents used for this kind of analysis include, among others, advertisements, meeting minutes, books, journals, newspapers, press releases and other forms of public records. Document analyses in qualitative studies are often used in a multi-method research design, usually as a means of triangulation, in order to ensure the highest degree of reliability and validity as possible (Bowen, 2009, p. 28). For intensive studies, document analyses are useful for generating a large amount of descriptive data about a particular phenomenon, event, organization etc. (Bowen, 2009, p. 29).

As a method, document analysis is considered efficient in terms of both time and resources (Bowen, 2009, p. 31). It is also considered a "counter" to any concerns regarding reflexivity (or lack thereof) due to the unobtrusive nature of documents - they are unaffected by the research process, as opposed to more possibly intrusive methods such as observational studies. The issue of access goes both ways; many of the documents often used for this kind of study are publicly available, but there might also be instances in which this is not the case (Bowen, 2009, pp. 31-32). Documents used for previous studies might also not be accessible or retrievable for a second study. It is also important to be aware of the possibility of biased selectivity when collecting documents for data generation. I have labored at keeping this in mind during my material selection.

The material this study is based on consists primarily of various publicly available documents and official statements from EU and Norwegian institutions. These are from both public and private sector. It is therefore important to be wary of any potential bias, agendas (hidden or otherwise) and other potential sources of influence prior to or during the creation of these documents or statements that might have an impact on reliability and validity. It is important to consider the time, identity and context of the authorship when considering bias or agendas. The material for this study is from the period of 2010-2018. This is the early years just after the crisis till recent times. This allows me to study the progress and development. In order to ensure a reflexive and balanced study, I have selected material from official EU and Norwegian sources, as well as private actor sources. This allows me to look at the issue from the perspective of all relevant parties.

Legislative proposals and legal acts are unbiased for the purpose of this assessment. They have no ulterior motive aside from the objective that they set out to regulate. It is possible to argue that they reflect the political leaning of the current government or authority at the time of authorship (e.g. a more market-friendly piece of legislation might be symptomatic with an author with stronger "right" than "left"-leaning political affiliation). However, this does not change the nature or idea of the legal acts themselves as regulatory frameworks.

NOU reports are more open to interpretation to some degree. Their main purpose is to present an analysis of the current situation of the topic (e.g. finance industry, fishing industry or immigration). Furthermore, they identify the weaknesses and strengths of the area they cover. However, these reports are ultimately the responsibility of their relevant ministries (finance industry report responds to ministry of finance, etc.). This allows for a potential political bias; a ministry under left-leaning leadership might not look too favorable on a strongly developed private industry and a ministry under right-leaning leadership might wish to report unnecessary government involvement in welfare activities. The NOUs used in this thesis are written under governments and ministries of both leanings. They also seem to be in concert with their opinions and conclusions. This allows me to worry less about their political agendas, and put more trust in their objectivity.

Government and Ministry White Papers are used to present an opinion or analysis of a topic by the government to the parliament without actually presenting a legislative proposal. They can also suggest future political development. There are some similarities with the NOU report; the possibility of pushing a political agenda by cherry picking the data to be included in the White Paper is there. However, the data of the finance industry is heavily built on numbers and statistics, and in order to present a full perspective it would be difficult to skew the data to further any agenda or bias. While it is hypothetically possible to leave out relevant data, this would undermine the very purpose of the White Paper, and the function of the government as well. Therefore, I find it very unlikely that the data presented in the White Papers are falsified, altered or limited, and can to a large degree be considered reliable sources of material. Statements and documents by the Norwegian financial supervisory authorities (FSAN) are less politically motivated. The FSAN is subject to the ministry of finance, but operates independently and reports to the ministry once every year. For this study, I have used a few material sources by the FSAN, most of which primarily details the implementation process of financial legislation and regulation.

Press releases by EU institutions can be used to push an agenda or convey a desired development. This study builds on several press releases, which can be separated into two categories: press releases declaring intentions of development, and "Frequently asked questions" (FAQs) about a development or legal act they intend to publish. The declarations of intent are, at first glance, intended to inform about future development of the regulative nature (e.g. announcing the introduction of the "Banking Union"). While this is partially due to maintaining transparency within the EU, it is also possible to argue that by making these announcements before the legislation is completed the responsible parties are sending a message to any internal EU forces that "this is happening, get on board or get out of the way". However, the internal political intrigues of the EU are not the topic of this thesis. With regard to the topic of this study, declarations of intent are considered as such – informative announcements.

The FAQs are at first hand intended to simplify a new project, answer the most common questions the public might have, and present technical and complex legal works to readers lacking the expertise to properly analyze the full legal text. However, it is also possible that, with the political bias of the authors in mind, they can be used to push their agendas. By presenting the questions and answers in a manner of their choosing, it is possible to "disarm" any suspicions or sway parties who are uncertain on their position about the development. To this end, the FAQs could be used as shrewd persuasive tools.

Newspaper articles can be precarious when utilized as source material. Newspapers are dependent on readers, and might engage in speculative and tabloid content to safeguard their own interests and ensure their reader-generated profits. Other newspapers are less concerned with tabloid activity, and works towards more objective, neutral reporting. In these instances, one should keep in mind that the content and context when assessing the usefulness of these as material. In this thesis, I have decided used a few articles while still keeping this in mind. I have aimed at finding articles which limits their news reporting to repeating interview statements and/or events which are easily confirmed by other sources. The benefit of this is that these articles does not engage in speculation but relays factual, provable statements. As such, I do not have to be overly concerned about their ultimate agenda or bias (if they have one), seeing how any potential speculation they engage in is irrelevant for the actual statements they quote.

1.5 – Structure

The study is divided into five chapters. Following the introductory chapter, I will focus on the financial crisis and the measures implemented by the EU. In this chapter I analyze several key legal acts and regulations which came as a result of the crisis. This will form the foundation for the two following chapters. In the third chapter I will look at how these measures impacted the competitiveness of Norwegian financial services. Several of the regulations and legislations from chapter two will be analyzed from the perspective of Norwegian financial service providers. In the fourth chapter I will analyze how the relevant EU measures impacted the political and structural relationship between Norway and the EU. Chapter two and three will have a more technical financial approach, whereas chapter four will take a more legislation- and institutionally based approach. Finally, the fifth chapter will use the findings from chapter two through four to discuss the primary research question.

2.0 – The Financial Crisis and the European Union

This chapter focuses on the Financial Crisis of 2007-2008; its' origin, the impact it had on the EU financial services industry sector, as well as measures implemented by the EU as a consequence of this. While this chapter deals with larger topics than Norway-specific ones, it serves to build an event-based foundation of measures implemented by the EU for the following chapters which will explore the more specific issues related to the primary research question. The chapter is based on studies of the EU's response to the Financial Crisis, as well as official documents and reports by core actors and organizations of the field. Due to vast amount of literature on the field and the scope of the research, the selection of material is largely limited to focus on selected prominent and relevant scholars. The main argument in this body of literature is that the EU has taken a reactive, rather than proactive stance to the Financial Crisis. It has become more harmonious and market-shaping, rather than minimizing and market-making, and it appears to have only partially dealt with the blows it was dealt by the crisis. The chapter maintains that the financial crisis has impacted the EU financial services sector, and it shows how the EU has responded to this. It presents a brief examination of the development of the Financial Crisis accompanied by the most prominent specific market-relevant measures taken by the EU to not only reduce the impact of the crisis, but also to prevent crises of similar or larger scale in the future.

2.1 – Historical background: The Financial Crisis and early measures

The first ripple of what became the tidal wave of the financial crisis can be traced back to the date of August 9th, 2007. The interbank market suffered from a severe blow to confidences, and trading was significantly diminished (Trichet, 2010, p. 8). When the financial turmoil began in 2007, the initial problems revealed themselves in the US securities market and particular bonds with guarantees in mortgages (Lund & Nordal, 2017, p. 1). This was, in a sense, not a sudden and spontaneous disease of the market but rather the symptoms of a long-time build-up of underlying flaws and imbalances in the financial system (Trichet, 2010, p. 8). Two primary factors have been identified as the culprits; massive imbalances on both external and internal levels in both the real economy as well as the financial systems, and the rapid development of poorly regulated and supervised financial markets, instruments and non-bank entities dealing with financial matters. Due to the increased complexion of financial products introduced to the market, it had become difficult to conduct proper risk assessments. This was further enhanced by poor risk management, dangerous incentives and moral hazard. Housing prices started to drop, and uncertainty about both

the value and ownership of these securities started to spread throughout the market (Lund & Nordal, 2017, p. 1). This uncertainty spread to other markets as well, and the international stock markets plummeted. Several banks found themselves in a position of having trouble financing their operations, and the sector titan Lehman Brothers declared bankruptcy on September 15th of 2008.

Due to the sudden onset of the crisis, the EU was taken by surprise, and spent much of the earlier periods, in late 2008, considering whether it was a short-term crisis or if it would develop into something more encompassing (Verdun, 2015, p. 223). The EU reacted by making and announcing seemingly arbitrary and disorganized decisions, which again would be followed up by more announcements that would deal with the immediate aftermath of the earlier decisions. Although the EU was challenged by reacting swiftly to severe and critical crises in the banking the sector, it still managed to make progress with several other initiatives (Verdun, 2015, p. 223). The then Commission President Barroso tasked a group with attempting to analyze the European financial regulation and supervision in an attempt to develop an improved framework for the future. This resulted in the De Larosière Report which provided suggestions for alternate measures to improve financial regulation and supervision in the EU.

The bankruptcy of Lehman brothers caused the financial turmoil and crisis of confidence to evolve into a large-scale financial and economic crisis on a global level (Trichet, 2010, p. 10). The money market suffered a breakdown, and attempts at restoring liquidity buffers and risk shedding led to massive deleveraging and consequentially the collapse of several financial markets. The severity of the financial market tensions, coupled with a drastic fall in global trade and synchronized decline of economic conditions across national economies, led several central banks to take immediate action; in the EU the Bank of England, the European Central Bank (ECB) and Sveriges Riksbank reduced interest rates significantly, with the ECB reducing key rates by 50 basis points.

In the following months the rate cuts continued and by May 2009 the refinancing rate of the Euro was reduced by 325 basis points to 1 per cent, an unprecedented development in the Euro area member countries in modern history (Trichet, 2010, p. 11). However, the currency market was severely impaired, reducing the effect and implementation time of the interest rate reductions. Due to the failing currency markets, monetary policy measures had lost their ability to maintain and control the stability through sheer interest rate decisions. A number of irregular measures had to be put in place which allowed the Euro rate to move closer to the deposit rate.

These measures were customized to the bank-based financial structure of the Euro area (as compared to the US market-based financial structure), and the so-called ECB's "enhanced credit support" entailed that (Trichet, 2010, pp. 12-13);

1) the Eurosystem offered unlimited central bank liquidity to banks within the Euro area at a fixed rate in order to provide short-term funding for banks to reduce potential liquidity risks,
2) the list of assets which could be used as collateral had been extended to help banks refinance larger shares of their balance sheets,
3) the maturity of refinancing was extended in order to reduce short-term refinancing requirements for banks,
4) the Eurosystem provided liquidity in foreign currencies, primarily US Dollars to banks within the Euro area to alleviate their needs for foreign asset funds,
5) and that the ECB purchased euro-denominated covered bonds used as long-term securities for refinancing of loans to private and public sector.

