NORWEGIAN PENSIONS AND EUROPEAN MARKETS

- FROM A PATERNALISTIC RISK MANAGEMENT REGIME TO EUROPEAN PRUDENCE?

Per Øyvind Langeland

Cand. Polit Thesis in Political Science, University of Oslo

Department of Political Science

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PREFACE

The theme of this thesis is positioned between social welfare policies (pensions) and Europeanisation of the nation state, but where emphasis is put on financial markets and how to regulate these. National pension systems are usually categorised into three pillars; a public social security, occupational pension schemes and individual savings. In this thesis attention is given to the impact of European financial integration on the Norwegian regime for occupational pensions.

This study has been a complex and time-consuming project. I have found myself repeatedly challenged by examining a policy field, which is exposed to substantial policy development and regulatory activity, both at the national and the European level. It has consequently been difficult and laborious to keep updated on the latest policy development by the process-oriented approach that I have chosen. Moreover, the absence of political science studies that could have acted as guidance for my thesis has further added to complexity and time-consumption. As stressed by this thesis, political science should take more interest in this topic and in the conclusion I address some implications for future research.

Above all, I am grateful to my supervisor Kåre Hagen for sharing with me his extensive knowledge on this subject. The patience and engagement he has displayed in my work, plus the availability for a talk or comments when it has been required, have been precious. His input has been a huge source of inspiration in my work. In this context, I would also like to express my gratitude to the ARENA-program for granting me a student scholarship, technical and financial assistance with my pension fund inquiry and the opportunity to take part in a stimulating scientific environment.

Thanks also to all contributors, who have been forthcoming and used some of their valuable time to this thesis. In particular this concerns informants in Statistisk Sentralbyrå, Kredittilsynet, Finansnæringens Hovedorganisasjon, Norske pensjonskassers forening, KLP and Storebrand and all those that responded on my pension fund inquiry. Even though some of the interviews had an informal character, I appreciated the open and responsive dialogue.

Furthermore, I am indebted to my parents for all support during my education, which has been invaluable input for my studies both at the University of Oslo and at London School of Economics. Also, a huge hug to Britt Skjeppestad, who has pushed me to terminate this thesis by continuously reminding me that she is the only cand. polit. in the family.

Finally, I would to thank my employer, the Ministry of Labour and Social Inclusion, for displaying flexibility in an otherwise hectic work situation so that this thesis (finally) could be terminated.

Any remaining errors are my responsibility alone.

Oslo, April 2007

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1 INTRODUCTION

"[Staten må ha full rett til å] gribe ordnende og kontrollerende ind..[]..Det ligger nemlig I selve Forsikringsbedriften hazardiøse Karakter og I dens over de forskjellige Samfundslag mere og mere udbredte Publikum, at dette Publikum vanskelig fuldt ud vil kunne overskue Sekskabernes Soliditet, sunde Forretningsførelse og deraf følgene Evne til at oppfylde de paadragne Forpligtelser…"(Norwegian government, January 1881, cited in Knutsen and Ecklund (2000: 28-29).

"Do what you will, the capital is at hazard….All that can be required of a trustee to invest, is, that he shall conduct himself faithfully and exercise a sound discretion. He is to observe how men of prudence, discretion and intelligence, manage their own funds, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income, as well as the probable safety of the capital to be invested" (US court decision from 1830, cited in Bernstein 1996: 248). [1]

1.1 THE RESEARCH PROBLEM

As welfare states, advanced capitalist democracies today experience the challenges of a twin pressure. On the one hand, processes of economic globalisation imply that national borders dissolve and break down. Arguably, no sector is more global in its orientation and operations than finance. These developments, it is claimed, have induced a de-regulatory race to the bottom, which eventually would lead to the retreat or the end of the nation (welfare) state (e.g. Strange 1996; Ohmae 1995). On the other hand, welfare states face pressures from within. Due to the ongoing demographic shift, rising pension expenditure have put constraining effects on public budgets and challenges the traditional methods of financing pensions. The key challenge is how to make pensions sustainable.

Accordingly, since the mid-1980s three empirical trends have been evident. Firstly, the growth in cross-border capital movement and financial assets has been substantial. Secondly, plans, drafts and implementation of national pension reforms represent a common trend away from a tax-financed pay-as-you-go (PAYG) system to increased reliance on funded plans. Hence, future pension systems would rather depend on returns on investments than a democratically agreed on redistribution of national income. Thirdly, at both the European and the national level public authorities advocate strategies that entail financial liberalisation and national pension reforms as an opportunity for

[1] The first quote stem form the debate prior to adoption of a comprehensive regulatory framework for life insurance in Norway, more than 100 years ago. The second quote is a US Court decision from 1830, and reckoned to indicate the birth of the prudent-man principle. These contrasting regulatory philosophies and assign different importance to the role of state involvement in the economy.

making pension systems sustainable. The twin pressure appears then not only as a challenge, but also as a key solution to the problems caused by ageing populations.

These empirical trends give however rise to some imperative implications. One is the changing character of pension policies and politics. What previously was considered as democracy's administration of taxes and social rights (i.e. transfer systems within national jurisdiction) now increasingly appears as regulatory policy regimes for capital accumulation and safe asset management. This has encouraged the development of so-called pension fund capitalism, where the regime of capital accumulation more or less equals the regime of retirement income provision (Clark 2000). As a result, financial institutions have experienced a substantial growth lately. According to OECD (2005), life insurance companies and pension funds held about USD 16 000 billion in custody in the OECD area, or roughly 90 percent of total GDP in that area. Since the 1990s these financial institutions have accounted for a majority of investments in the OECD area (OECD 2000). When examining globalisation of finance, the emerging pension fund capitalism should therefore not be neglected.

Another implication is the fusion of supranational and national regulatory competencies. This has proceeded the furthest in Europe, where a Single European Market (SEM) sets up a regulatory framework, which is responsible for about 80 percent of all market regulations in that area (Goetz and Hix 2001: 4). The EU has lately also put more emphasis on reforming national pension policies and pension systems in order to achieve a fully integrated SEM and to cope with the adversities of globalisation and ageing populations. A pension fund directive has for instance been adopted and is due for member state implementation. The impact of Europeanisation on key domestic structures of governance such as pension systems and capital markets organisation could therefore be expected.

Concerns on how to maintain safe and sustainable pensions have also been evident in Norway. During the last two decades substantial reforms have been implemented, several expert committees set down, reports and drafts have been submitted and frequent changes adopted. This has not only concerned the National Insurance Scheme, but also the regulatory framework for occupational pensions and pension fund managers. Most national pension systems are categorised into three pillars; a public social security, occupational pension schemes, and individual savings (World Bank 1994). In Norway most occupational pensions are organised on a funded basis in contrast to public social security that is tax-financed. A regulatory framework for fund management of occupational pensions was established in the early 20th century, about 50 years prior to the establishment of the National Insurance Scheme. The framework for 2nd pillar pension provision has proved to be remarkable stable until the late 20th century. Lately, however, regulatory changes have occurred concerning e.g. how these assets are invested, by whom they are managed, and in which regulatory framework benefits are embedded.

A growing pension market has become more visible as a sector due to the twin pressure. This has arguably enabled the financial sector to call into attention how fund management are regulated and practiced. Hence, pension policies have become industrial policies as pensions now are considered a key factor of future growth for financial industry. At the same time, Norway's relations with the EU has been substantially extended and grown deeper. This has entailed considerable policy-delegation to European institutions of governance, formalised by the 1994 EEA Agreement. Hence, Norwegian financial institutions and capital markets have the last decade been subject to a multi-levelled regulatory framework characterised by both European and Norwegian rules and regulations.

On this background, this thesis examines the role of European market integration on the Norwegian framework for occupational pensions, the so-called second pillar of the Norwegian pension system. Moreover, if pensions increasingly are becoming key elements of global capital markets, how has this influenced the welfare state's ability to deal with the risks of the twin pressure? More precisely, the key research question is:

> ***to what extent have changes in the Norwegian risk management regime for occupational pensions implied a regime shift, and to what extent are these changes (if any) explained by constraints and incitements produced by European market integration?***

The scope of this thesis is to detect European impact on a national policy area, which once was a key element in the establishment of the Norwegian welfare state (pensions). Moreover, the ambition is to provide new knowledge about the relation between Norwegian pensions and European capital markets, and to illuminate key questions related to the extent of regulatory capacity that remains on the financial area and which regulatory level that possesses these competencies. In doing so, primary focus is given to the nation state's scope and role to ensure safe fund management and to deal with markets risks for occupational pensions. As the quotes in the introduction illustrates, two opposing risk management regimes can be indicated on these matters; one liberal regime based on prudence, another based on more paternalistic considerations, cf. chapter 2.

1.2 THE CONTEXT

The theme of this thesis is consequently positioned between social welfare policies (pensions) and Europeanisation of the nation state, but where emphasis is put on financial markets and how to regulate these. My research problem is embedded in the context of five discourses. Firstly, this thesis is positioned in the debate about *state and markets* and how services in this public-private mix are organised. States and markets are often characterised as conflicting institutions in the meaning that freer markets imply less governmental control and deregulation, and vice versa. On the other hand, states and markets could also be regarded as complementarities since markets are founded and institutionalised by public regulations. This concerns in particular fund-based occupational pensions, which in contrast to tax-financed public pensions, rest on regulatory policy regimes for capital accumulation and safe asset management.

Secondly, the thesis concerns the relationship between *European and national policy-making*. Institution-building at the supranational level usually entail some form of delegation of policy competencies from the national level. The four freedoms imposed by the SEM might then very well induce four restrictions on the nation states' capacity to implement domestic policy objectives. The principle of subsidiarity stresses however that the authority of social policies rests within the national domain, while market-making rests within the domain of the EU. The regulatory authority of occupational pensions is however a contested issue between these levels. For welfare states, market-based occupational pensions are often regarded as complements to the modernisation of the National insurance scheme in order to make pension systems sustainable.

Thirdly, this thesis calls into attention the *complexity and difficulties with public regulation of financial markets*. Processes of financial globalisation have according to some scholars produced a deterritorialisation of national economies. Financial markets are consequently no longer characterised as national but global. When pensions rests on the returns of the markets a key question is how to deal with market risks. Welfare states' capacity of acting as "risk managers" rests on boundary control. Globalisation can then increase risk and uncertainty for sustaining national regulations. If this is correct, deregulation could on the one hand imply increased reliance on a corporative-based regulatory regime, where market regulations are decided by business actors alone. A pan-European regulatory framework on the financial area would on the other hand address this uncertainty by reducing it. European boundary control could then act as shield against the challenges of globalisation.

Fourthly, this thesis concerns the *"rules of the game"* that are established to define the conditions under which the transactions occur. For some, the risk management principles embedded in a prudent-man approach are regarded as scientific methods to deal with uncertainty and to reduce market risks. For others, these regulatory techniques are related with gambling and form the basis of market failure. Divergent *regulatory philosophies* are related to the extent of a fundamental ideological confidence in the markets. However, markets are also constituted by public regulations, cf. above. The question is then how many and what kind of market norms that are institutionalised into rules and regulations.

Finally, this thesis calls into attention key aspects of *pension reforms* and how welfare states deal with the challenges (and risks) related to the ongoing demographic shift. Growing public expenditure due to demographic developments has put the question of how to make pensions sustainable on the top of the political agenda, including how to make the regime for market-based occupational pensions complementary with the modernisation of first pillar public pensions.

There is a general mismatch between the large amount of statements that is put forward on the state-market issues and the actual political science studies that address these questions empirically. A general claim is that more markets imply less politics. With a few exceptions (e.g. Tranøy 2000, Helleiner 1994, Vogel 1996), there has however been a lack of studies that focus on regimes for markets and finance and how states and markets interacts in periods of regulatory reform. Such studies should be of growing importance when welfare states increasingly rely on the markets for future welfare provision. Some of this mismatch could perhaps be related to the intricacies and complexity of these policy issues, which involve substantial judicial and economic terms and concepts. The studies of pensions have until now primarily been cut down to the study of public pensions.

My study is an empirical contribution to the discourses in this context and combines financial markets and welfare (pension) reforms with European integration. I consequently take a broadly defined approach in order to shed light over policy processes which should induce more future research on these themes among scholars of political science, cf. ch. 6.

1.3 THE RESEARCH STRATEGY

The theme of this thesis comes under topics about Europeanisation of the nation state. Within this tradition several studies have been submitted, of which many conclude that *"domestic adaptation with national colours"* is a most likely policy outcome (Cowles et al 2001). A general starting point of mapping adaptational pressures is to identify the *"goodness of fit"* between the European and the national level.[2] If misfit is substantial, European institutions would seriously challenge the identity, constitutive principles, core structures and practices of Norwegian institutions. However, national institutions may also often appear robust, and their interactions with European integrative pressures have consequently produced traits of path dependence in policy output.

One primary task of this thesis is to assess regime change. According to Esping-Andersen (1990: 2) speaking about regimes, is to *"denote the fact that in the relation between state and*

[2] A basic hypothesis is; the larger misfit (lower compatibility) between European integration and national political settings, rules and practices, the larger adaptational pressures.

economy, a complex of legal and organisational features are systematically interwoven". Pensions are understood as insurance for those outliving their value as labour. Closely related to pensions is the notion of risk. When pensions are funded and rest on the returns of investments, they also become inherent to the risks of capital markets. Hence, regime changes are in this thesis linked to changes in how risk management is regulated and performed (see ch. 2). Regime change must accordingly be understood as somewhat more than changes in the mode of regulation (policy output). I therefore also take into account if changes in Norwegian fund management of occupational pensions have implied shifts in market behaviour and orientation (policy outcome) on specific areas.

As I consider the public-private mix on a broad policy area, where change are bound to have implications for many societal concerns and actors, an International Political Economy (IPE) approach is applied. This subfield of political science and international relation is an eclectic approach that focuses on the connections and interactions between politics and economics. An IPE approach entails three fundamental premises:

> *"i) that the political and economic domains cannot be separated in any real sense, and even doing so for analytical purposes has its perils;*
> *ii) political interaction is one of the principal means through which the economic structures of the markets are established and in turn transformed; and*
> *iii) that there is an intimate connection between the domestic and international levels of analysis, and that the two cannot meaningfully be separated form one another" (Underhill 2000: 806).*

Hence, I will examine European impact on national policies, regulations and practices, more broadly than any legal impact on national jurisdiction.

Processes of Europeanisation are complex and multi-faceted. One way of making these more clear-cut is to distinguish between institutions, interests and ideas as driving forces of change (Hall 1997). Even though these casual variables to some extent are mutually inter-related I make a distinction between them and treat them as three separate variables for analytical purposes. Each has its own distinctive dynamics and its impact corresponds and rests on the rule-based, interest-based and ideational adaptations at the domestic level (Claes and Tranøy 1999).

- Rule-based: Direct pressures on domestic politics stemming from the legalisation of international politics, represented by the Single European Market (SEM) regulations, which increasingly bind Norwegian authorities to a certain policy output.

- Interest-based: Indirect pressures due to strengthened competitive dynamics caused by shifts in the relative power of domestic market actors and sectoral demands; in this case the financial (pension) industry.
- Idea-based: Increased opportunities for policy imitations and social learning due to the transnational exchange of beliefs and ideas taking place in expert communities at the European level.

Expectations of European impact on my policy field in accordance to these processes are more thoroughly elaborated in next chapter.

I apply case study as a research design for further examination. According to Yin (1994: 13) a case study is an empirical inquiry *"that investigates a phenomenon within its real-life context, especially when the boundaries between the phenomenon are not clearly evident"*. Moreover, it often has the purpose of being critical towards existing theories and estimations, as well as representing a new combination of more or less known conditions that previously have not been exposed to thorough examination. This fits well with the research objectives of this thesis. Since the late 1980s the national abdication on the financial area has to a large extent been taken for granted by many scholars due to processes of globalisation, Europeanisation and financial liberalisation. Few scholars have however taken the growing pension fund industry into account when making their conclusions. My study therefore tests if this general conviction fits on a policy area, which is considered as a growing part of global financial markets, but also constitutes the core of nation state sovereignty. Furthermore, the paper is not deductive, or generalising, but has an inductive and observing character, which aims at synthesising some processes of change.

Nevertheless, in order to test the extent of European impact on the Norwegian regime, and to denote any pattern of change, some analytically distinctive categories are set forward. These should however not be regarded as mutual exclusive, but rather as ideal types, which contribute to clarification of principles and mechanisms in a complex research field. Empirically, the reality is generally of a more hybrid character. Moreover, the thesis has elements of comparative research design, as a key task is to position the Norwegian regime between some ideal types of regulatory styles, and to describe its development from time t0 to time t1.

Elaborating on the historical dimension of this research project has been both time and space consuming for this thesis. Reforms and changes on this policy area often comprise many different concerns and have evolved over at time-span of many years. Moreover, I have found myself repeatedly challenged by examining a policy field, which at the moment is exposed to substantial policy and regulatory activity, both at the European and the national level. Due to the complexity and absence of studies that could have acted as guiding stars, I have several times found myself challenged in providing a comprehensive portrait of this policy area. Business actors also stress this complexity. According to a financial industry informant, "*there is only a handful that can fully pledge that they obtain a comprehensive knowledge of the Norwegian regulatory framework on this issue*".

1.4 SOURCES AND DATA

This thesis is based on several sources of sources of evidence. I have mostly relied on official documents issued by Norwegian authorities and the European Commission (Green papers, White papers, proposals, directives, reports by supervisory agencies etc). As Norwegian authorities in most cases assumingly would not find great interest in exaggerating the need for adaptation to European integration or make political compromises due to interest group pressure and bargains very explicit, the ability "to read between the lines" and to make own interpretation has been required. Reports and statistics issued by independent research centres and interest organisations, as well as the (Internet) publications of Investments and Pensions Europe (IPE) have also been helpful.

Moreover, in spring 2002 I carried out a pension fund inquiry. A standardised post-enquete (see Appendix 1) was sent to all pension funds that held more than NOK 10 million in custody, both private and municipal.[3] Out of 124 pension funds 58 responded. This is a response rate of 47 percent, which I consider fairly satisfactory, especially when the respondents accounted for about 60 percent of total assets managed by pension funds in 2001. Furthermore, I have carried out interviews with key actors or representatives in the Norwegian financial industry and relevant authorities. These interviews had a

[3] This information was provided by the annual yearbook 2001 for private pension funds (NPF 2001), and by local governments' mutually owned life insurer, KLP, for municipal pension funds.

character of an informal conversation, but were helpful in sorting out the big picture of my thesis and confirming some of the arguments that I wanted to make.

In dealing with data, ensuring sufficient reliability and validity is important. The method of data triangulation is widely employed in case studies and should make any significant findings more reliable. Moreover, much of the data stem from public institutions and experts, which I find no reason to doubt. Ensuring inter-subjectivity in interviews are more difficult, but in my case these ended up to be more of a confirming character on findings and trends already expressed in official documents and in my pension fund inquiry. The validity of data also rests on the appropriateness of operational content on concepts and processes and that this content provides relevant data for my research questions. This is discussed more thoroughly in chapter 2. I claim however that validity is sufficient to make significant conclusions on my data material. This is underscored by employing both quantitative and qualitative forms of evidence.

1.5 COMPOSITION

Next chapter presents a theoretical framework for how to understand and analyse modern welfare states. The notion of welfare states as broad risk management systems is a key topic in this context. An index for analysing regime change is developed. Moreover, the three processes of Europeanisation are more thoroughly presented, and some hypotheses are developed. Chapter 3 calls into attention the developments at the European level concerning relevant initiatives towards a pan-European regime for occupational pensions. Hence, it serves as a background chapter when I later account for and analyse changes in the Norwegian regime. In chapter 4, continuity and change in the Norwegian regime is presented. This is done along the scopes of assets, access and authority, which represent important dimensions for assessing regime change. Attention is given both to policy output (regulatory changes) and policy outcome (changes in market behaviour). Chapter 5 brings the theoretical considerations in chapter 2 and the empirical evidence of chapter 4 together and examines the impact of Europeanisation on the Norwegian regime. Finally, chapter 6 concludes my findings and provides an answer on the main question as set forward in chapter 1.

2 WELFARE CAPITALISM AND EUROPEANISATION

> *"[One] conception of Europeanization focuses on change in core domestic institutions of governance and politics, understood as a consequence of the development of European-level institutions, identities and policies. European-level development then is treated as the explanatory factor and changes in the domestic systems of governance as the dependent variable" (Olsen 2002: 13).*

2.1 INTRODUCTION

As noted, most nation states today experience a twin pressure on welfare programmes and public budgets. This has led to a vast debate on the prospects of future survival of the welfare state (as we know it). Those emphasising the impacts of global market integration often conclude that welfare retrenchment is a most likely outcome, due to eroding regulatory capacity and principles of the welfare state. In Europe nation states have collaborated to maintain these competencies by setting up a regulatory regime above the nation state. This concerns in particular market issues, where the EU is responsible for almost 80 percent of all rules governing Single European Market issues (Goetz and Hix 2001: 4). This might itself have substantial constraining effects on nation states welfare provision. Hence, the four freedoms imposed by the SEM regime, might very well induce four restrictions on nation states' capacity to implement domestic policy objectives.

In this thesis, I approach the topic of Europeanisation by examining the role of the state on key asset management issues in the financial sector. This is an issue-area where the regulatory capacities of the state for decades have been thought of as ineffective and undermined. This is due to financial market integration both on a global and a regional level. Unlike many other studies of financial market integration, however, this has pensions as the empirical field. Pensions remains at the core of nation state sovereignty, as it involves *"its competencies to tax its citizens, its obligations to protect them against risks, and through democratic decision making, produce the rights and duties which transforms a territorially given set of individuals into members of a solidarity community"* (Hagen 2003).

The objective of this chapter is two-folded. Firstly, to present an approach and categorisation for how to understand and analyse welfare states in general, and regime change in particular. Secondly, as the thesis asks to what extent changes are explained by European market integration, I develop some expectations on how Europeanisation might influence Norwegian policy-making and industry behaviour on this policy area.

2.2 PENSIONS AND STYLES OF WELFARE CAPITALISM

Pensions are understood as insurance for those outliving their value as labour, and crucial for sustaining future level of consumption. Old-age security is then considered as an exchange of current production for a claim on future production (Barr 2000). This is either done by obtaining a promise (usually from the government) that benefits are provided in retirement, or by saving parts of wages for future consumption. In the former, pensions are paid by current contributions or taxes on a pay-as-you-go (PAYG) basis. In the latter, schemes are funded, meaning that pensions are financed by savings and returns on investments of accrued funds.

Old-age security was one of the first considerable tasks, in which welfare states engaged. Since that time, the extension of social rights and grants combined with ageing populations has made the task to design a framework for safe and sustainable pensions increasingly more challenging and urgent. Welfare states and pension policies can however not be understood in forms of public retirement services and transfers alone. Rather, when examining welfare states, an international political economy (IPE) approach that put emphasis on the state-society relationships of welfare state capitalism should be applied.[4] Several studies have demonstrated that welfare states cluster into broadly defined welfare regimes, depending on how this private-public nexus is structured (e.g. Esping-Andersen 1990; Hall and Soskice 2001).

2.2.1 Welfare regimes and cross-national variance in pension fund dependence

The organisation of pension systems seems to be particularly important when categorising welfare regimes. According to Esping-Andersen (1990) three regimes of welfare

[4] An IPE approach entails three fundamental premises: "i) that the political and economic domains cannot be separated in any real sense, and even doing so for analytical purposes has its perils; ii) political interaction is one of the principal means through which the economic structures of the markets are established and in turn transformed; and iii) that there is an intimate connection

capitalism is evident, each relying on different private-public arrangements and traditions for the construction of retirement provision (see box 2.1). Moving further along this argument, Soskice (1997) assigns increased importance to the organisation of markets and market-related institutions, e.g. the financial system. This I find interesting and useful for my thesis as occupational pensions constitute a key link between financial system, industrial system and welfare organisation. Soskice finds that European welfare states also experience a divergent pattern in how market-related institutions are structured.[5] Due to *"interlocking complementarities"* between the market related institutions he makes a distinction between liberal market economies (LMEs) and coordinated market economies (CMEs), cf. box 2.1.

Box 2.1. Welfare regimes and capitalist models

<u>Esping-Andersen's welfare regimes:</u>

- **A liberal welfare state** is found in the Anglo-Saxon countries, e.g. the US, the UK, and Ireland (and corresponds with the Beveredgian model). This is characterised by means-tested assistance and modest, flat-rate, universal (public) social security benefits. Its main objective is to prevent poverty, not to ensure social redistribution. As all people are more or less preoccupied with securing their own old age, this provides key incentives for private responsibility on old-age consumption, and encourages market-based provision of social insurance.
- **A conservative** or **corporatist welfare state** (Bismarckian model) is found in large parts of Continental Europe, e.g. Germany, France and Italy. In this, social rights are attached to class, occupation or status, and its main objective is to conserve a retirement income for those previously employed. Benefits are tied to occupational schemes, which usually are indexed to previous income (wage) on a proportionate basis. Social redistribution mainly occurs between generations, not within. In this welfare regime, there have traditionally been few incentives to private responsibility for retirement income, and social insurance has become "decomodified" as a service.
- **A social-democratic welfare state** is found in Scandinavia, characterised by a basic equal benefit to all and supplementary benefits tied to prior earnings. Hence, elements from both the Beveredgian and Bismarckian model have been incorporated. Its main objective is to promote equality and social redistribution (by taxation) both within and between generations. Substantial public involvement in the economy has crowded out large-scale market-based social insurance, but not discarded the incentives for additional old-age security.

<u>Soskice's capitalist models:</u>

- In **LMEs**, which corresponds with the Anglo-Saxon countries, the financial system is characterised by a

between the domestic and international levels of analysis, and that the two cannot meaningfully be separated form one another" (Underhill 2000: 806).

[5] Soskice's four institutional dimensions are the financial system, the industrial relations system, the education and training system and the inter-company system..

market-based style of financing, where large and liquid equities markets play a predominant role in supplying industry with risk capital. This is due to incentives for market based provision of social insurance and the rather uncoordinated form for corporate governance, which favours short-term horizons and competitive relations. This short-termism allow for a high-risk taking in capital markets where investors are competing for the highest returns on their investments.

- In **CMEs**, the financial system is characterised by a credit-based style of financing. Unlike LMEs, corporate governance is structured around the long-term cooperative relationships between investors and companies. In the provision of long-term risk capital, universal banks have a crucial role and strong influence. This and the decommodification of social service have led to rather poorly developed capital markets. CMEs are mostly found in Continental Europe.

The historical legacy of regime institutionalisation on welfare (pension) provision has led to substantial cross-national variance in dependence on and importance of market-based pensions. Hence, public pension policies have a decisive impact on the development of long-term savings, investments and hence the role of financial markets. Arguably, a polarisation between "funded" and "unfunded" Europe has been evident (Davis 1995). On the one hand, many typical CMEs on the Continent have relied on unfunded corporate pension schemes, such as book-reserves and PAYG-plans.[6] On the other hand, LMEs have relied on financial markets as a financing method for occupational pension benefits.

2.3 DIVERGENT RISK MANAGEMENT SYSTEMS

2.3.1 Risk and different risk management regimes

Closely related to pensions is the notion of risk. When pensions are funded and rest on returns of investments, they also become inherent to the risks of the capital markets. Risk refers to the probability of a certain outcome that neither was planned nor anticipated.[7] Risk management then is "*the ability to define what may happen in the future and to choose among alternatives*" (Bernstein 1996: 2). While actuarial logics and statistical methods have contributed substantially to deal with different risks, neither pension schemes nor

[6] Germany has long traditions for reliance on book-reserves, where pension liabilities are mirrored and posted in employers' balances. In France funded pension schemes have long been illegal (until 1994) and has rather relied on financing retirement provisions through PAYG-methods. Funded pensions in France and Germany mostly stem from individual pension schemes. Many CMEs, such as Germany, have recently introduced pension reforms, which makes it more advantageous with funded plans.

[7] The notion of risk is often related to the probability of loss, and consequently thought of negatively. Furthermore, taking opportunity of risk is usually associated with gambling. Previously, the rule of thumb and intuition lay the ground for risk management as art of crafts. According to Bernstein (1996), however, risk derives from the early Italian *risicare*, which means to dare. From this it follows that *"prudence without daring to take the risk does not offer a challenge and leads to mediocrity and complacency; the opposite of progress"* (European Commission/Pragma Consulting 1999: 25).

investments can give certainty, as the future is fundamentally uncertain. A key question is then what risks are politically acceptable and how these should be dealt with.

Modern welfare states have taken great interest in how capital markets are regulated, and how pension systems are organised, cf. discussion on different welfare regimes above. This is related to their preoccupation with controlling the probability of damage, and ensuring adequate compensation when loss occurs. Consequently, welfare states should be considered as comprehensive risk management systems (Hagen: 2001; Giddens 1999). Based on the institutional variance presented above, divergent regulatory philosophies are evident in the different regimes. Different styles of capitalism produce differences and variations in rules, norms, practices and policies (Esping-Andersen 1990; Soskice 1997). The "rules of the game" which is established largely define the conditions under which transactions occur and shape the markets. Hence, different national regimes organise its risk management systems differently and have different conceptions of risk.[8] This is reflected in the norms and regulations set up to prevent undesired risk, and to "shape" market behaviour and actors´ risk-taking capacity. When it comes to controlling market risk, two diverging styles of regulation are identified; one based on the prudent man principle, the other more paternalistic (e.g. Davies 2000), see box 2.2 on next page.

Another key feature of funded plans is by whom risk and the potential for loss on accrued funds are borne. This depends on the construction of insurance elements in the pension scheme and whether these are defined by benefits (DB) or defined by contribution (DC).

- **Defined benefit plans** refer to pension schemes whereby members (beneficiaries) are entitled to a certain benefit at retirement. Benefits are usually calculated on the basis of work participation (duration) and a pre-determined percentage of final salary. Moreover, benefits are paid until death occurs, and funds are pooled in insurance collectives. As DB plans are insurance-based market risks are borne by fund managers

[8] A regulatory regime is comprised of specific constellations of ideas and institutions. Vogel (1996: 20-22) distinguishes between ideas (regime orientation) and institutions (regime organisation), though these are often interrelated. The orientation of a regulatory regime constrains policy choices by defining what is acceptable or conceivable. The organisation of a regulatory regime constrains choices by structuring the incorporation of interest groups, defining state capabilities, and shaping state and societal interests.

Box 2.2. Risks and risk management systems

Pay-as-you-go schemes and political risks:

- In a system where state financed PAYG schemes are wide-spread, risk is shared between generations, as the claims on future rests on an implied (but usually unenforceable) contract between pensioners and labour. Reliance on political decisions makes however the system particularly inherent to political risks, i.e. risks that claims on retirement income is altered by political action. Political risks are particularly evident in cases of substantial changes in the societal structures (e.g. demographic shifts), when adjustments in social welfare provision and substantial political manoeuvrability often are required.

Funded plans and market risks:

- In a system of funded plans each generation must save for own retirement, and any future liabilities are to be covered by real or financial assets. As these funds usually are irrevocable, funding is considered as a strategy for overcoming pension problems deriving from ageing populations. It is generally expected that capital markets in the future will provide higher rates of expected returns compared to PAYG plans (Davis 1995). At the same time, increased reliance on funded schemes would set free substantial assets for investments, and hence have positive implications for capital markets efficiency and fostering growth in the economy. However, when pensions are established on a funded basis, these are inherent to the risks of the capital markets.

Prudent man risk management:

- A qualitative *prudential* (homo prudence=zero-risk man) framework rests on public authorities' confidence that fund-managers ensure that minimum requirements are met, and that any imprudent performance will trigger intervention from supervisory authorities. This liberal regime, which is usual in the *LMEs*, does however not mean that fund managers have a completely free hand. Tradition and history of institutional factors has established market practices and specific security norms with which must be acted in accordance, e.g. risk diversification and asset liability management techniques (ALM) are appointed great importance. Fund managers are accordingly to take account of the matching of assets to liabilities when making their asset allocation, where long-term balance between assets and liabilities is maintained by freedom to choose the most proper portfolio with reference to return, risk and duration characteristics of liabilities. The main regulatory concern is solvency control, where fund managers are required to hold an extra source of capital to help meet future liabilities in cases of unexpected events (e.g. market risk).

Paternalistic risk management:

- A paternalistic and extensive regulatory framework is often employed in *CMEs,* which is generally characterised by more poorly developed capital markets. These economies have often not established the same traditions and confidence in fund managers, and a framework is set up to hinder fund managers to engage in more risky operations than politically desired. Finance is considered volatile and dangerous, and should consequently be constrained and controlled. The regime is biased towards restrictions, prohibitions and obligations (e.g. product control, quantitative investment ceilings and more widely applied capital adequacy requirements). Moreover, paternalistic regimes are also to a larger extent compelled to apply discriminatory measures against foreigners and foreign markets; i.e. imposing constraints to invest abroad and incentives to invest in national markets, maintaining national licensing procedures, etc.

and sponsors. In general fund managers are accountable for the insurance element that is promised in the insurance contract (some minimum guaranteed returns), while sponsors (employers) are accountable for any premiums that ensure that the promises to beneficiaries are met.

- In **defined contribution plans** only contributions are defined in advance. Benefits will then vary, depending on level of contributions made by sponsors (employers) and returns on accumulated funds. Accrued funds are often only paid for a certain period in retirement. Risk-sharing features are absent, and risk is fully borne by each individual. Hence, a shift towards increased reliance on saving-based DC plans would at the same time imply disclaiming any social responsibility for future promises on pensions. In many countries pension funds that meet certain requirements can also benefit from a special corporate income tax regime. The main reason is to encourage their citizens to save for their old age, cf. chapter 3.

2.4 THREE DIMENSIONS FOR ASSESSING REGIME CHANGE (DEPENDENT VARIABLE)

A variety of meanings and interpretations could easily be ascribed to prudential and paternalistic regimes. My approach is however not to assess these interpretations or to make reflections on advantages and drawbacks of different regulatory styles. Rather than normatively defined, this thesis is to empirically observe changes in the Norwegian regime and to assess if these are denoted in any pattern of change.

Below I develop three dimensions, which would help me make this task more easily achieved. The dimensions are related to how assets are invested, by whom these are managed, and in which framework benefits are embedded. These are chosen with care, as they indicate core policy fields of fund management. They should therefore be of particular interest for national regulatory competencies both at the national and the European level. The dimensions also relate to how different risks are dealt with, as a fundamental precondition for welfare states to act as risk managers is boundary control (Hagen 2001). Lately, an almost unison conviction has been evident, stating that capital is by nature global, that financial institutions increasingly operate on a transnational basis, and that nation states experience reduced capacity to enforce social regulations on the financial area. Hence, these dimensions allow me to test if Norwegian financial market regulation (with pensions as empirical case) has changed in line with general convictions about globalisation and regulatory capacity on this area. Hence, I am primarily preoccupied with changes, which also are observed as changes in market behaviour and fund managers' orientation.

The scope of assets

Fund managers collect and invest accrued pension savings on a pooled basis. But how widely is the scope of investments (assets) defined? Based on the presentation about divergent risk regimes above, I expect that portfolio regulation and asset allocation is an area where I could find developments that could indicate regime change. Two questions are of particular importance when assessing changes in the Norwegian investment regime in a paternalistic-prudence continuum.

- How much are allowed and actually invested in equities? Equities are generally regarded as risky assets, where volatility in equity prices is substantial. At the same time, they are expected to provide the highest returns in the long run (Davis 1995).
- How much are allowed and actually invested abroad? According to prudent portfolio theory, international diversifications are expected to minimise investments risks (Davis 1995). On the other hand this element is related to the control aspect of asset management and other political objectives of e.g. making pension savings available for national capital markets and to finance domestic industry projects and development.

The scope of access

Maintaining regulatory and supervisory control over fund managers should be considered important as they hold social responsibilities. Fund managers serve a strategic function in society, both as an integral part of national pension systems and by having remarkable effects on capital markets. The "national ownership" (on paternalistic grounds) is arguably reduced in regards to:

- To what extent are foreign fund managers allowed to provide management services in Norwegian pensions markets, and to what extent do they actually do so?
- How internationally oriented are Norwegian fund managers concerning provision of fund management services abroad?

The scope of authority

Financial regulation is legitimised in various objectives; economic, political and social (Herring and Litan 1996). In order to achieve these objectives, a key question is how regulatory authority is designed and exercised. The scope of authority then concerns the extent of confidence that is given markets to define the conditions under which the transactions occur. High degree of confidence should indicate a freer hand to markets in fund management issues, while low degree of confidence should indicate that extensive regulatory policies are set forward to ensure a politically acceptable asset management, i.e.:

- To what extent has a few market conform regulations become more important than providing a regulatory framework that put emphasis on social objectives and fund security?

These three dimensions (the scopes of assets, access and authority) are neither exhaustive nor fully mutually exclusive for analysing regime change in the financial sector on this issue. Nonetheless, I argue that they provide a solid and valid categorisation that might illustrate how the Norwegian regime has developed relative to my research focus. In sum, a prudent man regime and paternalistic regime would then have following characteristics:

- **A prudent man regime** is characterised by liberal portfolio regulations where custodians are allowed and actually allocate large parts of its assets into international equity markets; liberal licensing regulations and ownership legislation so that national borders are transparent for both foreign and domestic fund managers; and where the general confidence in markets is high so that custodians are only subject to a few market conform regulations.
- **A paternalistic regime** is on the other hand characterised by more strict regulations on fund managers' opportunities to invest abroad and in equities; nationally biased licensing practices and ownership legislation which makes cross-border activities difficult, and a general lack of confidence in markets so that custodians are subject to a regulatory framework where the provision of social objectives and extensive nationals standards for regulation that put fund security in the driving seat.

2.5 PROCESSES OF EUROPEANIZATION (INDEPENDENT VARIABLES)

The concept of Europeanisation has many meanings (Olsen 2002), and an unequivocal definition does not exist. In this context I treat Europeanisation as an explanatory factor of change in domestic rules and regulations; in governmental policies and market behaviour; and in norms and identities. As noted in chapter 1, processes of Europeanisation are complex and multi-faceted. One way of making these processes more clear-cut is to distinguish between institutions, interests and ideas as driving forces of change (Hall 1997). Even though these causal variables to some extent are mutually inter-related I make a distinction between them and treat them as three separate variables for analytical purposes. Its impact corresponds with and rests on rule-based, interest-based (strategic) and ideational adaptations at the domestic level (Claes and Tranøy 1999). These are further elaborated on below.

2.5.1 Legal-regulatory pressures and rule-based adaptation

A rule based adaptational approach attempts to detect impacts of formal European legislation on domestic policies and practices. The internationalisation of ever-more policy areas and the process towards freer markets increasingly imply re-regulation (Majone 1996; Vogel 1996), and a juridification or legalisation of politics (Goldstein et al 2000).[9] The Single European Market programme aims at setting up a comprehensive regulatory market regime above the nation state, where integrative efforts are categorised as *negative integration* or *positive integration* (Scharpf 1998).

- Negative integration refers to deregulation and removal of restrictions and barriers at the national level. These policies entail market making (marketization) on the European level.
- Positive integration refers to the establishment of an institutional and regulatory framework at the supranational level, which may be classified as both market-making and market-correcting policies. Regulatory and supervisory institutions are established to ensure that rules and regulations are enforced and complied with by member states.

Norway became a participant in the Single European Market (SEM) when implementing the EEA Agreement in 1994.[10] Due to this agreement, Norway is required to carry out the rules and regulations, which at any time prevail in the SEM. Unlike EU member states, the Norwegian politicians do not participate in the formal decision-making procedures. This is due to Norway´s status as non-EU member state. For Norway's case

[9] Legalisation refers to three set of characteristics that institutions may possess: 1) Obligation means that rules and commitments increasingly bind states to act on account of attaining some agreed upon objectives. 2) Precision narrows the scope for reasonable interpretation and defines the conduct of behaviour. 3) Delegation means that third parties have been granted authority to implement, interpret and apply the rules (Abbott et al 2000). All these elements are central in the legal framework of European integration.

10 The EEA-Agreement is a comprehensive free-trade agreement between EU and EFTA states.

the regulative flow then proceeds only in a downward direction. European regulatory policies mostly come in form of directives.

On the financial area, Norway is committed to comply with EU's basic principles, concerning freedom of establishment and the free movement of capital and services. The European regulative approach on financial markets consists of two distinctive methods. Firstly, the Commission produces initiatives that aim at developing uniform standards for the entire European market. This approach entails harmonisation of existing national standards. Secondly, the Commission might establish a set of rules and regulations that impose minimum requirements in national legislation. This approach of mutual recognition restricts state involvement in the market, but is less formal than harmonisation initiatives.

In order to ensure compliance with EU rules and regulations, monitoring and enforcement mechanisms are set up by the EEA Agreement. The EFTA Surveillance Authority (ESA) is the monitoring agency for EFTA countries participating in the EEA. Its primary tasks are to ensure that EFTA member states, which have agreed to participate in the EEA, implement and enforce relevant regulations, and that its corporations do not operate in conflict with the EEA Agreement's rules and objectives (Graver and Sverdrup 2002)[11]. The EFTA Court of Justice advises and judges on conflictual issues.[12]

<u>Expectations:</u>
If European institution building involves a substantial and extensive replacement of national rules and regulations by European standards due to direct legal pressures from the European level, this would ascribe importance to rule-based adaptational processes. On cases were Norwegian authorities have not adapted in an adequate manner I should expect substantial involvement from EFTA regulatory institutions. In its most extreme, this could arguably cause convergence as a coerced choice of one set of rules and

[11] There are four basic types of breaches of the EEA Agreement 1) violation of treaty provisions, regulations and decisions, 2) non-transposition of directives, 3) incorrect legal implementation of directives, and 4) improper application of directives (ibid).
[12] Its responsibilities are firstly to deal with the infringement actions brought by the ESA. The Court also settles disputes between EFTA states concerning the EEA rules and regulations and considers to which extent ESA perform its tasks in a satisfactory manner. Finally, it gives advisory opinions in EFTA states on the interpretation of EEA rules.

institutions and put severe constraints on the ability to pursue national policy objectives (Berger and Dore 1996:3). On this background I address following hypothesis:

> ***Changes in the Norwegian risk management regime for occupational pensions have mainly occurred as a direct result of legal and institutional developments at the European level.***

2.5.2 Competitive dynamics and interest-based adaptation

Traditionally, interest based approaches have been the most influential in the IPE discipline. These may be categorised into analyses that focus on producer-group coalitions and electoral approaches (Hall 1997). Policy output is usually conceived as a *"function of political conflict shaped by the preferences of different actors, weighted by their market power and their propensity for collective action"* (Garrett and Lange 1996: 49). Hence, these approaches call into attention how preferences in society are aggregated among individuals and groups, and how these aggregated preferences form interests.[13] Arguably, *"if one understands which economic interests that have gained economic strength, one knows which have gained political power and in turn how policy is likely to change" (ibid*). The growth of fund managers should then make approaches of producer group coalitions relevant in order to examine and account for any policy change. Moreover, according to Frieden and Rogowski (1996) processes of internationalisation affect the opportunities and constraints, hence policy preferences, of actors in broadly predictable ways, based on the economic interests of actors. European market integration may consequently shift the balance of interests between domestic actors, and create new cleavages and coalitions among domestic interest groups.

This thesis will however not examine the sharpening battles between labourers and capitalists, but assess if the SEM have produced increased competitive dynamics for the financial industry. To what extent are concerns about international competitiveness reflected in Norwegian policy making on this area. Competitiveness of Norwegian financial industry is arguably related to two primary abilities: 1) to sustain market shares in the domestic markets and 2) to compete on the international arena. If a shift in terms of trade, the position a sector will take on liberalisation contra protection depends on the competitiveness of the sector and the specificity of its assets. Hence, the degree to which

[13] Interests are understood as *"the real, material interests of the principal actors, whether conceived as individuals or groups"* (Hall 1997: 176). A key pre-condition is that actors are able to carry out rational cost-benefit analyses on own preferences, and act correspondingly.

their products are traded or non-traded, their markets domestic or international, and their assets specific or mobile would be decisive (Frieden and Rogowski 1996). Owners of sector-specific assets will have incentives to lobby for sectoral protection if faced by international competition or for liberalisation if faced with export opportunities. Therefore, one finds that *"in many cases, the very industries that benefited from regulation in the past lobby for change because regulation no longer serves their interests"* (Vogel 1996: 13).