These measures had a significant effect at maintaining a relatively stable inflation forecast in the Euro area (Trichet, 2010, p. 13). The continued policy measures allowed for credit flows to the economy through factors of demand and supply (by low levels of interest rates, and easing funding pressure in the banking sector), and by providing unlimited amounts of liquidity to banks at fixed rates put a strong pressure on money market rates, pushing them down (Trichet, 2010, p. 15). This in turn allowed the banks to continue their lending operations. Overall, the financial market unrest quieted down significantly. The Governing Council of the ECB made it clear from the beginning that these measures were not intended to be in effect for an indefinite amount of time (Trichet, 2010, p. 16), and in the summer of 2009, the ECB announced an "exit plan", which was initiated in December the same year.

2.2 – Building for the future: Financial supervision and robustness

A lesson from the crisis was that governments and financial supervisory agencies had not, to a sufficient amount, been aware of the growing risks prior to it (Lund & Nordal, 2017, p. 3). As a response, already at the G20 summit in Washington, 2008, the participants declared their intentions

to strengthen regulation and supervision. In particular, the traditional microprudential[1] financial supervisory agencies had to be ramped up. Macroprudential supervision, which barely existed before the crisis, had to be developed. And the cooperation between the two had to be expanded. The elaboration of different standards for good supervisory practice of internationally active banks was one of the main objectives of the Basel Committee (BCBS, 2011). Suggestions and proposals for strengthening and changes in supervisory agencies' tasks and powers were incorporated in the suggestions and proposals for changed regulatory standards in the financial system.

2.2.1 – European System of Financial Supervision, ESFS

In September 2009, the Commission proposed a framework to replace the EU's financial supervisory structure. This led to the EU strengthening the supervision of the finance sector by establishing a new system of supervisory agencies, collectively known as the "European System of Financial Supervision" (ESFS) (Lund & Nordal, 2017, p. 3) (Verdun, 2015, p. 223). Separate authorities for microprudential supervision was established under the umbrella of the ESFS, for respectively banks (European Banking Authority, EBA), insurance and pensions (European Insurance and Occupational Pension Authority, EIOPA) and securities markets (European Securities Markets Authority, ESMA), as well as an authority for macroprudential supervision (European Systemic Risk Board, ESRB) (Lund & Nordal, 2017, p. 3). The boards of the authorities consist of representatives for the respective national financial supervisory authorities of each member state. The boards of EBA and ESRB also has representatives of the national central banks as well as financial authorities. With the establishment of the ESFS the microprudential authorities were given powers to make legally binding decisions which applied to national supervisory authorities and private actors. the ESRB was not given such powers, but could issue recommendations where affected authorities would be required to submit an explanation in case of non-compliance with the recommendations (Lund & Nordal, 2017, p. 3).

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[1]*Microprudential* supervision refers to oversight and financial regulation at firm and company level by regulators and supervisory agents, in order to ensure that the individual actors (to be understood as firms, companies and other legal entities operating on the financial market) are robust enough to withstand market shocks (Lund & Nordal, 2017, p. 3).

Macroprudential supervision refers to financial regulation that seeks to reduce risks to the financial system as a whole (systemic risk), as financial institutions participating in a common system are all subject to the same risks (Lund & Nordal, 2017, p. 3).

2.2.2 – Deposit Guarantee Scheme

The crisis proved how insufficient security that the existing Deposit Guarantee Scheme directive (DGSD) from 1994 provided (Quaglia, Financial regulation and supervision in the European Union after crisis, 2013, p. 18). The directive required a deposit protection of minimum €20'000 per depositor, but allowed for national discretion. At the time of the crisis outbreak, the coverage ranged between the member states from €20'000 to more than €100'000 in different member states. Furthermore, lack of coordination between member states and banks led to decisions on deposit guarantees that worsened the crisis. The situation got so bad that in 2009, the Commission proposed changes in the legislation in order to restore a degree of confidence in the banking sector (p18); on a series of legislative acts, they raised the minimum coverage from €20'000 to €50'000 and finally to €100'000. Due to the rushed decision of passing this legislation along, it was flawed with clauses which allowed for a broader than intended review of all aspects of deposit guarantee schemes (DGSs). This was attempted rectified by a legislative proposal in July of 2010, which addressed measures for harmonization and simplification of payouts. One of the provisions entailed establishing a mandatory mutual borrowing facility; if a national deposit guarantee scheme was depleted, it could borrow from another national fund. This was highly contended, and several member states tried to have this provision removed due to an unwillingness to surrender national sovereignty (Quaglia, Financial regulation and supervision in the European Union after crisis, 2013, pp. 18-19).

2.2.3 – Capital Requirements Directive, CRD-IV

One of the issues highlighted by the financial crisis, as a consequence of the falling confidence in the finance sector, was the amounts of withdrawals of deposits. Financial institutions lacking the equity to cover this crumbled unless they received bail-outs, which was a significant issue during the Financial crisis. In July of 2011, the EU Commission adopted the Capital Requirements Directive IV (CRD-IV); a legislative package requiring credit institutions and investment firms to strengthen their capital buffers on top of the already designated minimum capital requirements (Quaglia, Financial regulation and supervision in the European Union after crisis, 2013, pp. 19-20). The legislative draft was subject to criticism for altering or taking a relative stance to certain Basel III guidelines, such as softening the definition of Core Tier 1 capital and limiting the role of the leverage ratio which was designed to limit unnecessary risk-taking in the banking sector (Quaglia, Financial regulation and supervision in the European Union after crisis, 2013, p. 20).

Core Tier 1 capital is capital consisting of primarily common stock, whereas Tier 2 capital expands to cover some types of preferred stock and subordinated debt (Jacques & Nigro, 1997, p. 535). A leverage ratio is one of several financial measures examining how much capital comes in the form of debt (loans) or assessing a company's ability to fulfill its financial obligations. It is illustrated by the formula *Debt/Equity* = $\frac{Total\ Liabilities}{Total\ Shareholders'Equity}$, where the *Total Shareholders' Equity* is the leverage ratio denominator. This legislative work was a step towards creating the "Single Rulebook" for the EU financial market. Various member states also disagreed on the proposed guidelines. They argued either for softer or stricter regulations, but the general argument for either side was the need for individual member state specificities.

2.2.4 – Bank Resolution and Recovery Directive, BRRD

There were several instances of governments' lack of capabilities and options for solving issues with key banks (Lund & Nordal, 2017, p. 15). During the crisis, multiple banks were the recipients of government bail-outs as they were considered "too big to fail" (Quaglia, Financial regulation and supervision in the European Union after crisis, 2013, p. 20). In order to avoid systemic failure spreading from bank to bank, the governments opted for saving the banks through public resources, these so-called "bail out", instead of putting them under public management or bankruptcy. However, this was seen as the best of any poor option, and there was a general agreement that new tools were necessary to solve future crises. Seeing how this became a heavy burden on the tax payers, the Commission adopted a legislative proposal for recovery and resolution of banks in June, 2012, called the Bank Resolution and Recovery Directive (BRRD) (Quaglia, Financial regulation and supervision in the European Union after crisis, 2013, p. 20) (European Commission, 2012a). It distinguished between powers of "prevention", "early intervention" and "resolution", and stated clearly specific requirements demanded of credit institutions and some investment firms on how to proceed in certain situations of e.g. lacking equity and capital. One of the most important new key features for this was the introduction of "bail-in" (European Parliament, European Council, 2014); the banks' debt could be written down and/or converted into equity while the banks were still operational (Financial Stability Board, 2014, p. 7).

The directive also had visions of a resolution fund, which would be funded by the member banks themselves instead of the public. This funding would be raised by regular contributions from the banks in proportion to their considered liability and risk profiles (Quaglia, Financial regulation

and supervision in the European Union after crisis, 2013, p. 21). This fund would not be used for bailing out the banks, but to ensure that the resolution tools and execution of the resolutions tools and powers are conducted in an efficient manner.

This was also supplemented by recommendations that specific debt instruments on the banks' balance sheets could be subject to "bail-in" (Financial Stability Board, 2015, p. 10). The sum of the bail-in-able posts are called TLAC (Total Loss-absorbing Capacity). TLAC is an international banking standard intended to ensure that systemically important banks have sufficient equity and bail-in-able debt to minimize the risks of governments needing to provide bailouts by passing the losses to investors (Kupiec, 2016, pp. 159-160). During the resolution of a bank, instruments eligible to be considered into the TLAC include common equity, subordinated debt and certain types of senior debt. These must be able to be written down and/or converted into equity in order to recapitalize the bank during the resolution. Briefly summed up, TLAC entails that a minimum amount of the bank's balance sheet should at any given time be available for immediate and rapid conversion into equity to cover operations or other costs in case of resolution or severe financial deficit. As of January 1st, 2019, this must amount to at least 16%, and as of January 1st, 2022, it increases to 18%, of the banks' risk-weighted assets and minimum of 6% and later 6.75% of the leverage ratio denominator. Risk-weighted assets are utilized to decide the base measure of capital that must be held by banks and other financial institutions to decrease the risk of insolvency (Jacques & Nigro, 1997, p. 535). It is calculated based on assessments tied to risks of each type of asset. Average loans are deemed more riskier whereas mortgages have a certain security in housing or equity capital. These recommendations were only concerning banks considered of systemic importance. Minor and smaller banks, as proposed by the Commission, should maintain the current individual requirements (European Commission, 2016).

2.2.5 – European Market Infrastructure Regulation, EMIR

Preceding the financial crisis, a significant amount of securities and derivatives were traded over the counter (OTC), rather than through stock markets and exchanges (Quaglia, Financial regulation and supervision in the European Union after crisis, 2013, pp. 22-23). Consequentially, these trades were not cleared by going through central counterparties (CCPs). Trades passing through CCPs such as exchanges or other publicly available platforms contributes to increased transparency and decreased counterparty risk (that is, the risk that one of the trading party’s defaults) (Quaglia,

Financial regulation and supervision in the European Union after crisis, 2013, p. 23). This in turn reduces the risk of market collapse through a series of defaulted trades, which acts as a sort of safeguard for the entire financial system. The bankruptcy of Lehman brothers and other large trading actors who engaged in OTC trading demonstrated the necessity of reliable information on and transparency in the OTC derivatives market, which up to then had been absent of any systematic regulation.

In September of 2010, the Commission announced a proposal for the European Market Infrastructure Regulation (EMIR) (European Commission, 2010e). This legislation was designed to combat the lack of transparency on the OTC derivatives market and to reduce the risk this posed by, where possible, running OTC trades through CCPs who would act as intermediaries between the participatory trading actors. Furthermore, it would require participants to deliver proof of solvency through deposits and margin calls, as well as ensure more harmonized rules for CCPS and grant EU supervision of trade arenas. All trades and transactions would be subject to mandatory reporting and assist in any way the relevant supervisory authorities with getting a full overview of the markets. EMIR was considered a significantly important legislative work by the Commission and the Member States (Quaglia, Financial regulation and supervision in the European Union after crisis, 2013, p. 23). Initially the idea was that it would be drawn up as a directive, but it was quickly altered to become a regulation instead; directives grants, to a certain degree, member state discretionary interpretive leeway - regulations are incorporated into national law with immediate effect. The final draft was agreed upon on the 12th of March 2012.

2.2.6 – Banking Union

In particular, the experience with the Spanish banking crisis proved to the EU how exposed the symbiotic relationship between national economies and the financial system was (Euro Area Summit, 2012). As a response, the European Council and the Euro Area summit agreed in June 2012 to engage in a deeper integrational project. This would become known as the "EU Banking Union", and was based on four elements (Quaglia, Financial regulation and supervision in the European Union after crisis, 2013, p. 24): a single rulebook; further integration on banking supervision; an EU-wide deposit guarantee scheme; and an EU-wide ruleset for managing the resolution of failing banks and financial institutions. Furthermore, the Member States agreed to

create a single supervisory mechanism as a condition for the possibility of direct access to recapitalization of banks by the European Stability Mechanism (ESM).