The aspects of the regulatory regime in which financial institutions carry out their activities are also important as variations in asset management prices and performance might stem from diverging regulatory practices and regulations imposed. This would then cause cross-national variations in cost-efficiency due to diverging national institutions.[14] Davis (1995) argues that investors under a prudential regulatory regime provide better returns at lower costs (and risks) than those under a regime of quantitative regulations. This also relates to the type of products that are allowed to distribute, and under which circumstances these are offered. Regulation usually affects big business more directly than any other kinds of policy. Hence, *"if interest groups are ever to dominate an issue, regulatory reform should be that issue"* (Vogel 1996: 16).

2.5.2.1 Expectations

Any persistence of so-called Norwegian special regulations could arguably entail comparative disadvantages for Norwegian financial industry vis-à-vis foreign financial institutions. I therefore expect increased financial industry lobbyism due to competitive dynamics produced by European integration. This could arguably occur along three types of lobbyism, which would vary with the extent of industry's European orientation.[15]

- The first and most modest use of the European framework in lobbyism is by *voice*. European integration would then have empowered financial institution with new arguments for achieving own policy objectives. Increased capital mobility and transnationality would make threats and voice signals more credible and adequate to gain influence on national policy makers. The easier it is for custodians to move abroad, the greater are the costs of sustaining special regulations for this sector, and

[14] If state A imposes a set of unilateral regulations on its national firms, firms that are exposed to less or more liberal regulation in state B may gain a competitive advantage.
[15] My expectations of financial industry lobbysim largely coincide with Hirchmann's (1970) framework of exit, voice and loyalty.

the stronger are the incentives for governments to pursue policies that meet financial industry demands.

- Another type of lobbyism is financial industry's application of *exit* mechanisms. Custodians then actually take benefit of the opportunities to escape from national regulators. Country-hopping and regime-shopping may then occur, where fund managers take advantage of variations in different levels of taxation and diverging regulatory styles.
- The last and most advanced use of the European framework in lobbyism arguably is where industry replaces national *loyalties* with supranational. National authorities may sometimes be unwilling to leave regulation to market forces (market regulation), or fully converge to any international minimum standards (European regulation).[16] As the EEA Agreement sets up a multi-levelled framework of governance, Norwegian financial industry may find new key allies at the European level in their fight for improved terms of trade.

In its most extreme, industry lobbyism would induce and enable a competitive deregulatory dynamic to take place, where states move toward the lowest common denominator (e.g. Strange 1996). This race to the bottom would in the end induce policy convergence as a triumph of market forces (Berger and Dore 1996: 16). Following hypothesis is set forward to address these dynamics:

> ***Changes in the Norwegian risk management regime for occupational pensions have mainly occurred as a result of competitive dynamics introduced by the SEM. These dynamics have implied a more international oriented Norwegian financial industry lobbying for improved terms of trade, for which it has gained substantial support due to competition-sensitive Norwegian authorities.***

2.5.3 Technocratic learning and idea-based adaptation

Ideational approaches have traditionally been employed to explain residual variance. Idea-oriented approaches are however increasingly employed as independent competing variables. Scholars then often emphasise the effects of social learning. Checkel (2001: 53)

[16] Even though the European regulatory framework appears comprehensive and detailed, a judicial vacuum to some extent exists. In this, member states sometimes are left with significant flexibility regarding when and how to implement EU regulations (Selvig 1999). Domestic institutions, such as socio-economic institutions that organise interests in the private sector and formal public institutions, may then step in and act as mediators between changes in the constellation of market driven preferences and other public policy objectives (Garrett and Lange 1996). This may in turn freeze the potential impact of economic power that certain producer group coalitions experience and lead to a persistence of Norwegian special regulations.

consider this as a process "*whereby actors, through interaction with broader institutional contexts (norms or discursive structures), acquire new interests and preferences*". This form of ideational adaptation may occur due to two main dynamics (Claes and Tranøy 1999): 1) by actively employing European policies and arguments as to find solutions on perceived or experienced problems and crises at the domestic level (problem-driven learning); or 2) by imitating popular and prevalent ideas at the European level which are considered modern and in-fashion (solution-driven learning). Hence, when examining European integrative pressures on nation states, the prevailing ideas in Europe must therefore be considered as an independent variable for domestic change and adaptation. A key question is to what extent Norwegian risk management regime for occupational pensions has lost its national identity and embeddedness due to the integrative processes of European integration?

Ideational adaptation as a mechanism for change is considered primarily influential in novel situations characterised by substantial complexity and uncertainty, and when limited knowledge makes it difficult to maintain fully fixed preferences (Checkel 2001; Tranøy 1998). Ideas might then influence decision-makers by forming new preferences or changing conceptions of means-ends relationships (Claes and Tranøy 1999). Ideas often take the form of principled or causal beliefs (Goldstein and Keohane 1993). Principled beliefs are normative ideas and ideologies (doctrines), which specify, clarify and distinguish what is considered as legitimate from illegitimate. These might attain growing interest and popularity if underpinned by causal beliefs. These are ideas about cause-effect relationships, which guide individuals on how to achieve their objectives (Goldstein and Keohane 1993: 9).[17] In times characterised by substantial uncertainty principled and causal beliefs might serve as road maps, stipulating causal patterns and compelling principled of motivation for action (ibid: 16). Causal ideas respond directly to uncertainty by reducing it, whereas principled ideas enable people to behave decisively despite causal uncertainty.

[17] Changes in various cause-effect relationships take place more frequently than changes in principled beliefs as new scientific knowledge continuously reveals better and increased understanding on policy issues.

Moreover, ideational impact also relates to the role of experts and expert-networks. Knowledge about cause-effect relationships requires experts, and these are most influential if participating in networks where a common professional background is shared (Checkel 2001). So-called epistemic communities are transnational expert networks, which due to a shared professional consensus exchange beliefs and ideas that might have an impact on domestic policies and market behaviour. These networks consist of *"professionals with recognized expertise and competence in a particular domain and an authoritative claim to policy-relevant knowledge within that domain or issue-area"* (Haas 1992: 3). Epistemic communities have normally been used to explain coordination between countries on issues where agreements have been difficult to attain due to a fundamental lack of information and knowledge about proper actions. In this context I focus on how such networks might help the diffusion of norms and ideas that could subsequently change traditional forms for risk management principles and regulations. Ideational impact is most likely if there is a high density of interaction among participants (Checkel 2001). Moreover, any impact of experts is most likely when these are insulated from direct political pressure and exposure (ibid).

2.5.3.1 Expectations

One evident consequence of European integration is increased cooperation and contact across national borders. The Norwegian affiliation with the European Union, formalised by the EEA Agreement, excludes democratically elected politicians from taking part in the decision-making processes. Unlike politicians, experts are not formally excluded from EU committees and pan-European business networks. According to Trondal (2001: 1) *"a de-parliamentarisation, a de-politisation as well as a bureaucratisation of EU related decision processes nationally"* has been one key consequence of the EEA membership. Moreover, pensions and fund management are complex policy areas, which to a large extent are exposed to detailed technical standards and an extensive judicial framework. Fund managers and regulatory authorities (public officials) arguably have power over knowledge and expertise on this area due to its complexity. Their opportunity to act as experts and to make an impact on Norwegian policy-making and financial markets norms should therefore be emphasised in this context. If Norwegian experts participate and interact on a high-level density in European meeting places, I expect policy imitation of popular and prevailing European ideas about fund management and market-based pensions to be significant.

Furthermore, the ongoing demographic shift and liberalisation of Norwegian capital markets might have substantially challenged the Norwegian regime on how to organise its risk management system. The Norwegian regime has accordingly been brought into a novel situation, which could have produced substantial uncertainty and doubt about how risk should be dealt with. Rapid technological changes and product innovations in the financial sector further increase the demand for industry-specific expertise and knowledge. This should induce Norwegian technocrats to make benefit of their European contacts and networks and apply policies and arguments embedded in the SEM to find solutions on this experienced uncertainty.

If processes of social learning proceed unchallenged, convergence as a result of diffusion of the perceived best practice is an inevitable outcome. Given the expectations above I find the following hypothesis relevant:

> ***Changes in the Norwegian risk management regime for occupational pensions have mainly occurred due to the impact of ideas embedded in the European market regime***

2.5.4 Some reflections on alternative explanations

The objective of this thesis is to examine European impact on a national policy area. The three processes of Europeanisation which are introduced above are analytical distinctions that are not mutually exclusive. Hence, adaptation to European market integration could occur in all three mechanisms at the same time, or sequentially. The relative strength of each explanatory variable could then occur at the same time, but have different significance in different periods of time. Moreover, developments in the Norwegian regime could also be found in other explanations than those set forward above. Identifying changes that have little to do with Europeanisation and distinguish these from processes of Europeanisation might be a challenge, but nonetheless important when discussing any European impact. Some reflections on two alternatives are expressed below, and should be accounted for when I make my analysis and conclusions in chapter 5 and 6.

Firstly, small states have according to Katzenstein (1985) relied more on world markets than large states. High dependence on international markets requires continuously adaptation to changes in international structures as a strategy of sooner the better. Changes in the Norwegian regime could then be perceived as an intentional adaptation to what is predicted the most probable outcomes internationally. Adaptation to internationalisation would then proceed independently of SEM implementation and adoption of the EEA Agreement. These effects could for example be a result of efforts made by other international organisations, such as the OECD, World Bank and the IMF, which also influence Norwegian policy making.

Secondly, today most welfare states experience similar problems in the state-society relationship due to the constraining effects of globalisation and ageing populations. The expenditure on public budgets is rising and the prospects of increasing revenues (e.g. taxes, etc) are reduced. Since the 1980s new public management reforms have induced increased competition and liberalisation in many European welfare states, partly as a solution to these experienced problems. Hence, the challenges of what I have called a twin pressure could cause parallel national shifts, where similar policy outcomes are preferred by different welfare states, but which have nothing to do with any European forces of change.

2.6 SUMMARY - THE ANALYTIC FRAMEWORK

To sum up, the analytic framework of this thesis consists of a dependent variable (regime change) that relies on three different dimensions. These dimensions are related to how assets are invested (scope of assets), by whom these are managed (scope of access), and in which framework benefits are embedded (scope of authority). Furthermore, three independent variables are set forward to analyse any European impact on regime change. These variables rest on the rule-based, interest-based and idea-based adaptations to Europeanisation. In table 2.1 below these are summarised with some key expectation of regime change and European impact. I will return to this matrix in my conclusions in chapter 6.

Table 2.1. The analytical framework

	Rule-based *Changes have mainly occurred as a direct result of legal and institutional developments at the European level*	**Interest-based** *Changes have mainly occurred as a result of competitive dynamics introduced by the SEM, where a international oriented Norwegian financial industry has gained support for regulatory reforms*	**Idea-based** *Changes have mainly occurred due to the impact of ideas embedded in the European market regime*
Scope of assets *Norwegian portfolio regulation and asset allocation has become more oriented towards risk diversification into European equity markets rather than Norwegian markets*			
Scope of access *Liberalisation of Norwegian licensing regulations and ownership legislation has occurred so that national borders are transparent and characterised by substantial cross-border activities*			
Scope of authority *A few market-conform regulations have become more important than an extensive regulatory framework that put emphasis on social objectives and fund security*			

3 TOWARDS A PAN-EUROPEAN PENSION REGIME

> *The [pension fund] directive will provide pension funds with a coherent framework to operate within the internal market. They will now be able to build on that platform to offer safer and affordable pensions. The directive will also give European companies and citizens the opportunity to benefit from more efficient pan-European pension funds, and so make an important contribution to tackling the pension time bomb.*[18]

3.1 INTRODUCTION

In the last chapter I developed some key expectations about national adaptation to European integration. This chapter addresses in short what has happened on the European arena on setting up a European framework for risk management on second pillar retirement provision.

Occupational pensions are in most EU member states often provided and managed by separate pension institutions, such as pension funds. The European Commission has for long considered this provision as financial services. When implementing the SEM in 1992, a Single Financial Space was established for banks, investment funds and life insurance companies. In spite of the similarities between pension funds and life insurance companies, political agreement on EU policy delegation has to be met on both.[19] Finding an agreement on pension funds has proved difficult. The second pillar pension provision is characterised by substantial diversity across Europe when it comes to types of plans, financing methods, providers, regulation, taxation and supervision. Occupational pensions are also an integral part of member states pension systems. Unlike life insurance companies, pension funds were therefore not included in the SEM regime from the start. In spite of repeatedly endeavours from the European Commission to put these financial institutions under a European framework, common legislation on the activities of retirement provision was not adopted until 2003.

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[18] Internal Market Commissioner Frits Bolkestein hailing the new directive on pan-European occupational pension funds and its approval by the European Council in mid-May 2003 (IPE Jul 2003).

[19] The European regulatory approach is institution-biased, where different types of financial institutions to some extent adhere to different European rules and regulations (directives).

As this chapter will reveal, occupational pensions have nonetheless been on the European agenda for about 15 years. But why has this taken so long, and why has the European Commission taken great interest in a pan-European pension regime? The objective of this chapter is to briefly present the policy processes and initiatives at the European level on this issue. Through this, some of the challenges linked to European policy delegation and pension reforms are revealed. This could shed light over reform processes in Norway, which are analysed later in this thesis. Moreover, it would allow me to make more valid reflections on the Norwegian regime's uniqueness or commonness.

3.2 THE EUROPEAN PENSION CHALLENGE – BETWEEN DEMOGRAPHY AND MARKETS

3.2.1 The importance of pension assets

Processes of globalisation and member states' ageing populations have lately made the EU increasingly more concerned about the competitiveness of the European economy and future sustainability of member states' welfare programmes (cf. the Lisbon process). In 1999 the Commission President Romano Prodi uttered:

> *Where pensions are concerned we need a properly regulated pan-European pension fund market, which would give pensioners a far higher return on the capital they contribute and would also provide a stock of venturing capital for creating new business (Quoted in Holm Bakke 2000: 9).*

As the quote illustrates, the Commission has a two-folded objective: 1) to ensure the security and affordability of fund members' pensions, 2) to achieve fully integrated financial markets, which would be highly beneficial for fostering economic growth in the region. According to the Commission, both these objectives are only attainable if a prudential framework for occupational pensions is established.

3.2.2 Pensions and the Single European Market Regime

The 1985 Single European Market initiative aimed at substantial liberalisation on member states' financial sector. Consequently, a directive on freedom of capital movement was adopted in 1988, and directives on several financial services (bank, life insurance, investments, etc) were adopted subsequently. Rather than total harmonisation, the regulatory approach was based on mutual recognition, one single license and home country control (Litan and Herring 1995). This was believed to induce the four freedoms and produce new economic and political dynamics that would promote and enable the creation a Single European Financial Space.

- The *principle of mutual recognition* entails an explicit acceptance by each member state of the regulations, standards, and certification procedures of other member states.
- The *principle of home country control* implies that member states have agreed that it is the member state in which the financial institution's headquarter resides, that has sole responsibility for granting license and undertake financial supervision concerning e.g. solvency issues.
- Having been granted licence in its respective home countries, the financial institutions are under the *principle of one single licence/passport* free to market and distribute its products and services in other member state. This framework enables financial institutions to more easily offer services across borders.[20]

In the SEM regime, the principle of free movement of capital is particularly important, and is believed to benefit the European economy in several ways. Due to an enormous increase in European pension assets lately, the activities and operations (e.g. investment pattern) of pension institutions are considered ever more vital for achieving a fully integrated SEM. As the demographic shift proceeds, a pan-European regulatory regime for custodians of occupational pension benefits would become ever more important for European markets due to: 1) make free movement of labour easier and more flexible, 2) contribute to growth and improved utilization of savings, 3) increase competition in the financial sector which again might lead to product innovation and improved quality on financial services at lower costs, 4) produce better opportunities for risk diversification, and 5) have an disciplinary impact on economic policies (Bull 2002: 28).

3.2.3 Demographic trends of ageing populations

The demographic challenge of ageing populations is a key feature in all European member states. Growing life expectancy would lead to a substantial increase in pension expenses towards 2050 in all member states. Moreover, as declining birth rates are also

[20] EU law distinguishes three ways of which a financial institution can offer its services in other EU countries. Firstly, a subsidiary is regarded as a separate legal subject, which activities must coincide with national legislation of the host country, i.e. the country where the subsidiary is established. Subsidiaries do therefore not operate under considerations of home country control. Secondly, financial institutions may establish affiliates and branches in other member states. An affiliate/branch is not considered as an independent institution, and supervisory tasks do therefore adhere to the home country of its mother company. Finally, financial institutions may engage in cross-border activities where the provision of services occurs directly from the head-quarter or via a representative in host country. In these cases, licensing and supervisory control does also remain with the home country's authorities. Financial institutions are however required to notify home country authorities about its intentions of cross-border engagement before this is actually carried out.

part of the demographic trends in Europe, the tax-financed transfer (PAYG) schemes' sustainability is threatened, due to increasing dependency burden on the labour force that finances the pensions. (cf. table 3.1 below).

Table 3.1. Estimated development in pension expenses, demographic factors, employment rate and dependency burden in Norway and 13 EU countries (Moum and Strømsheim Wold 2001).

	Pension expenses as % of GNP		Dependency burden		Birth rate		Average life expectancy		Employment Rate	
	2000	2050	2000	2050	2000	2050	2000	2050	2000	2050
Germany	10,3	14,6	26,0	53,3	1,4	1,5	77,8	82,5	65,3	67,2
France	12,1	15,8	27,2	50,8	1,7	1,8	78,8	83,5	62,1	65,6
Italy	14,2	13,9	28,8	66,8	1,2	1,5	78,8	83,5	53,8	65,0
UK	5,1	3,9	26,4	46,1	1,7	1,8	77,6	82,5	71,5	72,3
Austria	14,5	15,1	25,1	55,0	1,3	1,5	78,1	83,5	74,4	88,3
Belgium	9,3	12,6	28,1	49,7	1,5	1,8	78,4	83,0	59,1	62,7
Denmark	10,2	13,2	24,1	41,9	1,8	1,8	76,6	81,0	76,8	77,0
Finland	11,3	16,0	24,5	48,1	1,7	1,8	77,5	82,5	68,3	68,4
Ireland	4,6	9,0	19,4	44,2	1,9	1,8	76,7	81,5	67,4	75,9
Netherlands	7,9	3,6	21,9	44,9	1,7	1,8	78,2	82,5	65,3	66,6
Portugal	9,8	14,2	25,1	48,7	1,5	1,7	75,6	81,0	68,5	71,7
Spain	9,4	17,7	27,1	65,7	1,2	1,5	78,5	82,0	55,9	68,0
Sweden	9,0	10,0	29,6	46,1	1,5	1,8	79,7	84,0	73,1	77,3
EU-13	10,3	13,0	26,7	53,4	1,5	1,6	78,2	82,8	61,4	66,3
Norway	7,2	17,8	25,9	41,4	1,8	1,8	78,4	82,5	78,3	78,2

However, irrespective of common demographic trends, cross-national variation is revealed. This variation is related to how the pension system is organised. As noted in chapter 2, pension systems in liberal market economies (LMEs) are less exposed to demographic risks as public compensation rates are less than in the coordinated market economies. On top of these differences, pension systems in LMEs (e.g. the UK), greatly rely on funded corporate pension schemes, which further adds to the reduction of demographic risks linked to the sustainability of public pensions.

3.3 TOWARDS A PAN-EUROPEAN MARKET REGIME FOR SUPPLEMENTARY PENSIONS

3.3.1 The European efforts of adopting a Pension Fund Directive

3.3.1.1 Early attempts on a pension fund directive

The need for a pan-European regime concerning retirement provision in order to get this in line with the treaty provisions on free movements of capital, services and labour was first addressed by the Commission in 1989.[21] In a speech the Commissioner of the Internal Market at that time, Sir Leon Brittan, called for the "three freedoms"; freedom of cross-border pension fund management, freedom of cross border investment, and freedom of cross border membership of pension funds. He claimed that a Single European Market was not to be completed unless it also included supplementary pensions. A directive was submitted in 1991 to remove obstacles on risk management of these benefits. The regulatory framework set forward focused on following principles (Brittan 1992: 17):

- *Provide much clearer guidance as to what restrictions may be justified on prudential grounds by abolishing localisation requirements, requirements to invest in particular categories of assets, currency-matching requirements beyond a certain level, and the systematic notification of investment decisions.*

- *Take a new regulatory approach. This should be based on a small number of prudent investment principles for pension funds, covering such matters as diversification, liquidity, the quality and risk profiles of portfolios taken as a whole, and restrains on self-investment.*

- *Establish the free provision of services to pension funds, in particular investment management and asset custody.*

- *Establish the freedom of cross-border membership of pension funds by enabling companies to set up a European Pension Fund on a legal basis agreed upon at Community level. This could establish a consistent tax treatment for contributions to and benefits from pension funds*

With these principles, which also relates directly to the three scopes called into attention in this thesis, the pan-European debate on supplementary pensions was set. The draft directive entailed a clear bias towards financial integration and prudent man principle, while social aspects were more or less overshadowed. This became the nemesis of the directive, which was withdrawn *"because of the amendments proposed by member states would have legitimised restrictions on pension funds rather than liberalised them"* (European Commission 1997: 14). Hence, member state resistance was considerable. New attempts were carried out in 1994, but these also failed.[22]

3.3.1.2 Growing concerns about segmented European markets and new policy initiatives

In the late 1990s the Commission increasingly became aware of the lack of financial integration in European markets. The persistence of segmented financial markets gave

[21] In the start, a main concern was that member states "*in the name of prudential control*" were still able to apply localisation requirements and obligations to invest in specific financial instruments, such as governmental bonds, on pension funds' investments (Brittan 1992: 17). The Commission argued however that *"in many cases members' investment rules go beyond what is objectively necessary to maintain adequate prudential supervision"* (European Commission 1997: 14).

[22] In 1994 the Commission published a Communication on freedom of management and investment of funds held by institutions for retirement provisions, which content was similar to the proposals of the withdrawn draft directive (Holm Bakke 2000: 37).

birth to an action plan for financial services (FSAP) in 1999, which set out a blue-print that aimed at increasing the pace in European decision-making processes on the financial area (European Commission 1999a). Furthermore, it was acknowledged that any integrated financial markets are difficult to achieve without eliminating disparities in tax treatment of income from private savings. Hence, measures of tax harmonisation were also a prioritised issue in the action plan. Pension funds and supplementary pension provision were at the top of this EU financial services agenda.[23]

In 1997, previous to the FSAP, the Commission submitted a green paper on supplementary pensions, which focused on quite similar targets and principles as those presented in the previous draft directive. The green paper is seen as seminal in a new wave of EU documents and policy initiatives concerning pension issues. Unlike previous EU documents, the green paper gave more attention to the role retirement provision played in social protection across Europe and became the first EU Green Paper that perceived the demographic shift as a threat for the provision of old-age pensions. The importance of prudential arrangements was stressed to ensure members' security.[24] The Green Paper was underpinned by the adoption of the Communication *"Towards a Single Market for Supplementary Pensions"* in 1999, and set out three principles for enabling a pan-European regime on supplementary pensions (European Commission 1999b): 1) Better protection of scheme members coupled with more efficient investments by pension funds; 2) gradual removal of obstacles to labour mobility and 3) continued coordination of Member States tax systems. The EU also started publishing and funding research reports in order to stimulate public reflection and debate on supplementary pension provision, e.g. the 1999 Pragma report "*Rebuilding Pensions"* (European Commission/Pragma Consulting 1999).

[23] Commissioner Mario Monti (1998) has stated that *"the creation of a single market for supplementary pensions would mark an important stage in the full integration of financial services in the Union, help to consolidate the European social model and be of major benefit of future pensioners"*
[24] Moreover, the Green Paper had a different tone than previous documents as rather than giving clear obligations it asked member states, market actors and EU institutions about their view on the proposals. The Commission did however again raise concerns about some of the rules imposed by some member states, which it conceived to go beyond what was necessary and comprised a major obstacle to the freedom of capital movement in the Single Market. The proposals were nevertheless much more open than was the case of previous regulatory attempts (Holm Bakke 2000).

3.3.1.3 Lisbon strategy puts pensions at the top of the agenda

Due to growing awareness of the effects of globalisation and ageing populations, EU policy makers were at the turn of the millennium concerned about competitiveness of the European economy and future sustainability of member states' welfare programmes. The Commission was in particular concerned about the relative poor performance of continental European economies over the 1990s, compared to that of the US.[25] In 2000, the so-called Lisbon strategy was launched as a comprehensive programme to make the European economy *"the most competitive and dynamic knowledge-based economy in the world within 2010"* The strategy stressed the need to complete the internal market, in particular the emergence of stable, efficient and integrated financial markets, which would benefit savers and at the same time help boost growth and employment. At the core of this strategy was adopting a pension fund directive.

> *"In its contribution to the Lisbon European Council, the Commission itself has highlighted the need for an integrated EU framework in the field of pension funds which, by increasing more liquidity on capital markets, would ease future pressure on social security systems, reduce costs of capital and increase venture capital" (Bolkestein 2000)*

To foster growth and economic development across Europe the Commission therefore urged that; *"as very long-term investors, pension funds should have the possibility to invest significantly in shares and risk-capital markets and manage schemes on a cross-border basis"* (Bolkestein 2001).[26] The Lisbon European Council set an ambitious timetable for completing the FSAP by 2005.

3.3.2 The Pension Fund Directive – a compromise on a compromise

A draft on a pension fund directive that aimed at setting up a prudential European framework on the activities of IORPs (institutions of occupational retirement provision) was submitted in October 2000 (European Commission 2000). The draft directive was somewhat more moderate than set forward by former papers. This time the Commission had to succeed. Rather than harmonising national supervisory arrangements and regulations in detail, it is to level a playing field of mutual recognition and confidence in the regulatory and supervisory framework of member states. The Commission recognised

[25] Many EU countries had for some time struggled with relatively low rates of growth and high rates of unemployment, compared to the US economy.
[26] While pension funds provide 60 percent of American industry's risk capital, Europe is according to Commissioner Bolkestein characterised by shallow and relative inefficient capital markets, and lack of sufficient risk capital.

that *"pension systems are just too different in each member state"* to make a strict harmonisation feasible (Bolkestein 2000). Consequently, a twin pronged approach was taken:

> *Firstly, to allow the member states such as Netherlands, Ireland and UK, who have a long and successful experience of pension funds to continue their system of prudential control based on the prudent man. Secondly, there are other member states who have less developed funds, less experience and who apply rather restrictive investment rules. These member states may not be ready to apply the full prudent-man yet until they have more experience" (Bolkestein 2000)*

Furthermore, the directive does not intend to interfere in the way member states organise their pension systems. These competencies remain under member states authority. Even though the draft directive could be considered a compromise compared to previous drafts, the directive gained substantial criticism and resistance from several holds in the process towards adoption.[27] While the UK and the Netherlands lobbied for prudent man principle, Greece, Italy, France, Spain, Portugal and Belgium were opponents of such a regulatory style (IPE Jul 2002). The old division lines between financial and social provision, and between countries embedded in divergent risk regimes, were still present. There have also been debates on how to understand, practice and find the right balance between prudent man ideas and required quantities approaches to ensure adequate security of funds. A political compromise was however reached at the ECOFIN summit[28] in June 2002. After more compromising, the directive was adopted by the European Council in April 2003, and became official legislation in September 2003 (European Commission 2003). Member states were required to comply with the directive within September 2005.

As for other financial regulation, the directive follows the single passport principles. Regulatory authority is the home country of the pension fund, i.e. in the member state it is registered. This would in particular benefit multinational employers. Typically two pan-European pension structures are expected (IPE Aug 2003). 1) A pan-European pension fund, where assets of several national pension funds are pooled into one fund in order to achieve economies of scale. 2) A pan-European pension plan, which place plan members

[27] The European financial industry has not been happy with what it regards as a mini-passport, and partly a continued reliance on host-country control, restrictively designed prudential rules and long transition periods, while many parliamentarians are afraid that the directive has not included adequate social provision and advocate some harmonisation of social policy elements as decisive.
[28] European Council of Economics and Finance Ministers (ECOFIN).

in a single plan centered in one member state. Host countries can however still insist that the pension plan should conform to the social and employment laws of that state. Moreover, collective bargaining agreements are also to be respected. Hence, multinationals would continue to face different national rules on these matters. Furthermore, the approach that all institutions that provide occupational retirement provision should fall under the directive has been considered too radical for the European Council (IPE Aug 2003). Hence, the directive does not apply to institutions managing social-security schemes, institutions that operate on a PAYG basis, companies using book-reserve schemes and investment funds. Member states are also free to make the directive inapplicable to institutions located in their territory, which operates pension schemes that together have less than 100 members in total.

Moreover, even though the directive set forward some prudential investment rules with which must be acted in accordance (e.g. risk diversification), some quantitative requirements remains as parts of the political compromise. Member states may lay down more detailed quantitative rules for institutions located in their territory, but no member state can restrict fund managers to invest up to 70 percent of assets in equities and 30 percent outside the euro-zone.[29] Any application of quantitative requirements is however to be prudentially justified, and member states cannot require institutions to invest in particular categories of assets. Hence, the directive would anyhow liberate asset management in many member states, where the regulatory framework has rested on extensive investment restrictions.

Unlike the proposals in the early 1990, the new directive also firmly establishes the link between assets and liabilities. Moreover, the Commission had this time been more preoccupied with solvency requirements that have to be met in member states legislation in order to protect fund members. Cooperation between supervisory authorities, introduction of notification procedures, obligatory disclosure of investment policy principles, annual accounts/reports and other relevant information to plan members are

[29] In events of cross-border activities, even more detailed investment rules are allowed to be set forward. Host country authorities (where sponsor and members are located) are for example allowed to ask home country authorities (where pension fund is located) to apply certain restrictions on assets corresponding to the pension scheme run on a cross-border basis, provided that the host country applies the same rules to its own domestic funds.

also stressed. More qualitative ALM (asset-liability-management) techniques for calculation of technical provisions, where fund managers are directly responsible for strategic asset allocation and risk management processes, are also introduced in the directive. These techniques are related to the nature and duration of pension liabilities.

The pension fund directive was to be implemented by all member states by September 2005. In spring 2006 the Commission sent a so-called reasoned opinion, the second stage in an infringement procedure, to 11 member states that had not fully implementer the directive (IPE April 2006). In summer 2006 the Commission referred the UK and Slovenia were referred to the ECJ for failing to implement the directive (IPE June 2006).

3.3.3 Eliminating tax obstacles to cross-border provision of occupational pensions

As supplementary pensions are a vital part of the welfare programmes in many member states, fiscal incentives are usually employed to increase retirement saving and to overcome problems with citizens' short-sightedness. Tax regulations are also employed to shape the occupational pension market in accordance with some larger social, political and economic objectives. There are three basic levels at which occupational pension provision might be subject to taxation (T) or exemption (E): 1) on the contributions made by employer/employee; 2) on the investment returns; and 3) on the payment of benefits in retirement. This implies nine possible combinations in the taxation-exemption matrix. Hence, member states' second pillar has been characterised by large diversity on these matters. The large majority rests however on the EET system.[30]

In order to preserve efficiency of tax controls, to ensure fiscal cohesion of national tax systems and avoid tax fraud, many member states have usually only made domestic fund managers eligible to held tax stimulated pensions in custody.[31] Moreover, as entitlements to social rights are usually based on citizenship, these discriminatory practices on nationality are also socially legitimised. According to the Commission, these fiscal measures are severe obstacles to migrant workers and to the provision of financial services across member states borders. Furthermore, it prohibits any establishment of

[30] Exempted contributions, Exempted investment income and capital gains, and Taxed benefits.
[31] Due to the different tax systems in Europe, mobile employees could be subject to double taxation, or experience double non-taxation (exemption).

pooled European pension funds for multinationals. The Pension Fund Directive does not deal with the obstacles to cross-border provision of occupational pensions found in member states' tax regulations. The Commission has therefore concluded that *"unless member states stop discriminating against foreign pension funds, we will not have a fully functioning internal market for occupational pensions even when the Pension Fund Directive is adopted"* (IPE April 2003).

Many member states see the European involvement on these matters as a threat to their individual right to design their own tax and welfare system, which remains at the core of national autonomy. A 1992 ECJ court decision in the so-called Bachmann-case[32] even gave support to member states concerns on many of these issues. To deal with this problem the European Commission issued a Communication on the elimination of tax obstacles to the cross-border provision of occupational pensions in 2001 (European Commission 2001). As the competence to tax remains within national jurisdiction, the Commission called for voluntary tax coordination in order to eliminate any double taxation or double tax exemption of migrant workers or persons retiring in another member state. As most national pension systems rely on the EET model, the Commission urged member states with another model to adapt to this regime.

Even though national autonomy on tax-deductibility to occupational pension schemes has been legitimised by the ECJ decision in the Bachmann case, this has not stopped the Commission to intensify its efforts to end these discriminatory practices in order to retain a fully integrated SEM.[33] In order to fasten the progress towards achieving a pan-European pension market, the Commission has strengthened its judicial strategy to modify or even eliminate the effects of the Bachmann decision. Key activities has been publishing legal texts that will provide guiding lines for national legislations, monitoring

[32] **Bachmann** was a German citizen that demanded tax deductions for his contributions to a German insurance company while working and living in Belgium. Belgium refused to give such exemptions, as the life insurer was not established in Belgium, and gained support from the ECJ due to considerations of efficient tax control and the uncertainty of taxing pension payments due to different tax systems in Belgium and Germany (IPE Aug 2003b). The ECJ ruled that taxation on these matters were still to be subject to national jurisdiction (C-204/90 Bachmann). The ECJ decision was a setback for the EU and its aim in accomplishing a fully integrated SEM, as this meant that member states could retain discriminatory tax provisions against other member states.

[33] The Commission has regarded these practices as continued de facto protection of domestic pension industry, which constitute severe obstacles on the freedoms of the SEM and its aim to create a larger, more liquid and more efficient European capital market. A 1995 ECJ court decision in the **Wielockx case** made some modification in the Bachmann case, and ruled that fiscal

national rules, and bringing matters of infringements before the ECJ. Moreover, it has also encouraged companies and individuals to bring test cases to the ECJ and to take legal action against member states' eagerness to apply discriminatory tax regulations against pension fund managers localised in another member state. Several ECJ judgements have already been carried out or are awaiting ECJ decision in these respects.[34]

In 2003 the Commission launched infringement proceedings against several member states that refused cross-border deduction for pension contributions.[35] Since 2003 the Commission has extended the list of member states that are involved in such proceedings, as well as taken more severe steps towards some member states in order get these to amend its legislation in accordance with the Commission's principles. As political harmonisation on tax reliefs are difficult, the Commission's strategy is to struck down national restrictions on this area bit by bit, in order to complete a pan-European pension regime. The efforts on these matters are still in process. Most European countries now rests on the EET system regarding pension taxation, and have ended its discrimination on pension contribution paid to foreign funds (IPE March 2007).

3.4 SUMMARY - THE EUROPEAN INITIATIVES

To conclude, the efforts of establishing a pan-European pension regime has been a long and difficult process. The first efforts were made in the late 1980s, but the process first

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coherence could not be invoked as a justification in situations where members states have voluntary given up that coherence (European Commission 1997).

[34] In 2002 the ECJ judgement in the **Danner case** (C-136/00), which has many similarities with the Bachmann case, held that it was contrary to the EC Treaty for Finland to disallow deductibility of contributions when contributions are made to foreign pension plans, while allowing deductibility for contributions made to national plans. Danner emigrated from Germany to Finland, but even though being a tax resident in Finland, he continued to pay social security contributions into the German compulsory occupational pension scheme that he adhered to. Finland refused the deduction on the basis of maintaining coherence of the Finnish tax system and efficiency of tax controls, avoiding tax fraud and keeping the integrity of the tax base (IPE: May 2002), and claimed that a link should exist between a tax deduction up front and a taxation of the benefit later. The ECJ rejected these concerns as benefits for Danner would anyway be taxable in Finland, and because the Court believes that it is possible to reach the aim of efficient tax control by other means than imposing non-deductibility.

In 2003 the ECJ court decision in the **Skandia/Ramstedt case** (C-422/01) followed a similar stance to end discrimination against static employees who have purchased pension products abroad (IPE Aug 2003b). The Skandia case has been launched by the Swedish insurer Skandia and challenges Swedish legislation for not allowing deductions on contributions to occupational pension products offered to its director Ramstedt, but purchased in another country (provided by Skandia Germany, Skandia Denmark and Skandia UK). The Swedish authorities, which tax current returns on investments, claimed that this would be impossible on foreign providers (Grønvik 2002: 74). The Court's dismissal of arguments brought by Swedish authorities was similar to the Danner case (IPE Aug 2003).

[35] A formal request (Reasoned Opinion) was sent to Denmark in, while at the same time official requests (letters of formal notice) were sent to Belgium, Spain, France, Italy and Portugal (European Commission (2003b). Later that same year, the Commission decided to take Denmark to the ECJ over this pension tax discrimination, as well as starting infringement procedures against the UK and Ireland (IPE Jul 2003b). In January 2007 the ECJ ruled that Danish tax rules are against the EC Treaty. In reaction to the ruling by the ECJ ruling on Denmark, Sweden has announced that it will also comply with the ruling and amend its legislation.

gained pace in the late 1990s. The EU then put this issue on top of the agenda. The initiative has revolved around three essential objectives:

- To complete the internal market, and improve the free movement of capital, services and labour
- To boost the objectives of higher economic growth, employment creation and increased competition
- To avert the old-age crisis ("defuse the pension time-bomb") and make pensions sustainable

A pension fund directive was eventually adopted in 2003. Even though the Commission increasingly has taken more interest in how to make pension systems sustainable due to demographic challenges, the Commission has primarily been occupied with pension funds as financial services and their role in the SEM. The European Commission regarded this as an important step towards a fully integrated SEM. The directive should be considered as a compromise between prudential regulation styles (preferred by the Commission) and more restrictive regulatory styles and social policy input, even though it is biased towards a prudent man regulatory philosophy on fund management. Moreover, the European Commission has lately strengthened its judicial efforts in order to remove what it considers as discriminatory tax regulation on cross-border provision of supplementary pensions.

The difficulties with achieving a political agreement on the European level might be explained with the substantial diversity that exists across Europe when it comes to regulation, taxation and supervision, etc, of second pillar pensions. Delegation of policy competencies to the European level on these matters has been difficult, because this tangle core issues in the public-private mix that also influence the model of capitalism. As the demographic trends proceed, the challenges faced by many European countries is that *"fealty to the inherited models of intergenerational social solidarity may be impossible expensive, while the Anglo-American model of economy and society would seem to imply acceptance of individual levels of risk and inequality at odds with continental traditions"* (Clark 2003: 26-27). Moreover, EU involvement on these issues hits welfare states at the core of their origin, namely to design their own tax policies in order to shape welfare provision in accordance with their social model.

The Commission has nevertheless made important achievements on this area lately. Attention is now directed towards ensuring that member states implement the spirit of the directive in national legislation and pursuing any inappropriate implementation of member states. The European Commission is determined to apply judicial efforts in order to eliminate obstacles to cross-border provision of pension services and to attain a fully integrated SEM. Many fears however that without political cooperation on this area, the European regime would end up in a complex legal quagmire, which again might be an obstacle to cross border freedom of pension funds.

The European Commission has with its initiatives put emphasis on a pan-European regime for occupational pensions which objective is to extend the scopes of assets (to European equities), access (freedom of services across borders) and authority (increased confidence in market actors) in a prudential direction. The next chapters deal with the Norwegian risk management regime for occupational pensions in this context. In chapter 4 I assess to what extent any changes in the Norwegian regime have implied a regime shift in a prudential direction, while in chapter 5 I analyse to what extent these changes are explained by constraints and incitements produced by European market integration.

4 CONTINUITY AND CHANGE IN THE NORWEGIAN REGIME FOR OCCUPATIONAL PENSIONS

"Debate about the future of European pension systems often revolves around the tensions between continuity with the past (ideal conceptions of social solidarity and social security) and convergence to some form of the Anglo-American model (with all that it implies about the role and status of the markets)" (Clark 2003: 35).

4.1 INTRODUCTION

This chapter addresses the development of occupational pensions in Norway. Until recently, about 2/3 of all employees have been covered by an occupational pension scheme. According to the pension commission, payments from occupational pensions accounted for more about 25 percent of total old-age pensions in 2001 (Pension Commission 2003: 3). Among pensioners that had earned membership in an occupational pension scheme, the equivalent share was 40 percent of their old-age pensions. From 2006, occupational pensions were made mandatory in Norway. With the exception of the Norwegian Public Service Pension Fund[36], Norwegian occupational pension schemes are established on a funded basis.

Most occupational pension assets are held in custody by life insurance companies and pension funds. Over the last decades there has been a considerable growth of assets held in custody by these financial institutions. By the end of 2006 their assets accounted for about NOK 790 billion (SSB). These assets are mostly based on contributions to occupational pension schemes. In comparison, equivalent numbers for 1980 was NOK 43 billion (ibid). Hence, during a generation, the growth of pension assets held by these financial institions has been about 18 times in nominal value. Compared to the growth in the economy, these assets have increased fourfold.[37] How assets are invested, by whom these are managed, and in which framework benefits are embedded, should therefore be of increasing importance.

[36] *Statens pensjonskasse* is a pension plan for certain categories of public sector employees. This is financed on a PAYG basis.

It is often claimed that Norway has developed a special form for welfare capitalism, a so-called democratic capitalism, where principles of equality and fairness have been central (Sejersted 1993; Esping-Andersen 1990). This has historically been reflected in an ambitious and redistributive welfare state with extensive involvement in the economy. As noted in chapter 2 of this thesis, a common regime distinction on the risk management for occupational pensions is between paternalistic and prudent regimes. The main focus of this chapter is to denote in what extent the Norwegian regime has been transposed in a certain direction. I have therefore taken the scopes of assets; access; and authority into account in order to observe any continuity or change. Attention is called both to regulative policy output and market behaviour outcome. More specific I will focus on to what extent:

- *Norwegian portfolio regulation and asset allocation has become more oriented towards risk diversification into European equity markets rather than Norwegian markets?*
- *Liberalisation of Norwegian licensing regulations and ownership legislation has occurred so that Norwegian national borders are transparent and characterised by substantial cross-border activities? (i.e. Norwegian markets have become dominated by many European fund managers rather than a few national fund managers and European pension markets have become more important for Norwegian custodians than domestic markets)*
- *A few market conform regulations have become more important than an extensive regulatory framework that put emphasis on social objectives and fund security?*

On the one hand, a prudent man regime is characterised by liberal portfolio regulations where custodians are allowed and actually allocate large parts of its assets in international equity markets; liberal licensing regulations and ownership legislation so that national borders are transparent both for foreign and domestic fund managers; and where the general confidence in markets is high so that custodians are only subject to a few market conform regulations. *On the other hand,* a paternalistic regime is characterised by more strict regulations on fund managers' opportunities to invest abroad and in equities; nationally biased licensing practices and ownership legislation which makes cross-border activities difficult; and a general lack of confidence in markets so that custodians are subject to a regulatory framework where the provision of social objectives and extensive national standards for regulation that put fund members' security is in the driving seat, cf. ch. 2.

[37] My estimate based on the growth of mainland GNP, where petroleum related revenues are excluded.

This chapter starts with a brief historical presentation of the Norwegian regime. This is important for assessing any direction of recent changes. Even though Norwegian occupational pensions have grown considerably during the last decades, this form for welfare provision rests on long traditions. A Norwegian regime on occupational pensions came into force about 50 years prior to the establishment of the National Insurance Scheme. The Norwegian regime has proved to be very stable until the late 1980s. In order to assess regime change this therefore necessitates a retrospective on principles determined a century ago. In this I also find why life insurers obtain a dominant position in the Norwegian pension market. Unlike many other European countries, which have kept occupational pension schemes under separate institutional arrangements, large part of the Norwegian occupational pension assets are at life insurers' custody. Life insurance companies are accountable for more than ¾ of all funded occupational pension schemes (Aamo 2002: 2). Moreover, these occupational pension assets account for about ¾ of Norwegian life insurers' total assets.[38] Hence, the regulatory framework on life insurance is vital when assessing continuity and change in the Norwegian risk regime.