The legislative proposal for establishing the single supervisory mechanism was adopted by the Commission in September 2012 (European Commission, 2012b). The intention was to create a regulation that would strengthen the supervisory powers over all euro area banks by the ECB and national supervisory authorities (Quaglia, Financial regulation and supervision in the European Union after crisis, 2013, p. 25). This would also maintain most of the regulation which was adopted by the creation of the European Banking Authority (EBA) to ensure a degree of continuity and balance in the decision-making process between the Member states of the euro area and non-euro area. Finally, this proposal also concerned a communication for completing the banking union, including the single rule book, the deposit guarantee scheme and the bank resolution mechanism.

2.3 – Analyzing the reforms and measures

Quaglia argues that among the responsive measures which the EU have officially proposed and/or adopted in the aftermath of the finance crisis, three main features can be identified (Quaglia, Financial regulation and supervision in the European Union after crisis, 2013, pp. 25-26). Firstly, the enacted reforms have regulated either activities or financial institutions that previously were left less or completely unregulated in the EU and/or Member States, at the EU level, or at national, European and international levels. There are also other examples of more heavy-handed regulation and cumbersome requirements on financial establishments which already before the crisis were subject to regulation, such as the increased capital requirements and the increased protective measures taken by the deposit guarantee scheme.

Second, the legislative and regulative proposals of both new and amending nature were, with a few exceptions, mostly resisted by a cluster of nations consisting of the UK, Ireland, Luxemburg and a shifting mix of Northern European countries. The resistance to these proposals engaged in fierce lobby campaigns with an end goal of amending the proposals towards what they viewed to be less over-prescriptive; the costs of implementing these changes, they argued, would lead to a potential unfair competitive advantage for entities operating in or originating from countries outside of the EU and its' stricter regulations.

Third and last, the process of reforming the financial sector in the EU was a slow step by step process characterized by inefficiency. This was partially to blame on the intricacies of EU policy-

making procedure, where an array of actors with veto powers are seated. The Commission was the primary agenda-setter of the attempts at reforming the finance sector, as it is the only entity which can make legislative proposals on an official basis in the EU. The Council and the Parliament were the primary decision-makers as they had the power to change or adopt the legislative proposals from the Commission. However, the Member States often had differing priorities from the EU, and found themselves concerned about the potential harm which could be incurred by the regulatory arbitrage they believed the proposed regulations would bring. While heavy lobbyism from the finance industry contributed to amending or even watering down legislative proposals, the political disagreement between certain Member States made sure to contribute to this as well.

According to Quaglia, the crisis revealed several problems which were only partially addressed by the EU reforms (Quaglia, Financial regulation and supervision in the European Union after crisis, 2013, pp. 26-27). First, she points to the disconnect between globalized financial markets and the EU, financial market integration in the EU, EU financial regulation and national financial supervision. When the EU is lodged into international banking rules such as the capital requirements set out by Basel accords, yet set its' own financial rules for Member States while simultaneously leaving the financial supervision to national level authorities, a fragmentation of powers and responsibilities prohibits the national government from effectively and efficiently supervising financial market activities. This becomes particularly troublesome with regards to cross-border financial entities in risk of failing, where the key is sharing the burden and distribution of recovery costs shared between the home and host country. As such, sometimes a cross-border institution is too big for the home country to rescue with public funds and host countries only have limited jurisdiction over their operations. As a risk of financial unrest, banks might pull out of a host country without prior warning, leaving little to no funding left. The BRRD and DGSD only partially answers these problems, Quaglia argues, as they fail to acknowledge the inevitable link between financial supervision, crisis management and fiscal power (Quaglia, Financial regulation and supervision in the European Union after crisis, 2013, p. 27). Fiscal power ties directly to national sovereignty, which might explain the resistance by certain Member State blocks towards the reforms. There's a likelihood, she says, that the costs and benefits of establishing these reforms would be unequally distributed across Member States, and ultimately more financially sound countries would have to bear the bill for less solid countries. Quaglia also claims that the global crisis brought focus on the connection between monetary policy, macroeconomic imbalances and

financial stability (Quaglia, Financial regulation and supervision in the European Union after crisis, 2013, p. 27); in some countries, the state's rescue of failing banks suffering from the financial crisis invited the sovereign debt crisis across the border, whereas in other states lax fiscal policies, despite solid financial sectors, led to a sovereign debt crisis which the banks had to pay for. This vicious circle brought to light the idea of the Banking Union, which has led to accusations of the EU being reactive rather than proactive.

Many of these thoughts are shared by Daniel Mügge (2014) as well. However, while he simply acknowledges that the Banking Union will be a risk sharing project, he delves further into the supervisory necessity of it (Mügge, 2014, p. 323). He claims that the Single Supervisory Mechanism (SSM) instituted within the Banking Union is an important element due to the supervisory weaknesses which were unveiled by the Financial Crisis (Mügge, 2014, p. 324). He also states that the authority which the SSM will enjoy will come at the expense of the European Banking Union. While a strong supervisory authority is necessary, the shifting of competences and division of powers and responsibilities would do nothing to lessen the complexion of the European banking legislation. Furthermore, he points to the internal discontent within the EU regarding the new regulatory structures; in agreement with Quaglia, he points to how, in particular, the UK opposed what it perceived to be over-zealous regulations (Mügge, 2014, p. 324). While Brexit is looming ever closer as we speak, and this might not necessarily be a factor in the future, previous studies have demonstrated that the UK is but the *de facto* leader of a block which continues to oppose what they consider to be political, regulatory *market shaping* by the EU, rather than their preferred liberalized *market making* course (Quaglia, 2010, p. 1010). In view of the development of the global financial market governance subsequent to the financial crisis, an opinion of less maximum harmonization and more mutual adaption and recognition based on minimum standards have emerged (Mügge, 2014, p. 322) and the EU would be wise to follow this, according to Mügge. However, as observed previously by Mydske in his report for the Norwegian government, an emerging pattern within the EU is the usage of regulation to impose new rules (Mydske, 2011, pp. 34-35). As touched upon earlier, regulations are increasingly used in order to ensure immediate adoption into national law without leeway for national discretion. In a press release announcing the adoption of the Banking Union regulatory technical standards into the EU legislative framework, Commissioner Michel Barnier stated that

"The development of the single rule book in banking is a vast undertaking. Its objective is to ensure all banks comply with one set of rules across the single market." (European Commission, 2014).

This further strengthens the argument that the EU is headed towards more, not less, full harmonization in an attempt to level, and even completely remove, the differences which have emerged as a result of legislations with allowance for national discretion (Mydske, 2011, pp. 34-35). Mügge concludes his assessment of the EU post-crisis progress by raising the point that the financial crisis was not necessarily as correctly handled or as successfully tackled as the EU might believe (Mügge, 2014, p. 324). He based this statement on an analysis of how extremely loose monetary policies have allowed an asset bubble to steadily grow in the period succeeding the financial crisis, a bubble he claims might burst any time. The fear of a potential asset bubble has in recent times also been confirmed by the Head of the European Central Bank Supervisory Board Daniele Nouy, who in an interview expressed her concerns by making the statement that

"What could cause the next crisis? I don't know, but I suspect it could be the real estate market. We know for sure that there will be a new crisis. But we don't know when or why it will emerge." (Koranyi, 2018).

Nouy's statement underlines the argument of Mügge, as well as reflects the accusations of the EU being reactive rather than proactive as asserted by Quaglia (2013, p. 27). While a bubble expresses the short-term success of, or at least confidence in, the market, it also provides grounds for skepticism for the future with regards to the financial crisis which the EU, and the rest of the world for that matter, managed to survive yet seemingly not learn enough from.

Epstein and Rhodes concur with some of these findings in their study of 2018 as well. Firstly, national competencies and discretion, with the introduction of the Banking Union and the SSM, has been transferred and centralized with the harmonization of legislative frameworks (Epstein & Rhodes, 2018, pp. 220-221). While the technical legalese is not without its' limits, the extended powers and authorities granted to the post-crisis institutions would leave the ESMA, in terms of de facto and de jure, far more empowered. Second, the relationship between the BRRD, and the introduction of bail-in regulations, and the "classic" publicly funded bail-out programs changed the market dynamic (Epstein & Rhodes, 2018, p. 221). No longer beholden to ultimate government supervision or political support, banks could to a larger extent reallocate resources within their

corporate groups at the expense of the host or home nations balance sheets. The latter point, however, is to some degree in contrast to the assumptions of EU as a market-shaper rather than market-maker, as it grants the banks a new source of influence despite the tighter regulatory schemes.

2.4 – Concluding remarks: harmonization and inequal benefits

This chapter has taken a look at the origin and development of the Financial Crisis of 2007, as well as how the EU responded to it and how these responses have impacted the European financial services sector. The analysis of the material shows that the EU was less than well prepared for the crisis when it struck, partially due to a reactive rather than proactive stance. Prior to the crisis, the focus was on minimum harmonization, allowing for national discretion on legislative proposals and adoptions. The usage of directives rather than regulations led to a slow uptake on legislation issued by Brussels. The combination of national discretion and slow uptake created differences on the various national markets, which contributed to desynchronizing the market. This is illustrated by how different countries handled the crisis and how severe they were impacted. This in turn enhanced the chaotic state of affairs in the industry sector, which served to make the crisis impact even greater.

The EU was slow to respond to the crisis, and when it did it was initially on a case-by-case basis with temporary short-term solutions. The consequence of this was a continuous race to put out fires in the industry sector, without focus on more stable, long-term solutions. When the permanent solutions finally received attention, they were directed towards a new hardline of harmonization and regulative uniformity. Despite a block of Member States of mostly Northern European countries opposing the new regulatory policy line due to the perception of a market-shaping rather than market-making EU, actors in generally financially strong countries were less troubled by the new regulatory restrictions. They perceived it as an equalizer on the market, where actors in cheaper countries were bereft of some of the competitive advantage they had held during the period of minimum harmonization. Vice versa, the actors of the previously cheaper countries felt that they were encumbered by unfair legislation which would impose heavy costs on them in order to implement the new frameworks. The transfer of supervisory powers from national to European authorities, while paralleling with increased regulations, created a new dynamic between industry

actors and national authorities, where the industry actors now found themselves in a position of reduced national dependency and increased independent influence.

The crisis, while significantly less severe, is not necessarily solved. An observable possible asset bubble, made possible by loosened monetary policies, is hanging over the market with the threat of bursting at any given point of time. While this might indicate that the responses by the EU to handle the crisis hasn't been as successful as initially considered, it also points to a market positivism which in simplified terms translates to increased turnover for financial market actors.

The EU's response was varying, flimsy and reactive towards the crisis, before taking a hard stance. Harmonization has evened the competition field, in theory, but left smaller actors who attempts to compete on cross-border markets stuck with expensive bills they will struggle to manage compared to larger actors. Supervisory powers transferred from nation states to EU institutions has created a situation where financial institutions aren't dependent on national political goodwill, which could grant larger actors more influence. EUs response to the financial crisis seems to have benefited larger actor on the financial market more than the smaller, less resourceful actors.

3.0 – The Financial Crisis and impact on Norwegian financial services market competitiveness

This chapter focuses on the aftermath of the Financial Crisis of 2007–2008, and how the measures implemented by the EU as a response to the crisis impacted the competitiveness of the financial services sector in Norway. It is based on existing studies on the topic, as well as official documents produced by relevant bodies within the financial sector.

There is a vast literature on the impact of the financial crisis on the EU, Eurozone and Europe. However, to this date there is significantly less accounts which focuses specifically on the Norwegian finance industry sector, and even less so on competitiveness within a Norwegian context. A few studies in recent years analyzes the impact that EU directives, regulatory frameworks and legal acts have had on Norwegian markets or financial services. Yet little has been carried out to study the larger, more encompassing impact on the Norwegian financial services market.

Existing literature mainly consists of master theses on the topic, in which it is maintained that there are few studies on the specific topic of competitiveness in the Norwegian finance sector following the regulations implemented by the EU in the aftermath of the financial crisis. They are all in accord when it comes to key findings, suggesting that the purpose of the regulation was to transfer the costs of potential future crisis rescue to banks and investors instead of tax payers and governments, and that this has been achieved. However, it has come at the expense of increased financing for banking and finance instruments trading activities. The stricter Norwegian regulations has also contributed to creating an uneven playing field in disfavor of the larger Norwegian domestic actors, granting smaller banks and foreign financial institutions an advantage in the markets. However, these studies only deal with specific directives or regulations, and does not take the larger picture into account.

This is the aim of this chapter. It analyses how the measures taken in the aftermath of the Financial crisis, in other words the EU's response to it, has impacted the competitiveness of the Norwegian financial services sector industry. It implies examines legal acts stemming from the EU relevant for the financial sector in Norway. Although some are still on the negotiation table between the EU and the EEA/EFTA/Norway (such as the Deposit Guarantee Scheme Directive), and the impact

has just begun to emerge, it nevertheless indicates the direction the proposed regulatory framework is taking.

3.1 – The European Legislative Flood: Basel III, BRRD and CRR/CRD IV

Through the EEA agreement, Norway is a part of EU's Single Market for financial services. This entails that Norway in principle have to adopt the legislations and regulations on an equal footing with the EU member states (Lund & Nordal, 2017, p. 3). Based on recommendations by the Basel Committee or other standard setters, the EU must consider if it should design a minimum or full harmonization legislation. The EU Commission presents the proposals for directives or regulations, in many cases based on proposals made by EBA, EIOPA and/or ESMA, to the EU Council and EU Parliament for approval, at which they must be incorporated in national law. There are certain changes in this procedure with regards to financial markets legislation and regulation, which I will return to in the next chapter. Sufficient to say, the aim of the cooperation between the EU and EEA/EFTA is to maintain a harmonized market, which impacts Norwegian legislation in the financial sector.

The Basel Committee presented a comprehensive proposal to a new framework for capital and liquidity requirements in December 2010, the so-called Basel III (BCBS, 2011). The proposal was approved in June 2011 and entailed requirements for more and better capital in banks, and new quantitative demands for liquidity (Lund & Nordal, 2017, p. 5). The Basel III capital requirement rules were accompanied by the Capital Requirements Directive (CRR/CRD IV), which transposed the Basel guidelines into European law (European Commission, 2013b). The framework provided a certain amount of national discretion, such as higher than required demands or implantation earlier than the deadline (Finanstilsynet, 2013a). Høyheim illustrates how the Norwegian authorities exploited this national discretion to regulate the domestic market earlier and stricter than the EU (Høyheim, 2014, p. 35). However, Norway is not completely up to date on its European legislation – the CRR opens for the possibility of reduced capital requirements for small and medium-sized businesses. This is called the "SMB Discount", and is currently not implemented into Norwegian law, even though it is part of European law (NOU2018:5, 2018, p. 76).

The new and strengthened requirements were to be phased in over an extended period of time in order to avoid hampering economic growth in the wake of the finance crisis. The Norwegian

economy was not harmed as much by the finance crisis as other countries, and so the prolonged phase-in period for implementing the new regulations was not necessary (Lund & Nordal, 2017, p. 6); where other countries would rather opt to make the most out of the implementation deadline set by the EU due to their economic and financial situation following the crisis, the state of Norwegian affairs was such that it allowed for a swifter and earlier implementation. The Financial Crisis Committee (Finanskriseutvalget) of the Norwegian government pointed to the macroeconomic development in Norway as the main reason as to why it experienced less severe financial problems compared to other European countries (NOU2011:1, 2011, p. 16). Consequentially, the new capital requirements were incorporated in Norwegian national law as early as in 2013. This was earlier than the final deadline of 2019 set by the EU. The Financial Crisis Committee and the Norwegian Central Bank concluded that the then (2010) current Norwegian legislation and framework was insufficient to effectively handle crises of the magnitude which Europe had just endured. The Central Bank made several legislative proposals, most of which harmonized with the BRRD (Norwegian Central Bank, 2010).

The new Basel III requirement for core equity[2] were significantly increased (Loan Market Association, 2015, p. 6). This restricted the investment risks, which in turn reduced the possibilities for profit. The core equity requirements can be met by either stock issuance, retaining profits and bonuses, or reduce risk weighted assets. The latter would entail a reduction of loans, which in turn could negatively impact the competitiveness of a bank.

Norwegian banks also adapted to the new and increased capital requirements (Lund & Nordal, 2017, p. 8). A bank can increase its capital requirement ratio by increasing the numerator or decreasing the denominator[3]. The numerator can be increased by increasing its surplus and/or retain larger shares of the surplus in the bank or issue new capital. The denominator can be

[2] Core equity Tier 1 is considered the key element of banking capital, and is consisting of equity capital and disclosed reserves; the reason is that these accounts are available in the published account, thus making them the primary measures to consider banks' profit margins and competitiveness.
[3] The numerator is capital measures, and consists of Tier 1 capital. The denominator is exposure measures, and consists of on-balance and off-balance sheet exposure. On-balance sheet exposure is accounting loss that does not impact the net profit account directly, e.g. the likelihood of loss from devaluating foreign currency assets. Off-balance sheet exposure refers to assets and/or liabilities that do not appear on the balance sheet of a company, e.g. the secured debt of a loan which is sold as an investment is often kept off the books.

decreased by reducing loans or other balance posts or by changing the compilation of the balance against assets with lower risk weight.

The capital coverage of Norwegian banks has increased primarily through core capital, and strong results are largely retained in the banks (Winje & Turtveit, 2014). Despite strong growth in the banks' balances during the period since 2009, increased use of their own calculation models for risk-weighted accounting basis led to a reduction in the banks' average risk weights. The accounting basis has therefore dropped somewhat and contributed to increased core capital coverage.

By the end of 2013 the crisis management capacity of Norwegian big and medium-sized banks were good and in general enjoyed good coverage of the MREL. Smaller banks and some medium-sized banks, however, were at risk of having to issue new senior debt[4]. This could have created some challenges because doing so would increase the risk premium which in turn would lead to an increase in percentile loss for investors. Furthermore, banks of these sizes do not necessarily have the possibility of issuing senior debt in foreign currency, thereby locking them to the Norwegian bonds market and limiting the number of potential investors. The MREL requirements could also lead to banks utilizing "contingent convertible capital" (a form of hybrid capital which can absorb losses and can be converted into equity capital), which is less attractive capital for investors in smaller banks (Hansen, 2014).

Investment ratings of senior debt were changed with the implementation of the BRRD, which in the end meant that ratings would be reduced. With the reduced ratings the risk premiums increased, and if a bank suffered too low ratings it would have problems with attracting investors. Banks financed by large amounts of equity capital, bonds and loans have a solid buffer before senior debt begins to absorb the loss, which would reduce the risk premium for senior debt in these banks. On the other hand, banks with less equity, bonds and loans would have a reverse experience. As such, BRRD could potentially cause larger price gaps between banks. The Norwegian ministry of finance have found in their reports that the EUs regulations on credit evaluation has made it impossible for brokers and banks to offer unofficial ratings (shadow ratings) to smaller businesses

[4] Senior debt is prioritized, often secured, debt (compared to other unsecured or "junior" debt), and in the event of bankruptcy of an issuer, senior debt must theoretically be repaid before any other creditors or debt holders receive any payment or compensation.

which does not have an official rating from credit rating agencies. The disappearance of shadow ratings was considered unfortunate for minor issuers' access to the bond markets, as it prevented a healthy competitive environment (Finansdepartementet, 2018a, p. 49) (NOU2018:5, 2018, p. 78).

Norwegian banks have experienced a string of good results throughout the entire adaption period (EBA, 2010-2013). This is in stark contrast to several European countries where major losses and weak economic development has led to poor results and equity capital profits. In these countries, too, the capital and liquidity coverage has increased as a result of the new requirements. Compared to Norway the coverage is largely a result of reducing the accounting basis and to some degree the issuing of new capital.

According to Hansen, the cost-benefit analysis conducted by the Commission of the BRRD instrument, found that the costs of bail-ins would approach 0.14%-0.42% of EUs GDP per year (Hansen, 2014, pp. 57-58). This is primarily due to increased financing costs. The benefits were found to be close to 0.76% of the EUs GDP per year, and is primarily tied to increased industrial stability and reduced risk of a new crisis. As such, the net benefit would approach 0.34%-0.62% of the EUs GDP per year. However, a memo issued by the Commission and Basel Committee states that the net economic benefits would approach somewhere between 0.3%-2% of the EUs GDP after the year 2019 (European Commission, 2013a). Hansen does not mention a timetable for his statement, and as such it is more purposeful to utilize the Commission timetable. Nevertheless, due to the stricter rules in the Norwegian sector, it is reasonable to expect a lower benefit margin in the Norwegian sector.

The financial crisis also revealed that the banks were unprepared to withstand the shocks, a targeted objective by the Basel III (Lund & Nordal, 2017, p. 11). The capacity to withstand shocks could be carried out by increasing the liquidity requirements to create buffers in case of unexpected liquidity outflows and hardships with gaining access to new capital (Liquidity Coverage Ratio, LCR). The LCR requirements stated that predefined particular secure liquid assets should amount to at least 100% of probable net outflow of the banks' assets over a period of 30 days in a situation with liquidity turmoil.

Government bonds are usually considered the most liquid securities and are as such sufficient as liquidity buffers. The Basel Committee recommended that countries with small government bond markets should be able to use other instruments to comply with the LCR requirements. Several

EEA countries were candidates for this special treatment, and in the end, Norway was declared as a country with need for this program (European Commission, 2015b). This program entailed that the LCR requirements could be fulfilled by the use of liquidity in foreign currency or a special loan agreement with the central bank (European Commission, 2015a) (European Parliament, The Council, 2013). In 2014 the EU also decided that covered bonds would be granted stronger weighting in the liquidity buffer than what was recommended by the Basel Committee. This would make it substantially easier for Norwegian banks to comply with the LCR requirements than if a stricter interpretation of the Basel Committee recommendations had been applied.

Another question that required answers was to what degree the LCR requirements should be fulfilled in each individual currency or if it should be considered as a single, cumulative liquidity pool (EBA, 2016). The Norwegian Department of Finance decided in 2015 that the LCR requirements of 100% should be considered as applicable for all currencies collectively (Lund & Nordal, 2017, p. 12). A later proposal suggested an LCR requirement of 50% NOK (Norwegian Kroner). As a result, the banks would avoid the challenge of a small government bond market in NOK. The Norwegian banks have collectively managed to comply with the LCR requirements of 100% (Lund & Nordal, 2017, p. 12) by adapting to maintaining more liquid assets than previously.