4.2 A NORWEGIAN REGIME IN THE MELTING POT

This section presents key initial reforms and developments, of which many had a decisive impact on how the Norwegian regime considered "appropriate" risk management until the 1980s and 1990s. I argue that the Norwegian regime at an early point of time took a national, paternalistic orientation, which was reinforced during the post-war period.

4.2.1 Emergence of collective pension insurance

The first life and pension insurance schemes were established in 1847. Then Christiania Gjensidige Forsørgeranstalt (Gjensidige Life) emerged as the first Scandinavian life insurance company (Gallefoss 1999: 23). Norwegian State Railways established the first pension fund in 1884 (Nordby 1999: 3). The emergence and demand for pension plans occurred at a time when the Norwegian financial system shifted into a market based orientation (Knutsen 1994), and when liberal trends in Norwegian and international economy were prevalent. Hence, funded plans became wide-spread. From the 1890s to

[38] In general I make no distinction between private sector and municipal fund managers, as these operate more or less under the same provisions. On many issues in this paper, this also concerns life insurance companies and pension funds, even though pension funds sometimes act as principals and life insurers as agents for pension funds. But since both primarily carry out many of the same services, I will only distinguish between them when substantial differences are evident.

WW I a modern capital market emerged in Norway, and at the same time the number of life insurers and pension funds grew rapidly (Knutsen 1994; Myhre 1996). Pooled pension funds were established, inspired by Bismarck's German social insurance reforms in the 1880s, which were the most advanced welfare programmes at that time. The design of pension funds is regarded as a consequence of emerging industrialisation at the end of the 19th century. Firstly, insurance-based defined benefit pension schemes tied to work experience in the corporation grew popular among employers as a mechanism to prevent labour unrest and to bind labour to the company (i.e. prevent labour mobility). Secondly, in this period the industrial expansion grew more capital intensive, and it became important to ensure that accumulated funds benefited sponsors by investing funded capital back into the corporation.

The first collective pension insurance distributed by a life insurance company occurred in 1917 when Norske Folk was established (Øverbye 1991; Myhre 1996).[39] This joint-stock company was established by the seven largest insurance companies in order to forestall the Norwegian employer organisation to organise industry-wide collective pension funds, which had occurred in Sweden (Myhre 1996). Industry-wide pension schemes did not occur, but unlike many other European countries, life insurers got a solid foothold in the Norwegian occupational pension market already from the start.

4.2.2 A paternalistic call for regulation

Parallel with these developments, and as a response to the rapid industrialisation and growth of the Norwegian economy at turn of the century, Norwegian authorities developed various regulations to control the markets. These regulations were principal for almost a century. *Firstly*, a comprehensive Norwegian insurance legislation was implemented in 1911, and established a supervisory authority (*Forsikringsrådet)* to assist the government. This was primarily legitimised with social policy motives and was to protect the interest of the general good (Knutsen & Ecklund 2000). On other regulatory activities, the regulatory framework "*reflected the uncertain and not always harmonic relationship between public authorities and industry"* (Sejersted 1993: 175). The prime minister's quote in

[39] Norske Folk is a predecessor for Storebrand Life and was the sole provider of these products until the end of the inter-war period, except for pension funds set up by employers (Myhre 1996).

the introduction of this thesis represents such a view. The insurance industry did however also call for improved public regulation and protection in domestic markets.[40] Licensing regulations were designed to prevent unsafe competition, which was considered to weaken life insurers´ solidity. Indirectly, this implied prevention of any strong foreign ownership in Norway and limited access to Norwegian markets.

Secondly, the 1911 Tax Bills granted under specific terms tax deductibility for employers, which contributed to funded pension schemes. These fiscal stimuli were established to overcome problems with short-sightedness and to shape the market-based pension regime in accordance with some larger social, economic and political objectives. Only contributions to funded plans, organised in a separate judicial entity based on irrevocable funds, were tax exempted. This removed any incentive for employers to establish accumulated funds on the company´s own balances. Hence, tax regulations had an immense impact on the Norwegian regime's orientation towards funding as a financing method for occupational pensions.

In 1917, tax provisions became even more important as these incentives were coupled with a *third* early initiative, the establishment of the Norwegian Public Servants Pension Fund (Statens Pensjonskasse). This public PAYG-plan acted as a norm for funded tax-stimulated pension schemes, concerning level of benefits and how these were calculated. No tax stimulated occupational pension schemes were allowed to provide higher benefits than the Norwegian Public Servants Pension Fund. This also prevented any emergence of a market for defined contribution pension plans to take place (Øverbye 1991). From the early 20th century and until the 1960s an institutionalisation of occupational pension schemes developed, where earning-related, insurance-based, defined benefit pension schemes became standardised.

4.2.3 Risk management in a paternalistic regime

As a starting point of analysing changes on the scopes of assets, access and authority, I shortly assess how these were organised before regulatory reforms started in the late

[40] In a letter to the government dated 1906, leaders from eight Norwegian life insurance companies claimed that the international character on fire insurance *"hører slet ikke hjemme paa livsforsikringens felt",* and that policies stressing that *"forsikring udelukkende bør tegnes i indenlandske selskaper"* should be encouraged (quotes cited in Knutsen and Ecklund 2000: 53).

1980s. Attention is given to life insurers, as pension funds in this period were primarily subject to the provisions laid down in the Tax Bills.

4.2.3.1 Scope of assets

The 1911 insurance act's most important objective was to attain maximum security for fund members' benefits. The insurance act therefore set forward detailed portfolio regulations for ensuring that assets were allocated in respect with this objective and to prevent undue investment risk. In 1961 some amendments were carried out, which opened for allocations in equities. Total investments in Norwegian equities and property was however not to exceed 15 percent of life insurers' balance (NOU 1983: 52, p 45). Custodians of occupational pensions were however not only subject to the social regulations laid down in the 1911 insurance act. During the post-war period a form for *"strategic capitalism"* developed, where ambitions concerning industrialisation- and industry development gained foothold in the regulatory framework (Knutsen & Ecklund 2000: 236). Consequently, several constraints were imposed on financial institutions' investment opportunities in order to channel credit into political prioritised sectors and companies. A monetary and credit act implemented in 1965 empowered Norwegian authorities to require that at least 60 percent of financial industry's assets held at custody were allocated in Norwegian bonds. Moreover, custodians' investment universe was provided by a governmental list of "high quality" securities.[41] Foreign exchange regulations made foreign investments unfeasible.[42]

4.2.3.2 Scope of access

The product standardisation of occupational pensions due to the tax regulations led to a de facto monopoly situation for life insurance companies and pension funds, which distributed insurance-based, defined benefit pension products. In order to ensure plan members economic security, Norwegian authorities set forward detailed licensing regulations in 1911, which were to be met in order to carry out these services. For life insurance companies a two-folded objective was laid down: to trammel owners and industry's self interest in employing assets held at custody as means for achieving individual objectives and to prevent against any strong foreign ownership (Sejersted

[41] Equities did only count for a few percent of total investments until the late 1980s (Kvinge et al 1992).

[42] The insurance industry was not enthusiastic about the investment requirements imposed on insurance companies, as they conceived themselves as socially, not financially motivated actors (Knutsen & Ecklund 2000: 201-202).

1993). Licensing regulation restricted in this way competition. Competition was however also constrained by industry's own market regulatory initiatives. These put emphasis on cooperation and cartel activities rather than competition. Both authorities and insurance industry considered that too much competition in the market would weaken solidity and consumer confidence and consequently harm public interest (Knutsen and Ecklund 2000; Myhre 1996). In the post-war period societal demand for insurance was employed as a key direction for granting license.[43] Moreover, a strong flavour of local and regional policy considerations led to ambitions of a *"decentralised centralisation"* of Norwegian financial sector, rather than building strong national financial institutions (Knudsen and Ecklund 2000). Foreign ownership in Norwegian financial institutions was restricted.[44] Foreign life insurers were however allowed to establish affiliates in Norway, but these were not eligible to provide and manage tax-stimulated occupational pensions, due to national and paternalistic arguments.[45] This also concerned cross-border provision of life and pension insurance, which was not allowed.

4.2.3.3 Scope of authority

The design of Norwegian occupational pensions has emerged as a bi-product of public regulations, in particular tax regulation, rather than a negotiated outcome between domestic labour groups and the government, which occurred in Sweden (Øverbye 1991). These plans are an integral part of Norwegian welfare policies. Social elements were therefore from the start embedded in the insurance act. The Ministry of Social Affairs exercised the regulatory authority. Social measures were also clearly set out in the Tax Bills. Norwegian authorities have consequently carried out product control both in the insurance legislation and in tax regulation. The Norwegian regime has from the start relied on the EET model, where sponsors' contributions and returns on investments of accumulated funds are exempted taxation, while pension benefits are taxed in retirement. In the post-war period, when the Beveridgean model gained popularity, the social objectives embedded in the tax regime were extended to also concern the principles of

[43] As a result, only three Norwegian life insurance companies gained access from the late 1930s to the mid-1980s (NOU 1983; 52: p 157). The only alternative was to set up own pension funds.

[44] In the 1980s foreign ownership was not to exceed a 15 percent share in a Norwegian life insurance company (St. meld 31 (1989-1990)).

[45] A common view was that foreign actors in Norwegian markets would diminish control and supervision carried out by Norwegian regulatory bodies. Moreover, due to security, control, language, judicial issues, etc., consumer protection was also regarded better if Norwegian financial institutions managed pension benefits (NOU 1986; 5: 168).

egalitarianism and proportionality. Amendments in tax bills in 1968 laid down a comprehensive regulatory framework for occupational pensions on these matters.[46] Moreover, strict product regulation and control of custodians investments, made any regulations on capital requirements redundant in this regime. Emphasis was put on attaining the general good and social policy motives, rather than financial stability and solvency controls.

4.3 TOWARDS A PRUDENTIAL RISK REGIME?

The initial position of the Norwegian risk management regime was arguably paternalistic oriented on all scopes assessed in this context. This regime has proved very stable until the 1980s. The rest of this chapter focuses on developments over the last two decades. In this period there have been frequent and substantial changes on these matters. A key question is to what extent these changes have led to a regime shift in a prudential direction? This is also been a period where European integration has extended to ever-new policy areas and moved towards deeper integration. The scope of next chapter is therefore to elaborate on any impact of European market integration on changes in the Norwegian regime as presented in this chapter.

4.3.1 Scope of assets

The section assesses to what extent strategies toward international equity markets are reflected in Norwegian portfolio regulation and custodians' asset allocation. More importantly, has a detailed portfolio regulation characterised by substantial restrictions on investments abroad and in equities been replaced by a liberal prudential framework, where asset allocation are mostly biased towards international diversification?

4.3.1.1 Changes in portfolio regulation

Some of the detailed portfolio regulation for fund managers was removed in the 1980s,[47] while other regulations were liberalised. In 1988 a new insurance act was adopted, which modernised and revised the insurance act of 1911. At the same time, a comprehensive act for financial institutions was adopted.[48] The so-called 1988 reforms reflected the market

[46] See *Regulation no 3 June 28 1968* and *Regulation no 9451 October 27 1969*. Until then, a practice where different groups in the labour market were treated unequally in private pension schemes, and where benefits were measured out for each individual on an approximate basis, was carried out.
[47] The obligations to invest in bonds were removed in 1985; Karlsen and Nilsen 1997:392).
[48] *Insurance Activities Act of June 10 1988 no 39 and Act no 40 June 10 1988 concerning financial activities and financial institutions*

ideology of the 1980s and liberalised the regulatory framework on several issues. A separate portfolio regulation for insurance companies was implemented, which stressed that *"assets were to be managed due to considerations about security, risk diversification, returns and liquidity"*.[49] Hence, the prudent man principle of risk diversification was implemented into Norwegian legislation.

Even though the 1988 reforms led to some liberalisation on portfolio regulation, substantial quantitative restrictions on investments remained. Maximum equity exposure was first set to 12 percent (Knutsen 2000: 275; Nordby 1996: 20) and then lifted to 20 percent in 1990. Moreover, holding shares issued in one company were first not to exceed 10 percent of the respective company total stocks, and later raised to 15 percent in 1990. Furthermore, restrictions were also set on other assets regarded as risky or illiquid.[50]

During the 1980s, Norwegian foreign exchange regulations were gradually removed (St. meld. no 2 (1989-90): 75). Life insurance companies were consequently allowed to invest abroad and diversify risk into international equity markets. Due to concerns about exchange rate risk, provisions of currency matching were however set forward. These stressed that custodians of pension insurance were at any time required to hold at least 80 percent of its financial assets in the currency of which its insurance liabilities are located. If all liabilities remain in Norway, these functionally legitimised provisions meant a de facto restriction on foreign investments to 20 percent of insurance-based assets.

In 1993 the insurance act and many of its adjoining regulations were also applied on pension funds.[51] From this point, all pension fund managers were more or less subject to the same regulatory provisions on asset management. The new framework liberalised investment restrictions laid down for pension funds, but did also implement new restrictions and requirements. Pension funds were for example not to possess stocks,

[49] *Regulations on asset management, September 8 1989 no 930.*

[50] Maximum 30 percent was allowed invested in loans not guaranteed by the Norwegian government, local governments and Norwegian financial institutions; loans guaranteed by certificates issued by others institutions than mentioned above; and investments in illiquid property.

[51] *Regulations on Incurance Activities Act's applications on pension funds, February 19 1993 no 117, the so called pension fund regulations.* Pension funds had for a long time not been regarded as insurance activities, as they did not distribute services beyond the company for which they were established.

shares or any forms for own capital in the enterprise, for which it was established.[52] In 1997 the portfolio regulation for life insurers and pension funds was revised and replaced by a new asset management regulation,[53] which led to a more detailed regulation of investment opportunities. In 1998 the investment ceiling in equities was further lifted to 35 percent for custodians' technical provisions of insurance-based liabilities (Kredittilsynet: 1998).

At the turn of the century Norwegian authorities advocated that this limit was not to be interpreted absolutely, but applied to the extent of custodians' risk bearing capacity (e.g. regarded in relation to the size of buffer capital, se chapter 4.3.3). In 2001, custodians were required to assess so-called stress-test analyses on a current basis to examine whether buffer capital is adequate in relation to actual market risk exposure on assets.[54] The objective is to assess how any negative developments in markets affect fund managers´ balances and capacity to meet its liabilities. According to Kredittilsynet (2007), such tests have now become a central tool in custodians' asset management. Stress tests are arguably a step towards more prudential risk-based supervision, where quantitative restrictions on assets are not interpreted as absolute measures anymore.[55] According to the MoF, these tests are primarily to be employed as a supervisory tool in asset management, and should not be regarded as something which should lead to formalised requirements on asset allocations (ibid: 45). Hence, investment ceilings prevail.

From the 1980s and onwards product developments in financial industry have blurred the line between life insurance products and general saving products.[56] Capitalised saving products on a defined contribution basis (DC) were however not incorporated into the Norwegian tax regime for occupational pensions until 2001.[57] Unlike DB pension

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52 Other forms for securities issued by the sponsor as, well as loans to the company, were not to exceed 20 percent of the fund's assets.

53 *Regulations in asset management, April 23 377 no 377.*

54 Stress test analyses allow custodians to consider their capacity to bear losses on investments in securities. As a minimum these analyses should entail the capacity to meet following stress-scenarios: a 30 percent downturn on the Oslo Stock Exchange, a 20 percent downturn in international equitiy markets, and a parallel shift in interest rates of 2 percent in international and Norwegian markets (Kredittilsynet 2001). If necessary, stress tests should also entail assessments on exchange-rate risk.

55 The solidity norms reflected in stress tests are rather based on a qualitative approach, where risk-models apply more directly to each financial institution's positions than any pre-determined quantitative investment ceilings.

56 An important distinction between insurance products and saving products is, however, that while the first promises certain benefits or guaranteed returns on investments, the latter do not entail such forms for insurance.

57 Defined contribution plans (DC) were allowed for individual pension schemes (IPA) in 1997.

schemes, which mostly have been managed on a pooled basis, portfolios of DC plans were required organised separately, due to the absence of risk sharing elements. In a DC pension plan each fund member is allowed to make his or her own asset allocation and freely design its portfolio.[58] Consequently, investment risks are individualised, borne by those that determine the asset allocations. The emergence of DC plans in the Norwegian occupational pension regime represents a major liberalisation regarding portfolio regulation and risk management policies.

In 2006 a new insurance act was implemented, which provided a new structure for how to categorise life insurers´ portfolios into three classes (cf. NOU 2001: 24)):

- *A jointly pooled portfolio covering all technical provisions due to its insurance-based liabilities, which is subject to quantitative portfolio regulations set forward as risk is borne by custodians.*
- *Individual investment portfolios of unit-linked/DC products, where allocations are carried out based on individual preferences. Market risk is then borne by each employee.*
- *Custodians' own funds (free assets), which are to be employed in cases of insolvency, but invested freely by custodians.*

A revised asset management regulation for life insurers and pension funds is in preparation and is expected to come into force in 2008. It is expected that this would liberalise investment ceilings, but it is yet not clear how much, cf. chapter 5.2.

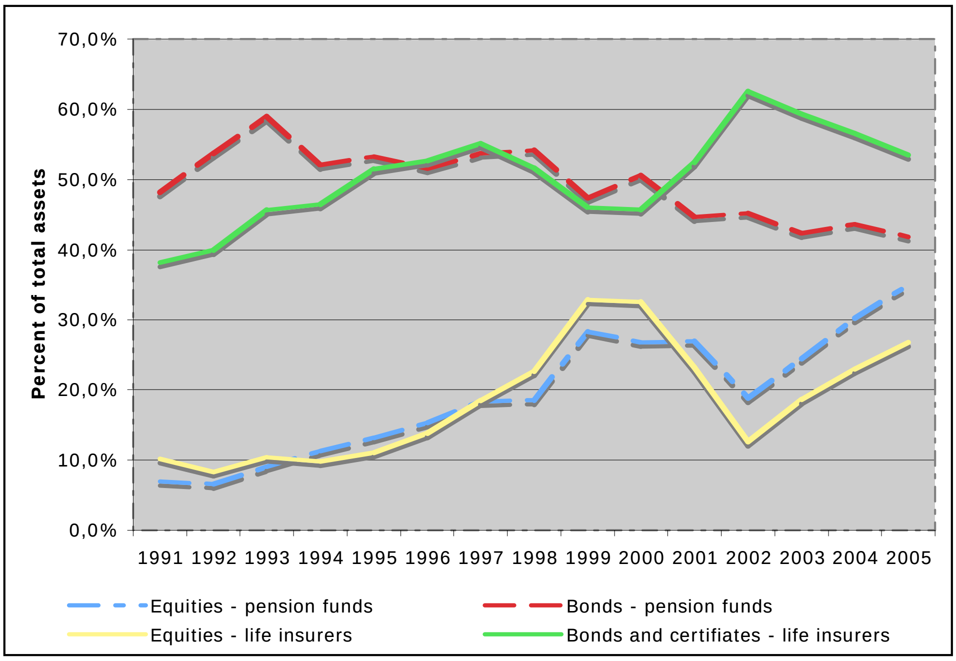
4.3.1.2 Changes in custodians' asset allocation

The changes in Norwegian portfolio regulation for life insurance companies and pension funds indicate a gradual move in prudential direction. How is this reflected in custodians' investment pattern? Figure 4.1 demonstrates that one of the most profound changes during the 1990s has been the growing importance of equities. This concerns both life insurers and pension funds. For life insurers equities accounted for about 10 percent of total assets in the early 1990s. At the turn of the century, equities accounted for about 1/3 of total assets. For pension funds the relative share in equities has risen even faster, from about 6 percent of total assets in 1990 to 27 percent in 2000. The turmoil in international securities markets from 2000 led to a substantial fall in pension funds and life insurers exposure in equities. As figure 4.1 illustrates, this concerned life insurers in particular,

[58] The portfolio might be composed of shares in securities funds, shares in specific investment portfolios and/or cash denominated in bank deposits.

where the exposure in equities in 2002 was reduced to the level of the early 1990s. Life insurers have thereafter been more reluctant to invest in equities than pension funds.[59]

Figure 4.1. Investments in equities and bonds for pension funds and life insurance companies 1991-2005. Percent.[60]



In spite of increased investments in the equity markets, and deregulation of bond-related investment requirements, bonds have sustained its position as the most important investment category. A long-term trend in the asset allocation has also been the declining importance of loans as an asset category.[61]

Investments in foreign securities markets did also increase substantially during the 1990s and represented a universal trend in asset allocation. Figure 4.2 reveals that life insurers and pension funds' foreign investments have proved a growing importance in this period. In the early 1990s life insurers' allocations in foreign equities and bonds were less than 20 percent of total investments in these securities. In 2000 more than 60 percent of the allocation in equities were invested abroad. Pension funds, which were not allowed to

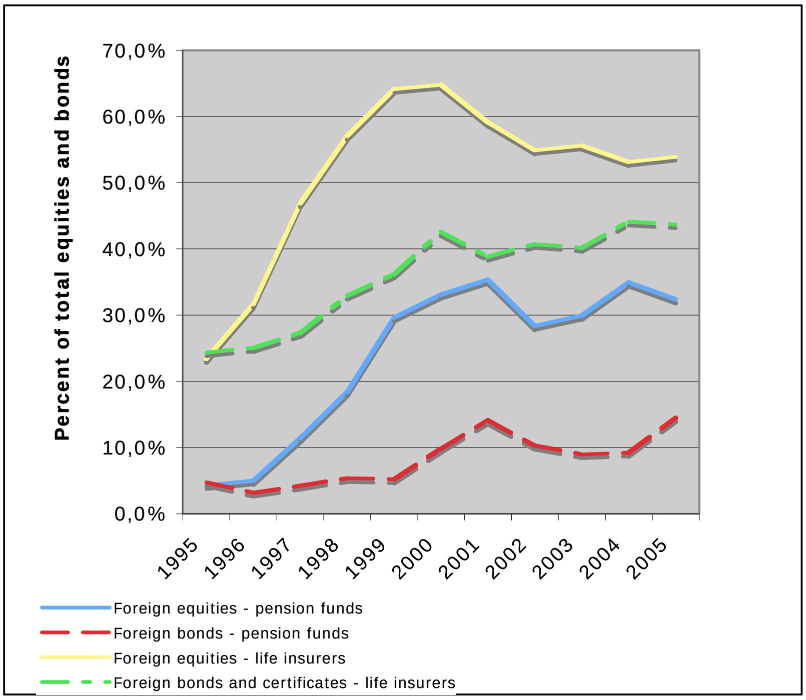
[59] Private pension funds have been more exposed in equities than municipal pension funds.

[60] The figure derives from numbers provided by SSB´s bank of statistics (http://statbank.ssb.no/statistikkbanken). Prior to 1997 these numbers rest on booked values, while from 1997 an onwards market values are employed in SSB statistics. For pension funds both private and municipal pension funds are included.

[61] Loans have historically been an important asset category, due to the credit regulations that financial institutions were subject to in the post-war period.

invest abroad until 1993 when the asset management regulation for life insurance companies was employed on pension funds, have also increased its investments abroad. This concerns equities in particular. Pension funds have traditionally been more biased towards domestic markets than life insurers.

Figure 4.2. Pension funds and life insurers' investments in equities and bonds abroad as percent of total allocations in equities and bonds. 1995-2005[62]



Even though investments abroad have grown substantially, the figure also reveals that large parts of these custodians' assets are still denominated in domestic markets. When accounting for the size and importance of the Norwegian equity markets compared to European markets, the home-bias of fund managers´ investments are arguably still evident. Moreover, the figure reveals that in times of substantial economic turmoil and uncertainty, the domestic orientation of fund managers' investment pattern is reinforced. From 2000 and onwards the investments in international equities have been reduced, in particular for life insurers. According to statistics from SSB, more than 70 percent of the investments abroad are allocated into European markets (EU-15). About 30 percent of

[62] The figure derives from numbers provided by SSB´s bank of statistics (http://statbank.ssb.no/statistikkbanken). Prior to 1997 these numbers rest on booked values, while from 1997 an onwards market values are employed in SSB statistics.

the investments in European markets were allocated in the Nordic countries, which might add to the home-bias account.[63]

4.3.2 Scope of access

Based on last section, it seems that the trend towards prudence has been more distinct in portfolio regulation, than in custodians' asset allocation. This section observes to what extent strategies of cross-border activities are reflected in Norwegian legislation and in custodians' conduct of providing pension related services across Norwegian borders. Liberal licensing regulations and ownership legislation so that national borders are transparent both for foreign and domestic fund managers would in this case indicate a prudential orientation of the risk management regime.

4.3.2.1 Changes in licensing regulation and ownership legislation

Until the 1980s the Norwegian insurance sector was strongly biased towards national protection and limited competition. Liberalisation processes and market ideology of the 1980s led to a deregulation of industry's own market regulatory initiatives (cartels) and a modernisation of the financial regulatory framework (Knutsen and Ecklund 2000). The reforms in the late 1980s put emphasis on sustaining fair competition in Norwegian markets, rather than considerations about societal demand, which previously had been common. Hence, the Norwegian market for occupational pensions have since the 1980s increasingly been exposed to competitive dynamics.[64]

Norwegian authorities put however still substantial emphasis on measures to counteract the emergence of too powerful financial institutions.[65] The formal scope of access for foreign financial institutions, including foreign affiliates, was nevertheless increased under the 1988 reforms. These were then more or less granted licence on equal terms as Norwegian insurers concerning provision of life insurance services (Kjær 1992: 60). In

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[63] These numbers also include non-life insurance investments. Even though, Nordic countries are important, life insurers had large shares allocated in the UK, Germany and the US. Life insurance companies and pension funds, accounted in the late 1990s for about 30 percent of all Norwegian investments in foreign denominated securities (Sundell 2000: 35).

[64] This was amplified when the pension fund regulation became implemented in 1993. Due to the growing importance of pension insurance services for life insurers in particular and in society in general, pension funds were also increasingly regarded as competitors to life insurers in this period. Large parts of the life insurance legislation were therefore deployed on pension funds. Nonetheless, pension funds are only allowed to manage pension benefits for employees of the company, for which it is established. Hence, competition is only established as long as sponsors consider establishment of own pension funds' as an alternative to purchasing services from a life insurer.

[65] Domestic regional policy considerations were however considered more important than building international competitive institutions (Ecklund and Knutsen 2000; NOU 1986: 5).

1994 the principles of one single license under home country control were implemented in Norwegian life insurance legislation, which also concerned the freedom of cross-border provision of life insurance services.

While the scope of access on life insurance services was deregulated at an early point of time, the eligibility of tax deductible occupational pensions required that contributions were made to Norwegian licensed life insurance companies or pension funds. These entry restrictions implied that only *subsidiaries* of foreign life insurance companies were allowed to provide such services. In 2001 a comprehensive revision of the framework for occupational pensions was done. At the same time, EEA licensed *foreign affiliates* localised in Norway were also permitted to provide tax stimulated pension products. The requirement of being established in Norway was considered important, as this would reduce risk of tax fraud by employers or financial institutions, compared to cross-border provision where non-existent or not adequate sanction mechanisms were apparent (NOU 1998: 1; Bull 2002). Norwegian localisation would also make it easier to ensure that all custodians fulfil the social obligations embedded in tax stimulated occupational pension products.

As noted above, the 2001 pension reforms also allowed for tax deductibility on DC pension schemes. This extended the formal scope of access to include several types of financial institutions, e.g. banks and securities funds, in the provision of DC pension plans. Life insurance companies were until recently required to manage funds of these plans in separate unit linked companies.[66] The new insurance activity act, which was implemented in 2006, lifted the requirements that restricted management of unit-linked-insurance and DC pension plans to separate companies for life insurers.

In 2006 amendments in the occupational pension regulation were implemented, which abolished the requirements of establishment in Norway for foreign financial institutions in order to provide tax-deductible pension services (St. meld. nr 23 (2006-2007)).

[66] This relates to the strict licensing regulations on life insurance, which stress that only products containing some form of insurance element are allowed distributed by life insurers. Banks, unit-linked companies and securities funds are on the other hand not allowed to manage insurance-based DB pension products.

Consequently, foreign life insurance companies and pension funds may now fully engage in cross-border provision of fund management services for Norwegian occupational pension schemes.

Another powerful instrument to gain access and a solid foothold in Norwegian pension markets is by acquisitions and take-overs. Restrictions on foreign ownership in Norwegian financial institutions were liberalised in 1990, when foreigners were allowed to own maximum 33 1/3 of a financial institution (Husevåg 1994). This restriction was removed in 1995. The only ownership restriction which remained was the so-called ten percent rule, which concerned both Norwegian and foreign shareholders of financial institutions. This rule set maximum ownership in a Norwegian financial institution to a 10 percent share (NOU 1998: 14).[67] Its objective was to ensure independent financial institutions and an independent financial sector, and to counter any undesirable concentration of economic power in the society (NOU 2002:3).[68] In 2003 new ownership legislation was adopted, which put an end to the absolute 10 percent rule. Ownership legislation is now based on a system of more approximate judgements, where any shareholders that desire to aquire more than a 10 percent stake are required to apply to the authorities when trespassing intervals of 10, 20, 25, 33 and 50 percent ownership (Ot. prp. nr 50 (2002-2003)).

4.3.2.2 Changes in Norwegian market structure and fund managers orientation

The regulatory scope of access has consequently been liberalised in a step-by-step manner during the last two decades and increased the potential of actors that might engage in the provision of occupational pension services substantially. This concerns both financial institutions domestically, and from abroad. To what extent are these reflected in the structure of Norwegian fund management market and Norwegian custodians' proneness to go abroad?

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[67] Some exceptions were however found. Financial institutions may hold a larger stake if legitimidsed in strategic copperation, or fully own another financial institution.

[68] Consequently, the 10-percent rule could in this case be considered as a remnant of the old regime's objectives to trammel industrial ownership of financial institutions. Today, it is also considered an important instrument to attain over-all structural objectives in the financial sector; e.g. to ensure that ownership structure do not conflict with competition considerations and solidity concerns.

In 1990 11 life insurance companies were licensed, of which the four largest (UNI, KLP, Storebrand, Vital) accounted for about 80 percent of total life insurance assets (St. meld. 9 (1991-1992).[69] At the same time there was 143 private pension funds and 40 municipal pension funds. In 2006, 9 life insurance companies, 91 private pension funds and 28 municipality pension funds were in activity (Kredittilsynet 2007). There has consequently been a decline in the number of Norwegian licensed life insurers and pension funds. Moreover, a further concentration of life insurance assets seems to have occurred. At the end of 2005 three life insurance companies (Vital, KLP and Storebrand) comprised for about 90 percent of total life insurance assets.[70] Life insurance companies represent a market share of more than ¾ of the defined benefit occupational pension market (Aamo 2002). Pension funds account for the remaining share. From 2001 securities funds and banks were also allowed to set up tax-deductible DC occupational pension schemes. It seems however that more than 90 percent of these schemes have been established in a life insurance companies (FNH 2007). Banks have in particular played an insignificant role.

Foreign entrance into Norwegian life and pension insurance markets has been rare until the late 1990s.[71] The only foreign-owned *subsidiary* of some significance in Norwegian life and pension market is Nordea life.[72] The importance of foreign *affiliates* and financial institutions engaging in *cross-border provision* in Norwegian life and pension markets is insignificant. Even though, an increasing number of foreign financial institutions have notified Kredittilsynet in accordance with EEA regulations about their desire to take part in the Norwegian market,[73] the actual significance of foreign life insurers has been much more modest. According to SSB (data provided on my request), only 8 foreign affiliates are actually present in the Norwegian markets. Total assets held in custody by foreign affiliates accounted in 2005 for about NOK 6 billion. Their minor importance must primarily be regarded in relation to Norwegian tax regulation and the practice of tax-

[69] This share has traditionally been even more concentrated when considering these institutions' respective share in the occupational pension market (excl. pension funds). KLP, did for a long time retain monopoly in the municipal pension market, while Storebrand maintained a dominant position in the private sector.

[70] Estimates based on FNH (2006b)

[71] In 1990, only two Swedish life insurance companies were present in Norwegian life insurance markets (St. meld. no 9 (1991-1992). Due to the practices carried out in Norwegian tax regulation, these were however not allowed to manage tax deductible pension schemes.

[72] This occurred when Kreditkassen was acquired by Merita Nordbanken in 1999. Nordea life has a market share of about 5 percent in the Norwegian market for life and pension insurance (Kredittilsynet 2007b).

deduction. Table 4.1 illustrates the insignificance of import of such services compared with total domestic production and consumption. This might however change in the future, as access to tax stimulated pension schemes has been liberalised lately.

Table 4.1. Life insurance and pension fund services. Annual production and consumption, exports and imports. NOK mill.[74]

	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Life insurance services													
Norwegian production	3414	2397	2481	2820	2900	2186	2384	2278	2225	947	3334	4778	4876
Imported services	3	2		1	5	7	16	79	29	3	9	17	
Exported services	9	25	17	12	25	52	27	18	41	16	162	61	
Norwegian consumption	3408	2374	2464	2809	2880	2141	2373	2339	2213	934	3181	4734	4876
Pension fund services													
Norwegian production	-138	219	634	473	439	430	507	437	46	50	243	361	496
Norwegian consumption	-138	219	634	473	439	430	507	437	46	50	243	361	496

Table 4.1 also reveals that Norwegian life insurance companies' engagement abroad (export) has been insignificant. Any cross-border transactions for pension funds have not taken place. Again, this must primarily be regarded in relation to tax regulation and practices on tax-deductibility across Europe, cf. chapter 3. In 1999 Storebrand established the subsidiary Euroben in Ireland in partnership with two Swedish life insurers. The objective was to provide pan-Scandinavian pension schemes for Scandinavian multinationals, which was not tax-deductible in Norway. A few years later this project was closed down due to failing interest among Scandinavian multinationals. In 2005 Storebrand established an affiliate in Sweden to market occupational pension services in the Swedish market. In sum, the Norwegian initiatives in life and pension markets abroad have been trivial.

There has been a tendency for pension funds to outsource its asset management to more specialised management companies. The domestic orientation is however also evident on these matters. According to the pension fund inquiry, which I have carried out (cf. annex 1), none of the responding pension funds have discussed moving parts of asset management abroad, even though this meant more advantageous regulatory terms. This inquiry also reveals that about 70 percent of pension funds purchased all or some asset

[73] The notification procedures are important elements for achieving the EEA principles of one single licence subject to home country control and mutual recognition of regulatory and supervisory bodies.
[74] Numbers are provided by SSB on my request, cf. also Hansen and Olsen (1998: 32-33).

management services from other custodians. Less than two percent, however, have to some extent purchased financial and judicial services from foreign institutions. Hence, pension funds prove a strong reliance on Norwegian actors on these matters.[75]

To conclude, even though the regulatory scope of access has been liberalised in a step-by-step manner during the last two decades, these markets are not characterised by transnational activities and any competition in this market mainly remains within Norwegian borders.

4.3.3 Scope of authority

The last section of this chapter assesses how regulatory authority is designed and carried out. This concerns to what extent a few prudent market-conform regulations have become more important than providing a regulatory framework that put emphasis on social objectives and fund security. I will particularly address issues that have relevance for asset management.

4.3.3.1 Fiscal regulations and social policy objectives in occupational pensions

Issues of social distribution are vital in the Norwegian pension system. Due to tax deductibility, occupational pensions have been a key element in Norwegian welfare provision since 1911. Premiums and contributions made by employers or employees and the investment returns on accrued funds are exempted from taxation, while payments in retirement are taxed. According to the National budget for 2007 the loss of tax income (so-called tax expenditure) was calculated to NOK 14 billion in 2006 (St. meld. nr. 1 (2006-2007)).[76] This is a considerable amount compared to equivalent tax expenditure in 2000, which was calculated to NOK 2 billion (St. meld. nr. 1 (2000-2001)). The growth is primarily related to the increase in accrued funds and contributions to these pension schemes.

As noted, fiscal regulations have also been employed to shape the market for occupational pensions in accordance with some larger social objectives. Fiscal stimuli

[75] Norway is by no means a special case on these matters. A report from CEIOPS demonstrated that the cross-border development of institutions for occupational retirement provision has been modest. By the end of January 2007 competent authorities reported less than 50 cases that operated on a cross-border basis. (CEIOPS 2007).

[76] Cf. chapter 4.5. in St. meld. nr 1 (2006-2007) for more information in these estimates.

have been established (and legitimised with) in order to overcome the problems of short-sightedness regarding retirement savings. For Norwegian authorities, it has been important to maintain this regime and the social objectives comprised in tax regulations (St. meld 35 (1994-95)). Paternalistic arguments of inciting more long term saving for own retirement and continuance of a stable framework on these matters, as well as sustaining the social content and profile of supplementary pensions, have been stressed in debates on the relevance of tax stimulation in this context (NOU 1994: 6; St. meld. no 35 (1994-95)). Consequently, fiscal regulations have acted as a key catalyst for how the regime for occupational pension has been oriented and organised. Only funded plans that included earning-related, insurance-based, defined benefit pension schemes provided by life insurers or pension funds were tax-deductible. Embedded in these plans were then social elements and objectives concerning which risks that were considered politically acceptable and how to prevent undesired risks. Such social elements were embedded in both insurance legislation and tax regulations.

While product control in the life insurance act became deregulated during the 1990s, the product control remained in the tax provisions until 2001. Then defined contribution pension plans (DC) were made tax-deductible and incorporated into the Norwegian regime. These pension reforms represented unprecedented changes for the traditional Norwegian regime, where principles of tax exemption had been rather stable for almost a century. As noted, risk is borne by each fund member in these plans.[77] For custodians, however, these schemes imply a less comprehensive regulatory framework to take into consideration compared to the framework for defined benefit pension schemes (DB). Asset management are arguably more easily performed in these saving based plans than for the insurance based plans.[78] Consequently, these products are apparently regarded more market-conform than traditional insurance-based DB plans.

The impact of DC pension schemes in the Norwegian regime was however modest until occupational pensions became mandatory in 2006 (FNH 2007). Then, all employers were

[77] In cases of substantial market volatility no compensation is offered for losses on members accrued benefits, which is the case in traditional DB pension schemes. Only contributions are fixed in DC plans, while life-long benefits are not guaranteed.

compelled to establish a pension scheme for all employees and to include those with a 20 percent position or more (NOU 2005:15; Ot. prp nr 10 (2005-2006)). According to a Fafo study about 600 000 employees in private sector were not covered by any occupational pension scheme (Veland 2004). It seems that most of these new contracts were signed in DC pension schemes. In 2005 less than 5 000 DC contracts had been signed, while this numbers exceeded 60 000 contracts in 2006 (FN 2007). At the same time, the number of DB pension schemes that were transposed into DC pension schemes doubled. Hence, even though DB pensions still represent a majority of Norwegian 2nd pillar pension plans, DC pensions have gotten a solid foothold and represented a market share of 18 percent in the life insurance companies in 2006 (ibid).

Moreover, as noted above fiscal requirements of presence in Norway in order to provide tax-deductible occupational pension services in Norway were abolished in 2006. This would arguably pose challenges to the Norwegian tax authorities´ ability to maintain tax control and to prevent tax fraud on issues of tax exemptions to schemes registered abroad. Furthermore, it would challenge Norwegian supervisory authorities´ ability to control that custodians provide pension services in accordance with Norwegian tax regulations. An overview of foreign pension funds that offer pension schemes can best be obtained by the introduction of a reporting obligation (Ot. prp. nr 1 (2004-2005).

On the other hand, the social principles of egalitarianism and proportionality have been carried on in the new pension regime for both DB and DC pension schemes and even extended on some key issues.[79] A key element in Norwegian welfare state policies is the norm about equal treatment between men and women. This norm has however been difficult to attain in occupational pension provision, due to different demographic patterns between genders. A typical DB product would compel sponsors to make higher contributions for women than men in order to safeguard equal pension benefits for men and women in retirement. This might however have distorting effects on women in the

[78] While administration costs in a DB plan are about 25 to 30 percent of total pension costs, this percentage is only 5 to 10 percent in DC plans, according to an insurance broker (Økonomisk Rapport 19/2002).
[79] In DC plans the principle of egalitarianism refers to requirements that all employees in a company are to be included in the pension scheme in order to gain tax deductions, and that contributions are measured on an equal basis for all fund members.

labour market as it might produce disincentives to employ women. The debate on gender-neutral contributions has been accentuated due to two separate developments.

- When DC pensions became implemented in the Norwegian regime the issues of equality, proportionality and neutrality in relation to gender got a new dimension. In order to achieve these principles, i.e. to prevent that annual pension payments are determined by different longevity between genders, employers that set up DC pensions schemes were obliged to set higher for women than men (cf. NOU 2001: 27). This was adopted in 2002, cf. chapter 5.3.1.
- Moreover, the aspects of gender and age neutrality in DB pensions were also raised to the political agenda. The demographic differences between men and women have traditionally been regulated differently in private and municipal life insurance companies. While gender and age neutral pension products have been allowed in municipal sector, this has not been allowed in private sector. In 2006 it became allowed to distribute gender-neutral pension schemes on a voluntary basis also in private sector (St. meld. nr. 23 (2006-2007)), cf. chapter 5 for more information on these issues.

4.3.3.2 From product control to consumer protection and increased emphasis on solidity measures

Strict product control and detailed control of custodians´ investments had made any regulations on capital requirements redundant. These provisions were implemented to reduce risks for economic failure, among other things. Emphasis was put on attaining social policy motives, rather than financial stability and solvency controls. The 1988-reforms changed some of this. The 1988 reforms were more biased towards enforcing increased competition in Norwegian financial markets.[80] Moreover, a general trend towards liberalisation of several regulatory requirements in the old regime started. This was supposed to benefit customers greatly, but also called for improved consumer protection and fund security. Several measures were carried out to achieve these objectives, e.g.:

- Transcripts disclosing accrued benefits and returns on accumulated funds that exceeded the promised interest rate were to be issued annually by custodians

[80] Custodians of occupational pensions resorted to the Ministry of Social Affairs until 1986. Then these came under the regulatory responsibilities of the Ministry of Finance. During the last decades much regulatory competencies have been delegated to Kredittilsynet.

- At least 65 percent of returns exceeding the promised interest rates were to be distributed to customers' accounts on an annual basis. Funds transferred were irrevocable.

- Portability rights were adopted to increase competition and to ensure that customers didn't lose accrued rights when changing custodian

Improved solidity measures also became increasingly urgent for Norwegian authorities in order to sustain financial stability and fair competition among financial institutions and to protect consumers (St. meld 2 1991-92). Capital adequacy regulations were implemented for insurance companies in 1991 and pension funds in 1993. Custodians were then required to hold a capital base (reserves) of 8 percent in order to be operational. This capital is considered as an important buffer against substantial under-capitalisation in situations of considerable market instability. Assets are to be rated by risk based on the different items on custodian's balance sheet. Hence, the capital adequacy requirements reflect the risk profile of custodians' balances, and might therefore also have an impact on how assets are allocated.[81] These requirements first and foremost address credit-biased risks, which is the benefit for creditors. Their objective is to secure creditors' assets and to hinder panic if a financial institution should fail, which eventually could cause instability in the financial system. The liability side is not accounted for in these requirements. Arguably, these requirements are not in particular biased towards the kind of market risk that custodians are mostly exposed to.

In the mid 1990s several new solidity measures were implemented (St. meld. no 13 (1994-95)).

- In order to prevent pension providers in outbidding each other, a fixed ceiling on maximum guaranteed interest rate to fund members in defined benefit pension schemes was implemented in 1993.[82]
- Another key solidity measure was to improve fund managers opportunities to establish buffer capital exceeding capital requirements, which could be deployed in

[81] The calculation base consists of assets held by the financial institution multiplied with the risk weight for the different asset categories. Equities are rated with a 100 percent weight, while bonds are given a 20 to 50 percent weight. These are considered as expressions for the risk of loss, which the particular asset entails (NOU 2000: 9, p 121).