3.2 – European Markets Infrastructure Regulations: EMIR

While the European Markets Infrastructure Regulations (EMIR) was adopted by the EU already on the 4th of July 2012 (European Commission, 2012c) by the EU, and entered into force on the 16th of August the same year, the EEA Committee did not adopt it until the 30th of September 2016 (Regjeringen, 2017). It entered into force in the EEA area and Norway on 1 July 2017 (Finanstilsynet, 2017).

The primary purpose of the EMIR was to strengthen financial stability, which would be achieved through among other things introducing clearing obligations (Finanstilsynet, 2013b, p. 29). These obligations were included for entities both within and outside of the scope of financial regulations. By implementing these, the regulation sought to standardize the derivatives and securities trading and make it easier to enter into contracts of trade. The clearing obligations are intended to reduce counterparty risks by clearing trades through a central counterparty instead of trading directly through bilateral agreements. The engagement of such central counterparties was estimated to

entail increased trading costs, as financial market actors usually trade different products on different markets, because it would require more than one central counterparty.

The clearing obligations would also provide certain benefits for financial actors engaged in derivatives[5] trading (aside from the reduced counterparty risk). Most significant it would apply to the reduced capital coverage requirements for trades (Finanstilsynet, 2013b, p. 29). Non-financial actors engaged in trade, however, would have to subject themselves to new requirements for security and collateral when trading derivatives. This in turn was assumed to increase their trading costs. The differentiation was introduced because the latter actor to a much larger degree engaged in trade with unsecured bank guarantees as collateral. At the time the report by the Norwegian FSA was written, it was difficult to gauge the future scope of clearing obligated entities in Norway after the entry of EMIR (Finanstilsynet, 2013b, p. 29). The reason for this was the lack of overview of how prevalent OTC derivatives trade activity conducted by non-financial counterparties was. One of the goals of EMIR was to rectify this situation. Smaller financial actors were assumed highly likely to experience the clearing obligations as financially cumbersome. Due to their smaller size, it was estimated that they engaged in fewer trades and thus obtained smaller profits (which would be cut into by the costs associated with engaging in trade clearing).

When the European Market Infrastructure Regulation (EMIR) was implemented to increase transparency in the securities and derivatives market, it introduced new transaction reporting obligations for all derivatives traded (Finanstilsynet, 2013b, p. 46). These were added on top of the existing reporting obligations to the FSA (Finanstilsynet) and the Oslo Stock Exchange. Both the central counterparty and the trade counterparty would be subject to reporting obligations to the transaction register of ESMA. This was estimated to increase the costs as well because increased reporting activity entails increased resources allocated to reporting and direct costs for parties obligated to deliver reports, as well as new requirements for IT systems to safeguard the reporting obligation. Market actors would experience increased costs as well, as the ESMA transaction register would require a register fee. In general, the Norwegian ministry of finance found that one of the consequences of implementing the regulations would be the likelihood of increased costs for private market actors (Finansdepartementet, 2016a, p. 4) (Finansdepartementet, 2016b, p. 30).

[5] A derivative is a financial product; its value is based on, or derived from, an already existing asset or product, or a group of assets or products.

A minority of the FSAs working group believed the regulation to overstep on market surveillance issues, as this area was not the purpose of the regulation, and the fact that market surveillance was covered by existing transaction reporting regulations in the Norwegian securities trading law and the European Markets in Financial Instruments Regulation (MiFIR) (Finanstilsynet, 2013b, p. 48). The working group minority also underlined a very questionable possibility of imposing on singular investment firms to report all OTC derivatives trades to a specific regulated market. This, they argued, would provide information and detailed insight into trades to other markets or trading facilities without revealing the same information to other markets or facilities who offered the same instruments. While the market surveillance issue was their main concern, the possibility of competitive offset is not far beyond.

With the implementation of EMIR, foreign central counterparties[6] offering clearing services in Norway would no longer require permits from Norwegian authorities or Norwegian supervision (Finanstilsynet, 2013b, p. 62). They would be allowed entry to the Norwegian market based on permits from other EEA countries or by merit of recognition from the ESMA. This, the working group argued, would make it easier for foreign central counterparties to establish and offer their services to Norwegian markets and actors.

EMIR was assumed to increase the efficiency on Norwegian market (Finanstilsynet, 2013b, p. 91). It would regulate unregulated areas and provide authorities with increased overview over derivatives market activity in order to safeguard financial stability. As it was the first regulation of its kind (a common European regulation on financial infrastructure), it was considered a contribution to the enabling of providing services across borders within the EEA area. This, however, presented some challenges as well. While the EMIR has a firm framework, the technical standards of content, such as the clearing obligations, still were not completed. And with the different jurisdictions having different regulations in order to implement their G20 commitments, the FSA were concerned that this would create some degrees of arbitrage (taking advantage of price differences between two or more markets).

[6] A central counterparty is a financial institution that serves as a transactional intermediary that offers several services. These include but are not limited to providing collateral to trading parties, monitoring the credit worthiness of firms, providing guarantee funds, and providing evaluations of trades.

3.3 – Influencing Norwegian competitiveness

When the finance crisis struck, it struck a hard blow to the European economy. However, unlike many other countries, the Norwegian financial sector was less impacted by the blow itself as well as the aftermath. Due to an already tight regime as well as macroeconomic prudence, Norway managed to haul itself clear of the worst impact. However, despite this, the government and industrial sector agreed on the simple fact that another crisis of similar magnitude would not be possible to escape with similar grace. A new set of regulation was necessary, and the financial frameworks implemented by the Norwegian government were much in harmony by the regulations the EU began implementing based on similar thoughts. These changes to Norwegian law were induced by the prospect of upcoming EU law. Due to this, Norway was able to expediate the implementation of the European legislative works when they were made official and adopted them long before the final deadline set by the EU.

However, the regulations implemented by the EU, putting the guidelines of the Basel III framework into European law, allowed for a degree of national discretion. This was a room for maneuver which the Norwegian government made use of to impose stricter regulations on the Norwegian financial industry than the rest of the EU. The hazard of different regulation standards and thresholds is that it entails differences in the numbers for calculating quantifiable equity. In the case of Norwegian banks, the stricter regulations and requirements could potentially lead to domestic banks being considered less equitable (and competitive(?) compared to their foreign competitors. The consequences of this would be increased costs of lending from the foreign currency market. This would in turn could lead to reduced profit margins in cases of similar loan interests, or to Norwegian banks having to enforce a higher loan interest to cover the margins. Either of these would be of benefit to the competition, either due to more profits per loan, or by gaining larger market shares at the expense of Norwegian banks. This could already be observed the very same year as the legal works were implemented. Shortly after the contents of the new capital requirement regulations were made publicly known during the spring of 2013, several banks warned an increase in mortgage interests as a result of the new capital requirements (Pedersen, 2013).

The regulations did not strike equal blows to every finance and banking actor on the Norwegian market, however. Due to the fact that banks considered to be of systemic importance were subject

to different, harsher gauging of solidity than less important, smaller banks, they were also exposed to increased financing costs compared to their competitors. Yet while minor banks were relieved of this burden, they suffered under the new regime as well. With the increase in the capital buffer requirements, they would be hard pressed to issue debt instruments to raise the required capital and strengthen their solidity. Consequently, they would risk being locked to smaller, more localized markets and fewer investors. Foreign bank branches established in Norway are subject to the laws and rules of the home country of the company headquarter, not the laws of the host country. Subsidiary companies of foreign banks established in Norway, however, are subject to Norwegian law (NOU2011:1, 2011, p. 15). This allowed for foreign banks to take advantage of the differences in financial regulations as well, thereby skewing the competitive factors in their favor. The Norwegian ministry of finance recently confirmed the increased presence of foreign actors on the Norwegian financial services market (Finansdepartementet, 2018a, p. 70).

The purpose of the regulations was to ensure that a potential future crisis rescue would be billed on the financial institutions and investors themselves, and not the government and tax payers. Existing analyses, as well as the findings of this chapter, supports the claim that this is indeed the bottom-line outcome of the regulation (Loan Market Association, 2015, p. 58) (Aas, 2017, p. 58). This chapter, as well as the existing literature, also finds that the implementation of the Basel III framework ultimately has worsened the competitive environment for larger, systemic important banks compared to smaller banks and foreign banks.

The EMIR framework was implemented with the intention of strengthening the financial stability through harmonization of derivatives trade regulations. With this in mind, it was not intended to be a competitively focused regulation per se. With its only recent adoption into Norwegian law, and no major crisis having struck after the financial crisis of 2007–2008, it is difficult to say if the regulation has either not yet been properly tested or if it is part of the reason for this in itself. This is beyond the scope of this study, however. The EMIR framework was expected to increase operational costs related to derivatives trading, a burden which would be heavier for smaller actors than the larger ones. It also established the possibility for foreign competition to enter the Norwegian market on clearing services. By adding weight to the burden of cost, particularly on those actors who would already be fighting an up-hill battle against their larger domestic competitors, and by pitting international competition in the fight as well, it is safe to say that the

base of the regulations is contributing to shifting the competitiveness in the Norwegian market. As demonstrated in the matter of BRRD and CRR/CRD IV as well, the increased costs for market actors will either be passed onto the customers or clients or the actor will operate with lower profit margins. Nevertheless, with the technical standards differences across European borders, this contributes to a possible arbitrage which puts Norwegian actors at a disadvantage.

3.4 – Concluding remarks: weakened Norwegian competitiveness

This chapter set out to assess how the legislative and regulative reactions of the EU following the financial crisis 2007–2008 impacted the competitiveness for the Norwegian financial services market. While the primary purpose of the regulations and legislations issued by the EU appears to have served their purpose of contributing to a strengthened stability of the financial system across Europe, the materials which were subject to analysis indicates that they served some parties better than others. With regards to the purpose of this chapter, it finds that the regulations have weakened Norwegian competitiveness.

Larger actors, often those considered of systemic importance, were subjected to regulative conditions which weakened their competitiveness. This is mainly due to increased costs associated with the requirements the new regulations imposed. While smaller banks emerged from the regulative barrage on a slightly lighter note, they still suffered as well because the increased costs related to the new requirements either forced them to accept smaller profit margins or operate with smaller market shares and fewer financial sources. On the derivatives market the same trend can be observed: while the larger actors suffered from stricter regulation, the smaller actors risked financial loss due to increased costs. The possibility of foreign competition due to arbitrage caused by e.g. different technical standards is also a factor to consider, as more actors on a market by itself equals increased competition, and when those actors operates with different standards and margins it becomes even more so.

The Norwegian ministry of finance stated in their report that the main impression of the Norwegian capital markets was that the securities markets were well-functioning, and Norwegian financial institutions generally were considered strong and liquid (Finansdepartementet, 2018a, p. 44). However, this does not necessarily speak about competitiveness. They already confirmed the increased presence of foreign actors on the market during the recent years. Given the way Norway managed to stay ahead of comparatively many of the European markets in terms of regulative

backlog, it is reasonable to assume that this is, if not wholly then at least to some degree, in correlation with the competitiveness on the Norwegian market. Increased capital requirements contributed to a banking system which was more robust and resilient to financial crises, but at the same time there were indications that small and young businesses were experiencing reduced access to bank loans the recent years (NOU2018:5, 2018, p. 76).

The regulatory standards have been met with critique from actors operating on the Norwegian market, and who face competition from international banks which are subjected to less demanding regulations. Based on the analysis and findings of this chapter, I argue that the increased requirements may have contributed to increasing financial costs for Norwegian banks in the international capital markets, and thereby weakened Norwegian banks in competition with foreign banks.

4.0 – The structural relationship between Norway and the EU

This chapter focuses on the relationship between Norway and the EU, and the measures implemented by the EU as a response to the financial crisis. The literature on the topic of financial integration in the EU is vast. However, a significant amount of it is related to economic growth. In terms of the structural relationship between Norway and the EU, this has primarily been mentioned in the Brexit debate as possible options for the UK, and not as a topic of itself. Some studies have analyzed the issue of sovereignty in a context of Norway vis-á-vis the EU, but this has been expanded to cover the entirety of the cooperation between the two. Very little literature exists to cover the specific topic of this chapter. What literature exists on the topic asserts that the increased harmonization of European financial regulation and legislation, as well as the issue of Norwegian sovereignty, has been, and are, conflicting points of interests. Furthermore, the literature argues that Norway indirectly has ceded sovereignty due to legal acrobatics which allowed the European Surveillance Authorities (ESAs) to subject the EEA/EFTA states to their authority in order to continue granting them access to the Single Market. The purpose of this chapter is to examine these assertions.

While previous chapters have dealt with technical financial market regulations and data, this chapter analyzes *how these measures have impacted the political and structural relationship between the EU and Norway, and thus the Norwegian financial services market*. Drawing on existing studies on the relationship between Norway and the EU, official documents and statements produced by relevant agencies and other bodies on both EU and Norwegian levels, it argues that a main issue between the two parties have been the problem of secession of sovereignty and the constitutional challenges this poses. I find that several of these issues are still a challenge. It also argues that the direction Norway has headed with its recent choices of dealing with these challenges might be a source of future conflict.

4.1 – The Norwegian relationship with EU and the EEA

As a consequence of a domestic banking crisis in the late 1980s and early 1990s, Norway decided to modernize the financial legal frameworks and regulations in the Norwegian national law (Mydske, 2011, p. 5). Thanks to this modernization, there were only minor changes to some technical standards and the removal of a few regulations considered of market discriminatory nature to be expected when Norway joined the EEA. Since then, the regulations have grown in

both extent and level of details (NOU2011:1, 2011, p. 571). Today, the scope of the EEA Agreement's annex IX on financial services is one of the most significant annexes in the agreement (Mydske, 2011, p. 5). The EEA Agreement is a Norwegian domestic political compromise across political parties, between those who seek full membership of the EU and those who desire less integration between Norway and the EU. A challenge presented by the EEA agreement is that refusal to comply with its duties and responsibilities could put the entire cooperation into jeopardy (NOU2012:2, 2012, p. 19).

Membership in the EEA Agreement entails accepting the Four Freedoms – the free movement of goods, people, services and capital. The latter is aimed at removing obstacles for free movement of capital and payments within the EU and between Member States and third countries (NOU2012:2, 2012, p. 799), and therefore usually considered relevant for the EEA. As a result, national agencies involvement with EU-level agencies clearly points beyond information gathering and exchange, and extends to the participation of developing and implementing EU legislation into national law (Egeberg & Trondal, 2011, p. 875).

Article §115 of the Norwegian constitution states that agreements granting international bodies the authority to exercise powers which by the constitution shall be performed by Norwegian bodies require the permission of the Norwegian parliament by a three-fourths majority vote with at least two-thirds of the parliament present at the vote (The Constitution, 2018). Articles 17-19 of the 2010 regulations which established the European system of financial supervisors[7] posed constitutional challenges if they were applied to EEA financial supervisors and institutions of nation states which are not members of the EU, such as Norway, as it would be tantamount to ceding sovereignty (Kinander, 2018, p. 243)[8]. Examples of this includes the article §40.1 of the Markets in Financial Instruments Regulation (MiFIR) and article §28.1 of the Short Sale regulation, which both grants powers to ESMA of directly intervening in national markets and even forbidding certain practices such as sales, purchases and marketing of financial products (Kinander, 2018, pp. 244-246).

[7] The European system of financial supervision established the European Systemic Risk Board (ESRB) as well as the European supervisory authorities EBA, ESMA and EIOPA.

[8] The articles §17-19 in the 2010 regulations establishing the ESAs grants the Authorities significant powers to intervene in national markets and even set aside the national authorities.

The European System of Financial Supervisors (ESFS) implemented the Supervisory Authorities European Banking Union (EBA), European Securities and Markets Authority (ESMA) and the European Insurance and Occupational Pensions Authority (EIOPA), of which the members of the Board are represented by national supervisory authorities (and not ministries or the government itself) (Finanstilsynet, 2011, p. 10). Norway is not a member of these but holds an observatory role. The Financial Supervisory Authority of Norway (FSAN) adhered to these authorities as if they were a part of the EEA agreement (although they were not at the time, 2011), and took their recommendations and guidelines into account. On the 13th of June 2016, the Norwegian government approved the decision of the EEA Committee to adapt and implement legal acts which established the ESFS. This would grant participation in the supervisory bodies, but without the right to vote (Finansdepartementet, 2018, p. 41). This process took six years to negotiate, and during this period several financial legal acts fell into backlog as they were reliant on Norwegian participation in the ESFS. As of the 5th of April 2018, there were approximately 300 financial legal acts developed by the EU which Norway were in backlog of implementing (Finansdepartementet, 2018, p. 42). The ESFS has authority to make legally binding decisions. These are executive and judicial powers which according to various articles of the Norwegian constitution should be performed by Norwegian bodies.[9]

4.2 – Two-pillar structure

It was considered politically impracticable and constitutionally challenging to subject national supervisors of non-EU nation states to direct rule of the ESAs. Therefore, the most practical solution was to expand upon the existing EFTA pillar, in particular the EFTA Surveillance Authority. This would create an instance of legal acrobatics which provided EEA countries the argument that they maintained their sovereignty while simultaneously being granted access to the financial markets (Kinander, 2018, p. 252).

Prior to the establishing of the ESFS in 2010, Norway had full participatory privileges in the supervisory cooperation between national financial supervisors of the Member States. This was conducted through the predecessors of the current ESAs; the Committee of European Banking Supervisors (CEBS), the Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS) and the Committee of European Securities Regulators (CESR). After the

[9] §3, §49, §75, §88 and §90

introduction of the new Authorities, Norway still had observatory rights along with access to the various fora where rules where shaped, which was an advantage for Norway as it granted the possibility of providing opinions and understand the background for new regulations as well as information about risks in the banking and finance sector in the EU. The impression was that these fora listened more to competency than to formal status, and as such Norway held a degree of influence (Kinander, 2018, pp. 252-253). This impression was also shared by the director of ACER as Norway is a major actor on matters of energy, further illustrating this perception. It was therefore crucial for Norwegian interests to continue having access to this influence.

Before the current system was established, several custom-tailored solutions were proposed by Norway and the other EFTA Member States, all of which did not include granting the ESAs direct access to and control over EFTA States' internal markets. These were all rejected by the EU. The solution was the Two-Pillar system and the establishment of the EFTA Surveillance Authority, the only institutions which the EFTA States were willing to transfers sovereignty to as it was part of an existing framework thus could be done without amending the constitution. In the Norwegian case, it only required the procedure of article §115 of the constitution to be followed (EFTA, 2014).

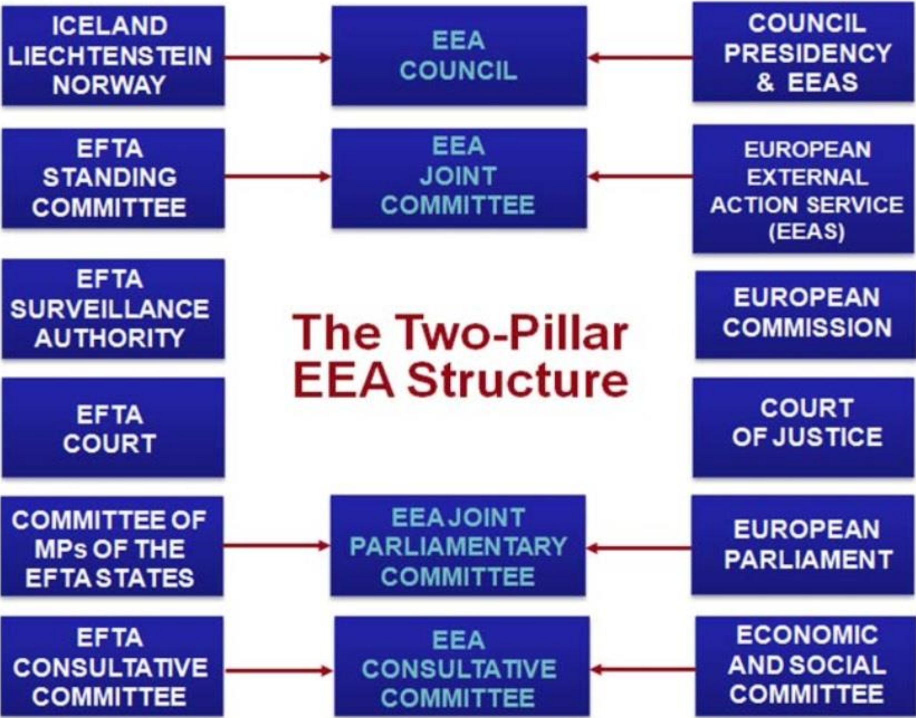

Figure 3 (EFTA, 2013)

The EFTA Surveillance Authority was tasked with overseeing the compliance of EFTA States with regards to the EEA Agreement in general (EFTA, 2012). It was granted mandate to act in the case of non-compliance towards the opinions and decisions of the ESAs by any EFTA Member States. In a case of non-compliance, the authority would file a complaint with the EFTA Court. While the EFTA Court is not legally binding, it can still issue judgements according to article 34§ of the Surveillance and Court Agreement (SCA), which according to article §33 of the SCA obligates the EFTA state to take "all appropriate measures" in order to ensure compliance. However, the EFTA Court lacks official sanctioning power (compared to the European Court of Justice (ECJ)), and compliance is based more on the political gravity of the context, that is, the risk of dismantling the EEA/EFTA agreement, than the legal weight the EFTA Court carries. The lack of legal weight carried by the EFTA Court leads it to rest its' decisions on existing precedence which usually has been set by the ECJ:

> *"The EFTA Court has constantly let the objective of a homogenous EEA prevail over any temptation it might have otherwise had to exercise its formal independence from the ECJ and to pursue interpretations of the EEA rules at odds with the ECJ's interpretation of corresponding provisions of EU law. This approach is to be applauded from a functional perspective, but there is no denying that the result is the de facto acknowledgement of the ECJ as the supreme interpreter of the substantive EU/EEA rules of the internal market under both the EU and the EFTA pillars of the EEA"* (Haukeland & Franklin, 2015, p. 673).

4.3 – Creating financial law in the EEA

When the EU adopts a legal act which it considers to be of EEA relevance in general, the EFTA Secretariat drafts a Joint Committee Decision (JCD) which it sends to the European External Action Service (EEAS) and then the Commission (European Commission, 1994). After the Commission has given its approval, it is considered by the EU Council in the case of any adaptions of significance. When it is finally approved, either by the Commission or the Council, the Joint Committee decides whether or not to incorporate it into the EEA Agreement.

Financial regulations have a more complex process where, according to the Lamfalussy process, the ESAs have been granted competencies and powers to make legally binding decisions (The Commission, 2010d). The Lamfalussy procedure was developed to expedite and simplify the manner in which the European Commission enacts legislation. It has four levels. On level 1

(Standard Legislative Procedure) the European Commission submits legislative proposals. This determines the core political aspect which the EC wants to regulate, and which implementing bodies shall be included at level 2. At level 2 (Technical Standards) specifications and technical standards are produced. Which ESA is chosen to develop these is decided at the first level. At the confirmation of the European Commission (EC), these standards can be legally binding. At level 3 (Feasibility of implementing the supervision in practice) the regulations which are not technical regulatory or implementing standards are translated into guidelines and recommendations for national laws. At level 4 (Monitoring implementation) the EC is responsible for ensuring compliance by Member States. For the purpose of this chapter, level 2 is the most relevant.