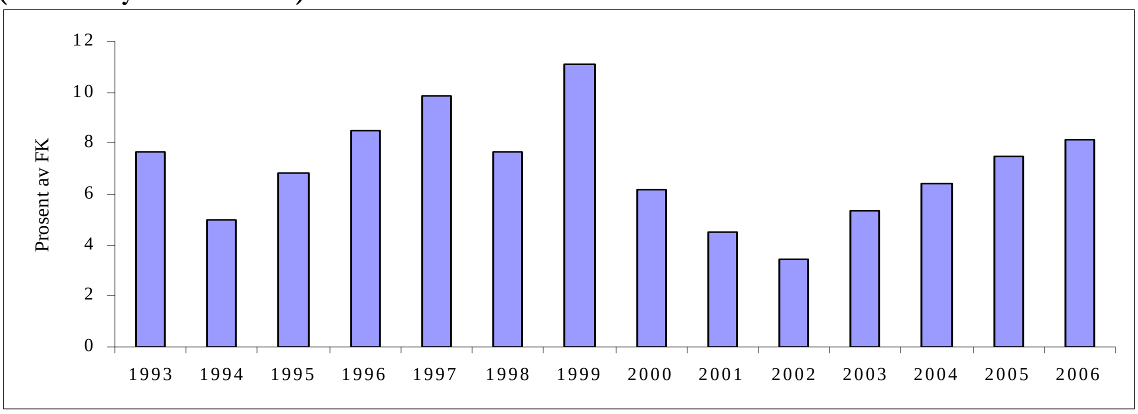
[82] Due to the long-term relationship of pensions and uncertainty of short-term market returns, it was considered important to keep interest rates at a reasonable level. A promise of high interest rates would reinforce market risk for custodians, while low interest rates would put more market risk on sponsors, as employees are entitled to a future defined benefit. The interest rate was

periods when market returns was lower than guaranteed interests. Both carrot (tax stimuli) and stick (instructions) were employed. These buffers would benefit long-term management by making it more advantageous to hold larger stakes in equities characterised by short-term volatility but that are likely to provide higher returns in the long run.[83]

- In 1995, solvency requirements were implemented (but only for life insurers). Unlike capital adequacy requirements, these are calculated on conditions concerning the insurance activities themselves, and stem from considerations about insurance risk and scope of liabilities that an insurance company holds. The objective of solvency requirements therefore is to ensure that life insurance companies are able to meet its liabilities at any time. This means that Norwegian life insurers are required to achieve two sets of minimum capital requirements.

Different forms of buffer capital have gained increased importance in the risk management framework and custodians' capacity to deal with market risks. Figure 4.3 demonstrates how size of this capital might fluctuate in time due to market volatility. Substantial cross-institutional variance might also exist. Pension funds have also demonstrated growing buffers, and these did in 2006 account for about 17 percent of total assets, i.e. twice of life insurers´ buffers (Kredittilsynet 2007b: 30).

Figure 4.3. The development of buffer capital in life insurance companies. Percent of total assets. (Kredittilsynet 2007b: 28)



not to exceed 3 percent per annum for new contracts. In light of low level of interest rates, this was set to concern all pension schemes in 2004, regardless of the date on which the contract was entered into (St. meld. nr 37 (2003-2004).

[83] Detailed provisions of how returns on these buffers were to be shared between customers and custodians were also set forward.

Not all of these policies which have been set forward to ensure fair competition in a framework that also put emphasis on consumer protection and fund security can be regarded as market-conform regulations. Parts of the measures set forward arguably favours short-term asset management on long-term liabilities by reducing custodians´ capacity to hold equities (in particular in cases of low buffers) and at the same time fulfil the short-term requirements that are set forward in regulations (Kredittilsynet 2003).[84] This concerns for example that the returns exceeding the guaranteed interest rate are to be allocated on an annual basis. These requirements must be considered as a general distrust to markets when it comes to ensuring affordable benefits for fund members in the long run.

A new insurance act (the act on insurance companies, pension funds and pension companies and their activities) was implemented in 2006 (St. meld. nr 23 (2006-2007)). This provides a clearer distinction between the assets of the insured and those of the company, a clearer distribution of risk between customer and company and a clearer pricing of life insurance products. One objective is to avoid unintended effects on asset management.[85] In general the new legal framework stresses that:

> *"innslaget av handlenormer i den offentlige reguleringen kunne reduseres og erstattes" av et regelverk utformet som et "rammeverk" for markedsaktørenes handlefrihet supplert med bestemmelser som fastlegger "de ytre grenser" for handlefriheten (NOU 2001: 24, p 18; NOU 2004: 24).*

How to enable long-term asset management and at the same time ensure desired consumer protection, solidity and fund member security are complicated issues, which are still debated and in process.

To conclude, the scope of authority has not been changed in a clear-cut direction. Changes have entailed liberalisation, introduction of more market-conform pension products and more emphasis on competition on the one hand, and substantial re-regulation and continuity (and even extension) of key social principles on the other hand. It seems that the re-regulatory efforts have been more widely employed than characterised

[84] In particular this concerned the combination of portability rights and annual distribution of returns to customers' accounts, which has entailed increased complexity for custodians (e.g. concerning ownership of assets) and might also have harmful consequences for asset management.

by any prudential framework. More emphasis has however been put on financial regulations which primary objective is to ensure financial institutions´ solidity.

4.4 SUMMARY – BETWEEN CHANGE AND CONTINUITY

Occupational pensions are of growing importance in Norway. At the same time, there are long traditions for relying on funded pension schemes, which dominates Norwegian second pillar pension provision. A Norwegian regime for occupational pensions came into force about 50 years prior to the establishment of the National Insurance Scheme. In chapter this chapter I have assed to what extent the Norwegian regime has been transposed in a certain direction concerning how to deal with risks in fund management of occupational pensions. A common regime distinction on these matters is between paternalistic and prudent man regimes. I have therefore analysed the development along three dimensions (the scopes of assets, access and authority) in order to examine if there has been a regime shift. Attention has been given to both regulative policy output and market behaviour outcome.

My argument is that this regime at an early point of time took a national, paternalistic orientation. Moreover, the Norwegian regime for occupational pensions was rather stable for almost a century. From the late 1980s, considerable regulatory activities have taken place. During this period, changes in Norwegian portfolio regulation for life insurance companies and pension funds have indicated a gradual move in prudential direction. A fully prudential framework is however yet to be implemented. A more liberal investment regime has led to increased importance of international equity markets. Nonetheless, large parts of custodians´ assets are however still allocated in Norwegian markets. Moreover, even though the importance of equities in asset allocation has increased, their role has been rather modest compared to equities ceilings set forward.

The regulatory scope of access has also been liberalised in a step-by-step manner during the last two decades and has substantially increased the potential of actors that might provide occupational pension services. These steps have occurred in life insurance

[85] Ownership of funds is now suggested categorised into three portfolios; one jointly pooled portfolio covering insurance liabilities; one consisting of individual investment portfolios; and finally custodians' own capital (cf. 4.3.3). Custodians' ownership of surpluses is suggested limited to any returns on own funds, while customers are entitle to returns on other funds.

legislation, tax regulations and ownership legislation. The formal scope has been extended for both domestic financial institutions (banks and securities funds), and for foreign financial institutions. Nonetheless, the impact of these changes on market behaviour has been very modest. These markets are not characterised by transnational activities and a domestic concentration within Norwegian borders are maintained.

The scope of authority has not been changed in a clear-cut direction. Changes have entailed liberalisation, introduction of more market-conform pension products and more emphasis on competition on the one hand, and substantial re-regulation and continuity (and even extension) of key social principles on the other hand. It seems that these re-regulatory efforts have been more widely employed than any prudential framework would have acknowledged. Re-regulatory emphasis has in particular been put on financial regulations which objective is to ensure financial institutions' solidity. Some of these have constraining effects on how asset management are exercised by custodians.

Given the changes on scopes of assets, access and authority as observed in this chapter, data do not provide a clear-cut conclusion on the question of regime change. The Norwegian risk regime has increasingly emerged as a hybrid model, it seems, between paternalism and prudence, between continuity and change. Furthermore, a general liberalisation of asset management regulations and deregulation of cross-border activities have led to re-regulation on other aspects in order to ensure security aspects related to fund management. A new framework is now in process to be implemented on life and pension activities. The new framework is likely to push the Norwegian regime further in a prudential direction. The impact on regime output and outcome remains yet uncertain.

One evident lesson is the complexity of life and pension insurance and the comprehensive and multi-faceted regulatory framework for risk management, under which these custodians are subject. Furthermore, processes of liberalisation have proceeded along with re-regulatory activities and initiatives. Next chapter assesses these developments in the light of the constraints and incitements produced by European market integration.

5 NORWEGIAN ADAPTATION TO EUROPEAN INTEGRATION

"Samtidig utgjør regelverket og reguleringsregimet for norsk finanssektor samlet sett rammevilkår som er av stor betydning for sektorens internasjonale konkurranseevne…Det er viktig at regelverket og reguleringsregimet til enhver tid utformes og praktiseres slik at det legges til rette for velfungerende finansmarkeder og en effektiv finansnæring. Det ikke minst nødvendig for å sikre norsk finansnæring mest mulig likeverdige konkurransevilkår. Sett i forhold til det omfattende internasjonale regelarbeid som pågår, som legger føringer for norsk regelutforming, representerer dette en betydelig utfordring. Dette gjelder særlig i forhold til de forpliktelser som følger av EØS-avtalen.[86]

5.1 INTRODUCTION

Norway has been exposed to the Single European Market (SEM) regime since 1994 when the EEA Agreement was implemented. The implementation of the SEM more or less put Norwegian financial institutions and capital markets under a multi-levelled framework characterised by both European and Norwegian rules and regulations. Since that time, Norway's relations with the EU has been substantially extended and grown deeper. In chapter 3 I revealed that fund management of occupational pensions have been on the European agenda for almost two decades. The European Commission has taken great interest in how this issue should be regulated and has advocated a prudential framework. Hence, it seems that the integrative pressures on this area have increased. At the same time, the Norwegian regime for fund management on occupational pensions has been exposed to substantial regulatory activities the last decades, cf. chapter 4.

This chapter seeks to examine continuity and change in the Norwegian regime of fund management for occupational pensions in the context to the incitements and constraints that European integration poses. As noted in chapter 2, processes of Europeanisation are complex and multifaceted. One way of making these processes more clear-cut is to distinguish between institutions, interests and ideas as driving forces of change (Hall 1997). The impact of these integrative pressures corresponds with and rests on rule-based, interest-based and ideational adaptations at the domestic level (Claes and Tranøy 1999). Hence, the analysis is divided into three parts. A starting point is the expectations and hypotheses I presented in chapter 2. The key question is to what extent do any of these adaptational processes provide explanatory significance for developments in the Norwegian regime? Moreover, have some adaptational processes been more important and common than others?

5.2 RULE-BASED ADAPTATION

Due to the EEA Agreement Norway is compelled to continuously implement European regulations and standards on several policy issues. On the financial area, the principles of free movement of capital and freedom to provide financial services across borders are essential. The European framework on the financial area is institution-biased, where different types of financial institutions to some extent adhere to different directives. Unlike many other EEA member states, which have kept occupational pension management under a separate legal regime, life insurance companies are major custodians of Norwegian pension benefits. Norwegian life insurance activities became subject to EU regulations when the EEA Agreement was implemented. This special characteristic could then have made Norwegian occupational pensions exposed to rule-based adaptation at an early point compared to many other European countries. A political compromise on the so-called pension fund directive was however reached in 2003 and has arguably extended legal integrative pressure. Moreover, the European Commission has set forward several initiatives to eliminate tax-related obstacles to cross-border provision of occupational pensions. Other directives and regulations might also have significance.

As stressed in chapter 2, it is therefore reasonable to expect that rule-based adaptation has been substantial on this area. I presented following hypothesis:

> ***Changes in the Norwegian risk management regime for occupational pensions have mainly occurred as a direct result of legal and institutional developments at the European level***

Hence, the first section of this analysis examines to what extent changes in the Norwegian regime has been a result of processes where Norwegian authorities are obliged to replace national regulation with European rules and regulations. Has European institution-

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[86] Minister of Finance Karl Eirik Schjøtt-Pedersen at the 100th anniversary for Norwegian financial supervision, September 7 2000.

building posed substantial restrictions on regulatory measures designed to sustain national scopes of assets, access and authority? [87]

5.2.1 Scope of assets

The processes of financial liberalisation and deregulation of Norwegian capital markets started in the 1980s prior to EEA-implementation. The EU directive on free movement of capital was incorporated into Norwegian legislation in 1990. Nevertheless, restrictions on institutional investors' opportunities to make allocations in equities and abroad have remained. Arguably, the legal-institutional pressures of the EEA Agreement have not changed this much so far. The life directives mostly entail some minimum requirements that are to be met by national legislation. This concerns for example adherence to the principle of risk diversification. The principle of risk diversification is emphasised in order to ensure security, liquidity and sufficient returns on investments. These prudential principles of safe and sound asset management were however laid down in Norwegian regulatory framework already under the 1988 insurance reforms, cf. ch. 4.3.

In spite of these prudential principles, Norway has still been allowed to set its own regulatory measures on asset allocation for fund managers subject to Norwegian jurisdiction. Quantitative investment restrictions have remained, and have not been lifted as a direct result of EEA participation, cf. chapter 5.3. The EEA Agreement compelled however Norwegian authorities to remove all requirements in portfolio regulation, which obtained a national orientation. An important exception is currency-matching regulations. Even though, these regulations are functionally legitimised, they sustain a de-facto domestic orientation on asset allocation, particularly when insurance risks (liabilities) are embedded in home markets. As learned in chapter 4 this is the case for Norwegian fund managers. The objective of currency-matching regulation is to reduce foreign exchange risk. Moreover, currency-matching regulations are however not only allowed, but also

[87] It should be noted that more than 90 percent of Norwegian rule-based adaptation has only required amendments in regulations, where the Ministry concerned immediately prepares implementation (Trondal 1999).87 This represents a challenge when analysing rule-based adaptation on this issue, where many issues are rather technical. Implementation of EU-regulation into Norwegian legislation may proceed in three different ways (Claes 2001: 8-9). Firstly, agreements on issues of particular importance that require legislative reforms must obtain the Parliament's approval. Secondly, issues that require regulations or amendments of existing rules and regulations need to be handled in cabinet meeting and granted by governmental resolutions. Most EU-regulations concerning the internal market do however comprise administrative and technical standards, and belong in the third category, where the Ministry concerned immediately prepares implementation.

required by EU authorities. Such regulations were however also incorporated into Norwegian portfolio regulation prior to EEA implementation.

Most changes in portfolio regulation due to EEA implementation have been of a rather technical character. Perhaps the most important of these "technical" changes in portfolio regulation, are the requirements, which stress that investment restrictions (in the name of prudential control) are only to prevail on assets covering insurance-technical provisions. Other assets, so-called free assets (i.e. companies' own funds and buffer capital), are accordingly allowed invested freely by custodians.[88] A large part of Norwegian occupational pensions have however been subject to insurance liabilities due to the dominance of DB pension plans. Hence, its real impact on asset allocation has been rather modest.

Also, more frequent re-regulatory processes and activities due to implementation of minimum requirements concerning e.g. asset categories, investment restrictions, currency matching, localisation of assets, can also be ascribed to rule-based adaptation. A main result of these activities has been more detailed regulations, which led to the implementation of a new asset management regulation in 1997. While an important motive for regulatory reform in 1988 concerning asset management was to make these regulations more clear-cut and undemanding, it seems that due to rule-based adaptation a more judicial detailed, complex and comprehensive framework for asset management has appeared. According to Aamo (2006) a general trend is that European lawmaking, often leads to a more complex and detailed regulatory framework than desired.

The directive does also itself set forward some quantitative restrictions, which objective is to reduce market risks in accordance with the principle of risk diversification.[89] These are however minimum requirements where stricter regulations were allowed if legitimised in risk diversification or general good considerations. Norwegian authorities did for example

[88] For Norwegian life insurers this did in fact imply a return to the regulatory framework prior to the 1988 reforms on this issue (Ot. prp. 77 (1993-94). Quantitative measures in portfolio regulation concerning all assets under management, did then only last from 1988 to 1994.

[89] E.g. investment ceilings concerning allocations in equities, bonds or loans provided by one issuer, and investments ceilings in unregulated markets, are set forward.

implement stricter provisions on custodians' maximum holdings of equities issued by one single company (which in 1990 was set to a 15 percent share). When the EEA Agreement was implemented, the Norwegian government regarded this restriction as a guarantee for risk diversification (Ot. prp. 77 (1993-94). In 2001 however the government received a reasoned opinion from ESA, concerning its application of this restriction also on life insurers free assets, i.e. assets that were not to cover insurance-technical provisions (Ot. prp. no 78 (2000-01).[90] Amendments in legislation were carried out to ensure compatibility with European regulations.

In sum, I argue that legal developments at the European level have so far not constituted a breach or substantial change on matters discussed under the scope of assets. This is however bound to change when the new pension fund directive is fully implemented. A draft on a new asset management regulation that is expected to come into force in 2008 has recently been submitted. This is now in legal preparation at the MoF. According to Kredittilsynet (2007) it is likely that investment ceilings will be lifted to the level of the minimum requirements of the directive. At the same time, new requirements on risk management performance will be proposed so that asset management is adjusted to each fund managers' competence and risk capacities. A new asset management regulation is however not a consequence of rule-based adaptation alone, as the quote below indicates:

> *"Sentrale deler av dagens kapitalforvaltning ble fastsatt for over ti år siden. Etter dette har det skjedd betydelige endringer både i kapitalforvaltningsfaget, i finansmarkedene og på tilsynssiden. Da reglene ble utformet var det lite innslag av grensekryssende virksomhet i det norske forsikringsmarkedet. Norske aktører opplever i dag stor konkurranse fra utenlandske aktører. I tillegg er et nytt pensjonskassedirektiv vedtatt." (ibid: 45).*

5.2.2 Scope of access

Liberalisation of the regulatory framework and practices concerning licensing regulations and ownership legislation also started prior to EEA implementation, cf. chapter 4.3. The principles of one single licence, home country control and mutual recognition were however implemented into Norwegian legislation in 1994. These set up and ensured more favourable conditions for establishing foreign affiliates abroad and to engage in cross border provision of services. In principle, no member state can reject foreign providers of life insurance products as long they are licensed in their respective EEA member state. As

[90] ESA gave reference to the ECJ decision in the Skandia-case (C-241/97), where the ECJ ruled the Swedish restriction on owning more than 5 percent in one company illegal (Dyrhaug 2000: 262). An argument for this restriction was also to ensure an

demonstrated in chapter 4, the effects of increased formal scope of access have been modest. This has partly to do with the regulations and practices regarding who are eligible to providing tax-deductible pension schemes. Due to the dominance of tax stimulated pension products in the Norwegian market, the effects of the life directives on transnational activities have been modest. As tax-deductible occupational pensions are an integral part of the Norwegian pension system, these have for long been considered as matters of national jurisdiction, even though life insurance companies in general are subject to EU regulations. This did for a long time legitimise a persistence of discriminatory provisions based on nationality also in Norway.

The European Commission has lately taken great interest in removing obstacles to the free movement of services, which are embedded in member states tax provisions, cf. chapter 3. Due to legal processes at the European level, where several ECJ-rulings step-by-step have attempted to nullify former ECJ-rulings on these issues, Norwegian authorities have been compelled to amend legislation. In the legal preparations to the 2001 pension reforms when foreign affiliates were made eligible to tax-deductible pension schemes, Norwegian authorities referred to the ECJ decision in the Wielockx case. This stressed that even though direct taxation is a matter for member states´ competencies, member states *"should comply with Community law and desist from every form for open and concealed discriminatory treatment legitimised in nationality"* (NOU 1998: 1; NOU 1999: 32; Ot. prp. nr 47 (1998-1999). Eligibility to life insurance companies engaging in cross-border provision was not given, due to the objective of maintaining coherence in the tax system and efficiency of tax controls (ibid).[91] However, a few years later, in 2004, the ESA sent a latter of formal notice to the MoF on these matters (Ot. prp. nr 1 (2004-2005)). This occurred as the European institution building had proceeded further due to important ECJ rulings on the matters of tax-deductible pensions, cf. chapter 3. Norway amended its legislation accordingly and opened for eligibility to fund managers that operate on a cross-border basis.

independent role of Norwegian financial institutions and to prevent too much concentration of economic power in society.

[91] It was referred to another ECJ ruling, the Bachmann case (cf. chapter 3), on these matters.

Furthermore, EEA implementation has also required that all discriminatory provisions on nationality in ownership legislation of financial institutions have to be removed. Such restrictions were abolished in 1995. From the mid-1990s, the only remaining restriction in ownership legislation was the so-called ten-percent rule, which was applicable to all owners regardless of their nationality. The rule limits maximum ownership in a Norwegian financial institution to a ten-percent share. The rule was set forward as a legal anchor to achieve several objectives; 1) to ensure independent financial institutions and an independent financial sector; 2) to counter any undesirable concentration of economic power in the society; and 3) to maintain an ownership structure, which ensures that competition and solidity of financial institutions is sustained (NOU 1998: 14; NOU 2002:3). In real terms the ten percent rule also maintained that if a ten-percent share was obtained, this was sufficient to carry out strategic control in the financial institution.[92] The rule therefore became a famous so-called Norwegian special regulation, both domestically and internationally. The financial industry has stressed disapproval with the regulation (ibid; NOU 2000: 9).[93] However, the Norwegian Parliament has repeatedly stressed the importance of strict application of these provisions. Furthermore, under the EEA negotiations the Norwegian government considered it important to sustain the ten-percent rule, and concession to do so was given by the Commission.[94]

Nevertheless, the EFTA Surveillance Authority (ESA) started making inquiries about Norwegian ownership legislation on own initiative in 1999. A letter of formal notice was sent in 2000 and a reasoned opinion was made in 2001. In contrast to the European Commission's opinion almost a decade ago, the ESA claimed that Norwegian ownership legislation entails restrictions on the freedom of capital movements and concluded that the ten percent rule was incompatible with EEA regulations. According to ESA the Norwegian regulations were unjustified restrictions and not compatible with the principle

[92] Ownership legislation stressed that any bidding part in both friendly and hostile take-overs must gain acceptance from at least 90 percent of shareholders in the financial institution at stake for attaining governmental approval. By acquiring a 10 percent share veto power has consequently been achieved. This occurred when Storebrand's Norwegian competitor, Den norske Bank (DnB), managed to block a bid from the Finnish life insurer Sampo, even though this was welcomed by Storebrand, and eventually overturned the proposed cross-border acquisition. As the blocking part was a Norwegian financial institution where the Norwegian government at that time held a 47 percent share, accusations of patriotism and that *"finance flies the flag"* were also raised (Financial Times 21.10.2001).