This provides a challenge to the two-pillar structure, as the ESAs are not only granted the power to propose and create new rules (which they often do through regulations rather than legislation to ensure swift and harmonious implementation), but also the power to intervene in national markets. As such, the ESAs have been granted powers which even supersedes those of the EFTA Court. It works as follows: as the EFTA States are not members of the EU, the EFTA Surveillance Authority makes decisions regarding obligations to the EEA Agreement. Within the area of financial regulations, however, there is another aspect to consider. The decisions of the Surveillance Authority are adopted based on drafts which are prepared by the ESAs, which includes the supranational aspect that was problematic in the first place. The structure was implemented by amending the regulations which established the ESAs to extend their authority to include the EFTA pillar as well, ensuring the market integrity the EU sought to create and protect (EEA Joint Committee, 2016d) (EEA Joint Committee, 2016a) (EEA Joint Committee, 2016b) (EEA Joint Committee, 2016c).

The main function of this was to include the financial supervisory authorities of the EEA EFTA Member States into the ESFS regulations. By doing this, the national supervisory authorities were subjected to the same regulatory structure as the EU Member States. It also granted the supervisory authorities of the EFTA States participatory (but not voting) rights on the Board of Supervisors (BoS) and the preparatory bodies (such as internal committees, panels etc.) in the ESAs.

The regulations which established the financial supervisory authorities EBA, EIOPA and ESMA have a commonality in that the articles §17-19 in all the regulations grants significant powers to intervene in national markets and even set aside the national authorities (The Commission, 2010a)

(The Commission, 2010b; The Commission, 2010c). Article §17.4 states that national authorities have one month to comply with the opinion of ESAs, upon which the Commission may allow the competent authority to, according to article §17.6, sideline national authorities and directly instruct the relevant financial market institution. European Supervisory Authorities (ESAs) can present their own recommendations where they believe it to be expedient and necessary (Isaksen, 2012, pp. 36-37). They have the authority to make decisions which are binding for Member States (such as ban certain products). They can also issue guidelines and recommendations which Member States are expected to adhere to.

An example of this mandate is the work with the fourth Capital Requirements Directive (CRD IV). The directive was proposed by the Commission in August 2011, and by autumn the same year the EBA recommended increasing the capital requirements beyond the proposal. The FSAN decided to adhere to this even though it was not a binding decision (recommendation by the ESAs are not binding, only guiding, for Norway and other EFTA countries, as opposed to EU Member States). This has been considered a stealthy form of rule depositing by the industry; the ESAs bypasses the Commission and make their own rules. In Norway, this was even considered a violation of the constitution as it granted significant supranational powers to a foreign authority beyond the scope of existing agreements.

ESA as a decision-making authority entails that the appeal body in the EU pillar is unable to process appeals on ESAs decision. There has not been established an equivalent appeal body in the EFTA pillar (Utenriksdepartementet, 2016, p. 15). The judicial courts' influence on the decisions of the finance agencies is likely to be limited due to the technical and complex economic nature of the finance industry sector, which the courts are ill suited for interpreting and analyzing (Utenriksdepartementet, 2016, p. 15). The appeal bodies of the finance agencies are not to be considered as specialized courts, but as parts of the agencies themselves (Chirulli & de Lucia, 2015, p. 853). The result of this system is that EFTA Member State actors (of both private and public nature) have a decreased legal security compared to their counterparts in the EU. Furthermore, the Commission has signaled a desire to further strengthen the supervisory authorities:

> *"More needs to be done to enhance regulatory supervisory convergence within the Single Market to help our financial markets work more effectively and to address new challenges.*

Once adopted, the proposals will improve the mandates, governance and funding of the ESAs" (The Commission, 2017).

4.4 - Internal and external conflicts

The secession of authority has led to cases of disagreement between the Ministry of Finance and the FSAN, such as the Deposit Guarantee Scheme case (Finansdepartementet, 2016). Norway already had an existing guarantee scheme of NOK 2mil which the Ministry desired to maintain, whereas the FSAN supported implementing the European guarantee scheme of €100k. Directive 2014/49/EU, also known as the Deposit Guarantee Scheme Directive (DGSD), is considered a directive with EEA relevance (NOU2012:2, 2012, p. 799). It was expected to be implemented into Norwegian law as of 1 January 2019. However, article §2 of the directive has been a source of disagreement between the EU and Norway for a while, as it states that differences between national law on deposit guarantees is to be removed and harmonized with the EU deposit guarantee of €100k. Prior to this directive, customers at Norwegian banks were guaranteed deposits up to NOK 2mil (NOU2016:23).

The DGSD is subjected to the authority of the EBA, and could not be implemented into the EEA Agreement until a suitable EEA adaption of the ESFS could be found (NOU2016:23, 2016, pp. 111-112). When the Norwegian parliament approved the proposal of including the ESFS into the EEA Agreement in June 2016, they also implemented a law on EEA financial supervision which states in article §1 through §4 that the four EU regulations on financial supervisory authorities were to be considered as implemented into Norwegian law, with the adaptions provided and made necessary by the EEA Committee. As of that moment, the DGSD was eligible for entry into the EEA Agreement, once the appropriate adaptions were to be made. These adaptions have yet to be put in place, or even still agreed upon. Norway has chosen a half-measure in order to, at least temporarily, calm the situation, by implementing legal acts with quasi-harmonization to the directive without putting the directive up for consideration in the EEA Committee (Finansdepartementet, 2018b). Domestic customers are allowed to enjoy the deposit guarantee of NOK 2mil, whereas cross-border customers must adhere to the European deposit guarantee of €100k.

This was a part of the EU's campaign for a fully harmonized financial services market, and the Norwegian guarantee scheme was, and still is, in their opinion an unfair competitive advantage.

Due to the political, rather than technical, importance of the case, the FSAN eventually sided with the Ministry [10]. However, there have also been cases of direct conflict between the Ministry of Finance and the FSAN, such as the situation of the Solvens II Directive (Isaksen, 2012, p. 43). The directive was approved by the EU in 2009 and entered into force on the 1st of January 2013. The Solvens II Directive relates to, among many, life and other insurances[11]. The FSAN proposed changes to Norwegian law in 2011 due to the fact that Solvens II would inevitably require changes in the national law which concerned the market development of insurance companies. This was considered as controversial by the Ministry, and led to a public conflict where the FSAN attempted to pressure the Ministry through the media, an effort that ultimately failed. Ultimately, however, the Solvens II directive was implemented and entered into force on the 1st of January 2016 (Finanstilsynet, 2017).

4.5 - Implications of the current Norway/EU relationship

This chapter set out to examine the structural relationship between Norway and EU which came as a consequence of the implementation of the measures to the financial crisis. I find that the two-pillar system is playing the part as both the solution to existing problems and the root of new ones.

When the EU and the EEA/EFTA agreed to expand upon the existing two-pillar system in order to incorporate the ESAs into the agreement, the main challenged they faced was the issue of ceding sovereignty. The Norwegian constitution only allows for transfer of authority in “limited special cases”, and only by approval of the parliamentary process of §115 of the Norwegian constitution. The transfer of judicial and executive powers from Norwegian authorities to the ESAs on the entirety of the financial services market can hardly be categorized as a “limited special case”. This is in itself a constitutional challenge in which several financial actors have raised doubts. Furthermore, the EU’s statement of further regulative harmonization and expanded powers to and strengthening of the ESAs can easily be interpreted and understood as even more secession of national sovereignty and authority. With the continued expansion of regulations and strengthening of Authorities throughout the history of the EU/EEA relationship, this should hardly come as a surprise to anyone, least of all Norwegian politicians and law-makers. As such, to claim that the

[10] The Norwegian deposit guarantee scheme is considered important as a consumer service due to the high amount of deposit savers in Norwegian banks.

[11] Solvens II is for insurance companies what the CRD IV is for banks – ensuring solidity and liquidity in order to withstand shocks and in case of insolvency not pass the bill on to the customers and tax payers.

transfer of authority on financial markets services is a "limited special case" is not only overly bold, but can be perceived as twisting the truth. While this in itself is an issue which is worrisome, it has been solved with regards to the cooperation between the EU and EEA/ETFA, and does currently not pose a risk for the future cooperation or the structural relationship between the two parties. Norwegian representatives have been granted access to the law-making fora where merit after all is as important as formal status. What it does cause, however, is a source for conflict on the domestic arena. As such it *does* pose a potential risk for the future cooperation between the two.

The Norwegian FSAN has participatory rights but not voter rights on the BoS's of the ESAs. The ministry of finance has no similar official contact surface with the European financial authorities. These two entities have somewhat different responsibilities, but their areas of expertise (and responsibilities to a certain degree) are overlapping. So far, a normative division of these areas have existed and managed to keep potential conflicts in check, for most of the time. However, differences of opinion based on political and professional views are not unfamiliar between the two. While this is not a common occurrence, it is still worrisome and could potentially be used to draw a picture of the beginning of a dangerous pattern. A healthy democracy opens for disagreements and ways of demonstrating displeasure with the government or other institutions. However, when two public institutions engage in open conflict in the public media, it creates grounds for concern. Discrepancies between personal ideologies and official positions and principles of the political system are potential threats to the stability of and trust in the political system (Bouckaert, Van de Walle, Maddens, & Kampen, 2002, p. 84). And if citizens don't trust their public institutions to perform their duties adequately, the citizens will develop a negative attitude towards them (Bouckaert & Van de Walle, 2001, p. 21). While this appears, at first glance, a domestic issue, it could potentially spill over onto the view of the European cooperation, considering it is part of the reason for the overlapping areas of expertise and responsibilities. Fortunately, these kind of situations have so far not been frequenting enough to create a real challenge for the trust in the EEA agreement.

However, what happens when the conflicts reach beyond the domestic borders and takes place between Norway and the EU? If the EU proposes a legal act which is considered unacceptable by Norwegian politicians and institutions, do we swallow our pride and comply, or simply refuse it

and risk the entirety of the EEA agreement? This was the case of the deposit guarantee scheme which sought to harmonize bank deposit guarantees across all of the EU/EEA. As a member of the EEA, Norway has the option of utilizing it's right of reservation on the grounds of articles §93 and §102 of the EEA agreement (EFTA, 2016). This won't, however, stop the EU law. In case the right of reservation was put into use, it will simply suspend all associated rights of the EEA EFTA states to the linked benefits, such as market access. This would strike a heavy blow towards Norwegian businesses, as they depend on having full access to EU markets. Norway threatened to use the right of reservation in 2011 on EUs Directive 2008/6/EC (so-called "3rd Postal services directive") (Krekling, Nordlund, & Randen, 2011) but the threat was never brought to completion, and the directive was implemented by the new coalition government (Thoner, 2013).

The solution in the case of the DGSD was to put it into a legal "limbo"; although Norway has agreed to adopt any and all laws issued by the ESAs as if they were to be national laws, the legal acts still has to be adapted to fit the EEA framework. By simply keeping the proposal for the DGSD in a perpetual state of bureaucratic treatment and withheld from the EEA Committee, it will most likely never be implemented into Norwegian law until one of the parties surrender their position. Meanwhile, Norway adopted a half-stance where they agreed on the deposit guarantee for all cross-border deposits, whereas domestic deposits could enjoy the Norwegian guarantee. This is a dangerous practice: while it is technically legal, it is by no means a secret that Norway is attempting to stall and perhaps even completely obfuscate the Directive. If the same strategy were to be employed on future legal acts which Norwegian politicians or institutions disagreed with, it could be perceived as a method of cherry-picking which European laws Norway will and will not comply with. And this is most certainly something the EU would not accept. After all, it has a stated mission of increasing harmonization and creating a market playing field as level as possible.

In the case that Norway actually continues with this strategy, there are only two perceivable responses from the EU; drastically strengthen the powers of the necessary authorities, or simply cease the EEA cooperation with Norway altogether. While this is a dramatic step, and one not very likely to be taken by the EU, it is nevertheless a possibility.

4.6 – Concluding remarks: conflicting interests

In this chapter, I have found that the issue of sovereignty is still an obstacle. Previously it was an issue with concerns to how to design the institutional structure in order to ensure continued

cooperation and market access without violating the constitutional rights of the EEA Member States. In recent times it has become an issue of how *much* sovereignty is actually being, and will be, transferred. The inclusion of the ESAs into the EEA Agreement has granted significant powers to these authorities over national markets, for the trade-off of having been continued granted access to both influence and markets. However, this was something Norway already had access to prior to the new institutional structure, and cannot be seen as a reward but rather a sort of "Trojan horse" to accept the new ESAs by the EU. In return for this "gift horse", Norway has transferred several constitutional powers to European institutions. This was approved by proper democratic processes, and as such it is not an encroachment to democracy. Nevertheless, the fallout of these decisions has sown seeds of dissent and conflict within domestic institutions which, while not directly threatening, could prove unhealthy for the democratization and trust in the "system".

This could in turn, in a worst-case scenario, have implications for the cooperation between Norway and the EU. The most severe "threat" is currently the legal acrobatics where Norway has put a European law with EEA relevance into a legal limbo in order to avoid compliance. If this becomes a regular practice for further undesirable legal acts in the future, it could force the EU to respond with drastic measures. Fortunately, this case appears to be the first of its kind. But the willingness to open the door once demonstrates an attitude which might allow it to happen again.

The institutional structural relationship between Norway and the EU has, as a consequence of the measures implemented by the financial crisis, changed significantly. In order to ensure harmonization across the financial services market, the EU has established several new institutions which required six years of negotiations to implement into the EEA agreement. These new institutions have brought a new process of developing financial law, which has put Norwegian institutions in a position where conflicts are continuing to sprout, both internally and externally. While Norway has managed to maintain its previous access to influence and markets, it has done so at the expense of significant secession of authority. This has forced Norway onto a course where it is (seemingly) deliberately attempting to circumvent European decisions. And no cooperative partnership can survive when one partner attempts to skirt its responsibilities and duties.

5.0 – Concluding analysis

In this study, I set out to examine how the post-financial crisis measures implemented by the EU have impacted the Norwegian financial services market. In order to do so, I have explored the financial crisis as well as the measures implemented by the EU. Furthermore, I have analyzed how these measures have impacted the competitiveness of the Norwegian financial services market, as well as the political and structural relationship between Norway and the EU.

The EU was poorly prepared for the crisis, and initially handled it with a reactive approach. Prior to the crisis, the focus was on minimum harmonization. This allowed Member States to have different national standards. EU also preferred directives over regulations, which led to a slower implementation than if the EU had adopted regulations. This combination contributed to a desynchronized market, which magnified the impact of the crisis. EU was slow to react, and then only on a case-by-case basis with short-term solutions and not long-term stable solutions. Eventually they turned to increased harmonization as a long-term answer. This was met with some resistance by blocs of nation states perceiving this as market-shaping rather than market-making. The harmonization decreased the dependency upon host states for larger market actors while smaller actors believed that they would suffer from increased compliance expenses.

The EU sought to harmonize financial legislation in order to strengthen the European financial system. They appear to have accomplished this, but in the process, they chose to sacrifice both equitability and equality to attain this. Both systemic important and smaller financial institutions were levied with heavier compliance costs due to the new regulations. Large actors experienced reduced competitiveness due to increased compliance costs, while smaller actors either had to carry the compliance costs at the expense of reduced profit margins or risk smaller market shares and reduced profit margins either way. The same trend was observed on the derivatives market.

The differences in Norwegian and European standards also led to increased foreign competition. The Norwegian Ministry of Finance stated that the Norwegian securities market was well-functioning, and that financial institutions were strong and liquid. They also confirmed what other private market actors voiced; that competition from foreign market actors indeed increased. This arbitrage was most likely a result of Norwegian regulative diligence compared to a general European backlog on regulations. While the measures implemented has led to a more robust

financial system, it has come at the expense of small businesses, which are even more vulnerable to competition from stronger and increased amount of competition.

Norwegian authorities made a deliberate choice to implement stricter regulations than EU Member States. This can be tracked back to the banking crisis in the late 1980s and early 1990s, and a tradition of strict fiscal policies. It was a choice unilaterally made by Norway in the absence of European pressure. Some regulative tightening has come as a result of expected European policies, but Norway has to a large degree been ahead of the European deadlines for implementation. As such, the arbitrage which the private industry complains about is a result of Norwegian rather than European policy-making.

One of the core ideas of the Single Market was cross-border competition. This was not something which have been introduced in the years after Norway entered into the EEA Agreement, but was one of the original aspects. While the increased foreign competition might just as well be a result of regulative arbitrage, the concept of foreign competition is something Norwegian actors have had to deal with the last 25 years. When the Ministry of Finance stated that Norwegian capital markets was strong and liquid in 2018, it is important to keep in mind that at this point most of the national financial laws were either a result of, or in compliance with, EU regulation. This begs the question; who is to “blame” or “thank” for this? While Norway has a tradition of strict financial regulation, the latest wave of European legislation in Norway has been implemented without incentives from the EU. It is reasonable to argue that the solidity which the Ministry of Finance was bragging about was to a larger degree the result of European harmonization and tighter regulation.

In the cooperation between Norway and EU, sovereignty has been and still is an issue. In the past it revolved around on how to design the institutional structure without ceding sovereignty. Today it has become an issue on how much sovereignty shall actually be ceded. When the ESAs were included into the EEA Agreement the result was a significant transfer of sovereignty to these institutions. In return, Norway was “given” continued access to influence and the Internal Market, although these were benefits Norway already enjoyed before the new regulatory reforms.

However, in the end, what choice did Norway actually have? Financial services and goods are covered by the four freedoms which EEA members must adhere to. In order to avoid being excluded from these markets, Norway and the other EFTA countries had to give some concessions.

Although there were negotiations between EU and the EEA/EFTA states, EU held the best hand. On the other side of the table, Norway risked losing "everything" by not conceding. No wonder this has led to increased domestic conflict and outcries from both private and public sector actors. A complete distrust of the democratic system and a breakdown of the cooperation is somewhere between highly unlikely and impossible. However, increased distrust and discontent can create possible obstacles for future developments in the cooperation.

The way Norway handled the DGSD is to some extents similar. By putting the directive in a legal limbo in order to avoid compliance, Norwegian authorities were risking the displeasure of Brussels. While they could possibly be swayed to look past a singular instance, making a regular practice of this would not go unanswered. Fortunately, this is apparently the first case of its kind, and as such it does not appear to be a pattern. The DGSD should not be the only ground upon Norway rested. It was, after all, a symbolic political case for Norwegian politicians. Considering they opted for a half-measure where cross-border deposits were subject to the EU deposit guarantee scheme while Norwegian domestic deposit customers were allowed to keep the previous Norwegian deposit guarantee, it is unlikely that it was about the competitiveness of Norwegian banks. Therefore, it becomes a symbolic case of standing up for Norwegian interests, even though this particular interest in reality impacts less than 5% of Norwegian bank deposit customers.

In sum, the EU has definitely impacted the Norwegian financial services market. If it is for the better or worse depends on perspective. However, Norway has not been entirely irreproachable in this development. The present apparently strong Norwegian financial industry is influenced by EU legislation. The consequences of the regulation requirements implemented by the EU (and thus by Norway) such as increased compliance costs are to be put entirely at the feet of the EU. However, the competitive consequences of the regulations can be seen as a result of Norwegian policy choices, such as starting regulation implementation long before the EU deadlines. Competition is never "fair" in a liberalized market; not everyone can have the same benefits or goods as everyone else, but only the same framework to act within. The inclusion of the ESAs in the EEA Agreement has stripped Norwegian authorities of some of their sovereignty. The reality is that there were no other choices for Norway; the increased harmonization from the EU would demand a regulative tightening and centralizing of competences. But while Norway has swallowed this pill, it has not

done so quietly. The prospect of future cooperation has been given some scratches with increased domestic unrest, as well as the handling of the DGSD.

The competitiveness of the Norwegian financial services market has been put to the test by increased foreign competition. This is, to some degree, the result of the choices made by the EU, but Norway has also contributed to this. The political and structural relationship between Norway and EU has undergone major changes. As a consequence, Norway has accepted to cede sovereignty. In return, they have managed to maintain their existing benefits while not necessarily being granted any new ones.

The future of this topic of study is wide open. There are between 250 and 300 financial legal acts yet to be implemented, and the EU has begun developing what is being called "Basel IV". The nature of financial law is not written in stone, but keeps changing as the markets and financial situation change. While this study contributes to the literature by analyzing the development of the last decade, the future is unknown. To this end, further development in financial regulation and the Norwegian/EU relationship will provide new avenues to explore.

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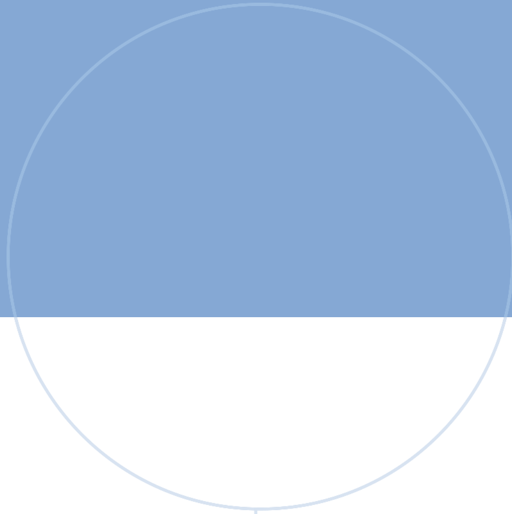
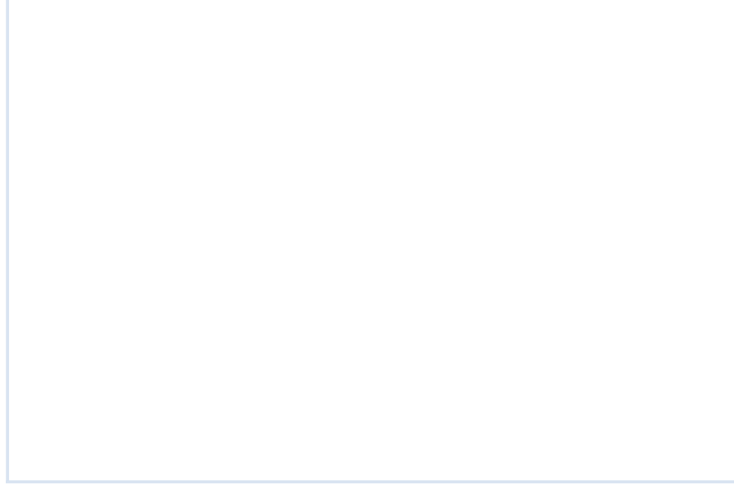

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