[93] Norway is according to the financial industry's (FNH) the only remaining EEA country, which has not implemented ownership legislation based on EU notification procedures.

of necessity (Dyrhaug 2000: 259). Norwegian authorities argued on the other hand that these regulations did not constrain the freedom of capital movements, and considered them non-discriminatory, just and necessary. An expert committee was set down in order to assess the compatibility between the Norwegian ownership framework and European principles (NOU 2002: 3). According to an independent expert on EU Law, it was an open question whether Norway would win or lose a potential case in the EFTA Court of Justice (ibid).

The Committee recommended a system based on the principles in the EU directives.[95] Hence, due to processes of rule-based adaptation, over which a cross-country merger attempt in life insurance shed light (cf. footnote above on the Storebrand-Sampo case), the framework for ownership legislation was amended in 2003. Legislation is now based on a system of more approximate judgements, where shareholders that desire to acquire more than a 10 percent stake are required to apply to the authorities when trespassing intervals of 10, 20, 25, 33 and 50 percent ownership (Ot. prp. nr 50 (2002-2003). This framework is likely to make mergers and acquisitions substantially easier. The guiding lines concerning assessing suitability of the bidder remain however with Norwegian interests and tradition (NOU 2002: 3).

In sum, legal-institutional pressures have been rather considerable on the scope of access lately. This has resulted in several examples of rule-based adaptation in Norwegian legislation. It seems evident that what was regarded as compatible with EU regulations in the 1990s has increasingly been regarded as incompatible in the last five-year period. Rule-based adaptation has in particular increased the formal scope of access during this period. This is much owed to increased efforts and initiatives on the European level, where integration processes have gained speed, cf. chapter 3. The effects on market outcome are yet very modest, cf. chapter 4. Norwegian markets are still characterised by concentration of a few domestic fund manager.

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[94] The Commission did not view the rule as any restriction on the provisions of free movement of capital, as it concerned all EEA market actors (St. meld. 27 (2001-02): 39).

[95] EU regulations do not entail quantitative provisions concerning maximum ownership in a financial institution. Anybody intending to acquire a qualified holding in a financial institution is nevertheless required to notify about this to competent supervisory authorities and get authorisation in advance. The notification procedures start when certain limits are trespassed.

5.2.3 Scope of authority

The EU sets up a regulatory framework above the nation state, which often challenges national jurisdiction and domestic political objectives. The four freedoms of the SEM can accordingly be characterised as the four restrictions on the nation state.[96] Taxation and social provision have however been matters subject to national jurisdiction. As noted above, however, the ability to design national tax provisions on its own terms has recently been challenged due to new ECJ rulings. This has led to amendments in the legal framework concerning the eligibility to tax-deductible occupational pension for foreign providers of these services. Rule-based adaptation can however not explain other changes and reforms that concerns taxation and social provision.

In the EEA framework the regulatory authority of financial institutions rests on the principle home country control. This implies that it is the country in which the financial institution's headquarter resides, that has the responsibility for granting license and undertake financial supervision, cf. chapter 3.2. Due to the domestic orientation fund managers' liabilities (cf. chapter 4), Norwegian authorities arguably still play a vital role on life insurance and pension related issues. As noted, Norway is however compelled to implement the minimum standards laid down in relevant directives. Moreover, according to the directives national authorities might on several issues implement stricter requirements on domestic fund managers than laid down in the directives.[97] Generally, the Norwegian lawmakers have interpreted the EU directives as minimum requirements, and stressed that

> *"the EEA regulatory framework is not exhaustive, and that Norwegian authorities should consequently not desist from implementing complementary rules and regulations" (NOU 1998: 14, p 50).*

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[96] European rules and regulations might entail various types of obligations: 1) Provisions requiring that the national law shall contain rules of a particular content, 2) provisions requiring that the national regulatory measures shall at least meet a particular minimum standard, 3) provisions requiring the adoption of national regulatory measures designed to achieve a particular objective or to be consistent with particular guidelines, 4) provisions merely asking for the adoption of national rules on a particular subject without indicating anything as to the content of the rules, and 5) provisions prohibiting national rules of a particular content (Selvig 1999: 230-231).

[97] National rules and regulations might be invoked if legitimised with reference to the general good. These exceptions are however not to discriminate against foreign competitors, show reasonableness in relation to its target and demonstrate that they are objectively essential to meet this target. Nonetheless, general good principles are often disputed, as they call for national special regulations and may impede the four freedoms.

Minimum standards are for example laid down concerning appropriate solidity measures in order to ensure soundness of the financial institution. EU regulatory policies are however institution-biased, which means that different directives are adopted for different financial institutions. Different solidity measure are then set forward to deal with the different types of risks that financial institutions are exposed to. For banks and credit institutions this concerns requirements on capital adequacy, which objective is to reduce credit-based risks. For life insurance companies certain solvency requirements have to be met, which objective is to reduce insurance-based risks on the liability side. Norwegian legislators have however also carried out the credit-biased capital adequacy requirements for banks on Norwegian life insurance companies and pension funds. These requirements came into force prior to the EEA-regulations, as this framework rests on the legal processes of the Basle Committee.[98] Solvency requirements have been implemented for insurance companies, but have yet not been exercised for pension funds. The implementation of the pension fund directive in will however also require solvency measures on pension funds.

Norwegian legislators have consequently applied EU regulations on a broader basis than required due to the EEA minimum standards. Even though, financial industry has disapproved with these special Norwegian regulations (e.g. NOU 1998: 14; FNH 2000; FNH 2006), Norwegian authorities have stressed the importance of a comprehensive regulatory framework, which put emphasis on security and fair competition between different types of domestic financial institutions.[99] The application of EU regulations on a broader basis than necessary is also valid concerning how Norwegian authorities have employed EEA-relevant regulations for life insurance companies on pension funds. Pension fund have been exposed to EU-regulations on these matters since 1993, even though a pension fund directive was first adopted in 2003. An objective for Norwegian authorities has been to establish equal terms of trade for these custodians.

[98] The Basel Committee on Banking Supervision provides an international forum for regular cooperation on banking supervisory matters. Its objective is to enhance understanding of key supervisory issues and improve the quality of banking supervision worldwide.

[99] The origin of credit-biased regulations for Norwegian life insurers must be regarded in relation to the historically unique role of credits and loans on life insurance companies and pension funds´ balances.

Even though EEA implementation has required deregulation of product control within life insurance, product control has also proved continuity due to some important issues.

- Firstly, fiscal provisions remain under Norwegian jurisdiction. In order to achieve tax deductibility, several social measures have to be attained, e.g. principles of egalitarianism and proportionality and that national social law and collective bargaining agreements are respected. According to the pension funds directive states can still insist that pension plans should conform to the social and employment laws of that state, cf. chapter 3.
- Secondly, Norwegian life and pension insurance legislation contains extensive considerations about e.g. consumer protection. These considerations may often invoke the principle of the general good, which again allow for national departure from EEA provisions. Life and pension insurance is generally based on a very complex regulatory framework that might prove substantial cross-national variance. On these grounds, directives are careful to stress harmonisation beyond minimum requirements. According to EEA provisions following issues are subject to host country insurance law (Bull 2002: 398-413).
    1. *Distribution of costs, losses and income between insurance branches, contracts and among insured within the same insurance collective*
    2. *The ability to intervene in unreasonable contributions and terms of insurance set forward by fund managers*
    3. *Application of portfolio rights*
    4. *Practices of individual accounts and transcripts of accounts*
    5. *Distribution of surpluses to customers*

Consequently, many of the regulatory initiatives implemented in the 1988 reforms have outlived EEA membership. The national variation and complexity of these regulations, also contribute to reduce the scope of cross-border activities within life and pension insurance, cf. chapter 4. Any changes in these regulations must be explained elsewhere.

In sum, I argue that European institution building has not implied a large-scale replacement of national social policy objectives with more market-conform regulations. I rather find examples that Norwegian legislators on several issues have implemented more strict regulations than laid down in EU regulations. Moreover, EEA provisions concerning some types of financial institutions or activities have sometimes also been added to other areas in order to maintain broader national social and financial objectives.

Much of these developments must therefore be regarded as something more than rule-based adaptation, cf. chapter 5.3.

5.2.4 Concluding remarks on rule-based adaptation

It is often argued that the European regulatory regime imposes substantial legal constraints on Norwegian legislation. Based on the analysis above, rule-based adaptation has been a more modest explanatory factor than I expected in chapter 2. Any large-scale convergence towards a coerced choice of one set of rules and institutions has not occurred. European institution building has however produced frequent re-regulatory activities and amendments in existing Norwegian regulations. Many of the European regulations that Norwegian authorities have been compelled to implement can be characterised as minimum requirements. Moreover, many amendments and revisions due to rule-based adaptation have been of a rather technical character (e.g. changes in portfolio regulation). It seems therefore that legal processes at the European level has led to a more comprehensive and complex framework for custodians asset management.

Furthermore, the legal-institutional pressures on the activities of financial institutions that hold occupational pensions in custody have grown in strength lately. This has in particular concerned the deregulation of the scope of access. The ESA has recently been engaged in infringement proceedings on both ownership legislation and the lack of tax-deductibility to custodians that provide occupational pension schemes on a cross-border basis. Nevertheless, changes in actual market orientation and policy outcome have been very modest so far on these aspects. Moreover, the implementation of the new pension fund directive would imply a liberalisation of portfolio regulation and new requirements on risk management performance due to fund managers' competence and risk capacities. This is expected to take place when a new asset management regulation is implemented in 2008.

In sum, I argue that Norwegian authorities' role as vital risk managers are yet to be substantially constrained by EEA legal commitments. Fiscal provisions and several regulatory issues in national insurance legislation are still subject to national autonomy. Recent changes at the European level concerning national discrimination on the provision of tax-deductible pensions, which has led to amendments in Norwegian legislation, might however challenge this authority in the years to come.

5.3 INTEREST-BASED ADAPTATION

The ongoing internationalisation of finance, in particular represented by SEM integration, has arguably exposed financial institutions and national authorities to new and increased competitive dynamics. The aspects of the regulatory regime in which financial institutions carry out their activities should then become increasingly important for fund managers as variations in costs and performance might stem from diverging regulatory practices and regulations imposed. It is for example often argued that investors under a prudential regulatory regime, which the European Commission has advocated, provides better returns at lower costs (and risks) than those under a regime of a paternalistic orientation. The relative importance of constraints and incentives posed by European integration vis-à-vis those constraints and incentives inherent in the Norwegian regime, might then induce forms of interest-based adaptation. These dynamics might however induce different strategies along the public-private nexus to confront these challenges. In chapter 2 I expected for example financial industry to employ mechanisms of voice, exit and loyalty to achieve more market-conform regulations. Following hypothesis were set forward:

> ***Changes in the Norwegian risk management regime for occupational pensions have mainly occurred as a result of competitive dynamics introduced by the SEM. These dynamics have implied a more international oriented Norwegian financial industry lobbying for improved terms of trade, for which it has gained substantial support due to competition-sensitive Norwegian authorities.***

Financial industry's competitiveness is arguably related to two primary capacities: 1) to sustain market shares in domestic markets and 2) to compete on the international arena. Hence, this section calls into attention to what extent financial industry holds the capacity to influence and shape the Norwegian risk regime. Can any interest-based adaptation on the scope of assets, access and authority be regarded as the triumph of market forces?

5.3.1 Revision of the framework for fund managers – between competitive dynamics and pension reforms

In the late 1980s Norwegian lawmakers established a comprehensive financial framework that regulated key aspects on solidity, competition, ownership and consumer protection in a uniform manner independent of type of domestic financial institution. The objective was to put emphasis on equal terms of trade between financial institutions in order to ensure and promote fair competition and sound and independent financial sector. In 1990 the Banking Law Commission was appointed in order to modernise, harmonise and revise Norwegian financial legislation in order to attain these objectives. Even though the Commission was originally set to finalising the financial reforms in the late 1980s, the mandate of the Commission has since been extended several times.[100] This has also concerned assessments of how to incorporate relevant SEM regulations into Norwegian legislation and to assess how the changes in the regime of occupational pensions might be carried out. By spring 2007, the Commission has prepared 16 reports according to these missions. In addition there have also been other commissions, which also have elaborated on aspects of the Norwegian risk management regime of occupational pensions.

The role of the Banking Law Commission in the legal development on this area is indisputable. The Commission is a cooperative organ which consists of representatives of Norwegian authorities, financial industry and other relevant special interest groups and public instances. The financial industry interest groups are the Norwegian financial services association (FNH) which represents the insurance companies, banks, etc, and the Norwegian pension fund association (NPF), which represents most private pension funds.[101] The reliance on consensus-biased corporatist structures in the public-private nexus, which is typical for Norway (e.g. Katzenstein 1985), is consequently also evident on this area. However, even though financial industry has been included in these and other commissions, whose mission are to prepare legal revisions and reforms that stake out the direction of the Norwegian regime for occupational pensions, other considerations than financial industry's concerns have also often been emphasised.

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[100] Insurance was initially excluded from the Commission's work, but incorporated in 1991, in spite of insurance industry's discontent, to achieve the political objective of equal terms of trade for all financial institutions.

[101] FNHs role is to safeguard the interests of their members' vis-à-vis the authorities, as well as to represent its members in international forums. FNH works to ensure that the financial services industry in Norway have good operating conditions and development opportunities and to ensure that Norwegian-based operations of the financial services industry are subject to conditions which put them on a level playing field with their foreign competitors and are well adjusted to developments within the EEA (www.fnh.no). NPF role is to safeguard the common interests of their member and works to ensure that pension funds have the best operating conditions in order to achieve high yields on returns and low administration costs in asset management (www.pensjonskasser.no).

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For the financial industry it became increasingly evident that the uniform way of regulating financial institutions in Norway produced so-called special regulations, which were regarded as competitive disadvantages when markets now appeared international. Some of these special regulations occurred as Norwegian authorities implemented the EU regulations more strictly than the minimum EEA requirements set forward, cf. chapter 5.2. For Norwegian authorities these were however often legitimised in objectives about consumer protection, equal terms of trade between different types of (domestic) financial institutions, ensuring an independent financial sector and aspects about solidity, security and financial stability. Hence, Norwegian authorities have been reluctant to change this framework into more market-conform regulations (NOU 1998: 14). It was rather argued that the many complex requirements legitimised in consumer protection, competition and solidity constituted competitive advantages for Norwegian fund managers when cross border competition in insurance became more efficient (St. meld no 2 (1991-92): 31).

While Norwegian authorities maintained the objective of equal terms of trade between different types of domestic financial institutions, life insurers lobbied for a level playing field which was compatible with the framework of international competitors. During the 1990s several amendments in Norwegian regulations were carried out to encompass EU requirements.[102] The financial industry maintained however that

> *"policy initiatives and reforms on the financial area have been characterised by a substantial preoccupation of single aspects, rather than to adapt Norwegian financial industry to the international economy, of which it is a participant"(Skauge 2000).*

At end of the 1990s, the continuance of several so-called Norwegian special regulations particularly in life insurance and the general regulatory philosophy of Norwegian authorities became increasingly intolerable for financial industry. When the Banking Law Commission was appointed to prepare a modernisation of the Norwegian financial legislation, the financial industry vetoed the Norwegian authorities' perspective in the Commission (NOU 1998: 14).

> *"Banklovkommisjonen var i arbeidet med den 4. delutredningen om finansforetak fra 1998 delt på viktige punkter mellom representantene fra myndighetene og finansnæringen. Finansnæringens representanter måtte ta dissens bade*

[102] Most amendments have occurred in form of regulations, while the basic legal structure has outlived these amendments until recently.

> *med hensyn til overordnet reguleringsfilosofi og når det gjelder behov for EU-harmonisering i viktige enkeltsaker der flertallet gikk inn for fortsatt særnorske regler" (Skauge 2000)*

An urgent need for EU harmonisation was stressed, due to the industry's alertness of new integrative dynamics at the European level. New efforts to establish a comprehensive elaboration on financial industry's international competitiveness were carried out. The arguments and concerns gained validity, and a commission was set down. Its report on competition in the financial sector (NOU 2000: 9) concluded that the regulatory framework on insurance was in particular complex, comprehensive and on some issues not clear-cut. On this background the Banking Law Commission was again appointed to follow up the report's recommendations on life insurance. Its mission was to:

> *"..etablere et tidsmessig, helhetlig regelverk for å sikre norske selskapers rammevilkår for å møte et store innslag av internasjonal konkurranse og for å gi grunnlag for effektiv drift og et best mulig tilbud til kundene….(NOU 2001: 24)*

Parallel to these developments changes in the framework for occupational pensions were also stressed. The introduction of DC pension schemes into the Norwegian regime was first raised on the public agenda in the 1994 Green Paper on supplementary pensions (NOU 1994: 6), but rejected in a governmental White Paper on welfare in 1995 (St. meld. nr. 35 (1994-95)). Due to social objectives on risk management, the government put the drafted pension reforms on hold, while the importance of clear-cut insurance elements, life-long benefits and certain objectives of social redistribution, was maintained. These market-conform products were however reconsidered when the white paper on welfare was debated in Parliament. A majority in Parliament had in particular taken notice *"that many small and medium sized Norwegian employers had not yet established supplementary pension schemes for its employees"* (St. meld 1 (1996-97): 97). On this basis a Commission was set down to modernise the occupational pension framework. The Commission submitted two reports, which objective was to prepare an act on occupational defined benefit pension plans (NOU 1998: 1) and an act on occupational defined contribution plans (NOU 1999: 32). These acts were implemented in 2001.

The insurance industry advocated a more broadly defined market for individual and occupational saving, which was regarded as vital for Norwegian financial industry competitiveness and growth. This demand became urgent when the EEA Agreement opened for provision of so-called unit-linked products by foreign financial institutions, while Norwegian actors were largely barred from taking part in this market [103] I argue however that the primary factor for introducing tax-deductible DC pension products into the Norwegian regime has been paternalistically reasoned. The main objective has been to extend the application of fiscal stimuli as an incentive to increase saving for retirement age and to include a larger share of the labour force into the occupational pension regime.

Over the next years several key documents were submitted and legal changes were implemented on life insurance and occupational pensions due to the work with reforming the pension system and the incitements produced by the Commission that assessed Norwegian financial sector's competitiveness (NOU 2000: 9). Below are some of the most important initiatives in these respects:

- In 2001 a green paper on life insurance was submitted (NOU 2001: 24), which was a follow-up on the 2000 green paper on competition in the financial sector. The objective was to develop a new modern legal framework for collective life insurance, which also was adjusted to the 2001 occupational pension reforms. A proposal was adopted in 2004. This marked a first step towards a new comprehensive act on life insurance and pension funds and their activities, see below.
- Also in 2001 a green paper on gender neutrality on pension schemes in private sector was submitted (NOU 2001: 27). Due to implementation of DC pension schemes into the Norwegian regime, the issues of equality, proportionality and neutrality in relation to gender got a new dimension. In order to achieve these principles, i.e. prevent that annual pension payments are determined by different longevity between genders, employers that set up DC pension schemes were obliged to set higher contribution for women than men (NOU 2001: 27; Ot. prp. nr 100 (2001-2002). The Parliament

[103] The Norwegian government has long viewed unit-linked products positively as a financial innovation (St. meld 31 (1989-90)). Norwegian authorities maintained however the importance to prevent negative returns on fund members' assets. Hence, financial risk was still to be borne by custodians. This implied however conditions of asymmetric risk allocation, as risk of loss were to be borne by custodians, while at the same time not entitled to any returns on investments (NOU 1995: 16, p 48; NOU 1998: 10). Life insurers did therefore not distribute unit-linked products until financial risk was allocated symmetrically. The Norwegian restrictions on unit-linked products were in particular devastating according to the Norwegian Insurance Association: *"The Norwegian Insurance Association oppfatter Regjeringens holdning som en så alvorlig diskriminering mot norsk forsikring at Forsikringsforbundet ikke kan forsvare å stille seg positiv til at Norge inngår en EØS-avtale* (press release from 1992 cited in Kjær 1992: 64). Even though these restrictions were removed in late 1996 due to substantial pressure from the Norwegian financial industry, this did not concern tax stimulated supplementary pension schemes.

adopted the changes in 2002, but requested at the same time changes that enabled gender and age neutral pensions in defined benefit pension schemes.

- A green paper on competition in the municipal segment for life insurance and occupational pensions was submitted in 2003 (NOU 2003:11). A key issue was to establish a framework where all pension providers (life insurance companies) could offer gender and age neutral defined benefit municipal pensions that satisfied the requirements of the General Collective Agreement for the municipal sector. Until then, only KLP had been allowed to offer pension schemes based on a gender and age neutral financing system. The starting point of these amendments was a Labour Court decision in 2002, cf. chapter 5.3.4. Furthermore, the green paper includes a proposal on modernisation and simplification of regulations for transferring life insurance and pension contracts. The proposed amendments were adopted in 2003.
- In 2003 it was also submitted a green paper on gender and age neutrality in group pension insurance schemes (NOU 2003: 28). This was a follow-up on Parliament's request to draft a legislation which allowed life insurance companies to establish gender and age neutral pensions also in private sector if demanded. The proposed amendments were adopted in 2006. Hence, pension products which objective is to counteract the fact that pension costs will vary according to the members' gender or age are now allowed distributed on a voluntary basis both in private and public sector.
- In 2004 a green paper on pension funds was submitted (NOU 2004: 24). The report put emphasis on the regulation of pension funds as institutions and their activities as providers of occupational pension services. This was partly follow-up work on the life insurance legislation proposals as listed above in order to ensure that life insurance companies and pension funds have equal terms of trade (e.g. concerning asset management of pension benefits) since they largely operate in the same market. An objective was also to make an editorial revision of the insurance activity act to develop a more transparent and tidier Act. The green paper also elaborated on changes in the Norwegian regulatory framework in order to adapt to the requirements set forward in the pension fund directive. Furthermore, it drafted changes where several municipalities are permitted to join together and establish an inter-municipal pension

fund. The legal provisions for pension funds were included in the insurance activity act when the proposal was adopted in 2005.

- Also in 2004 the so-called pension commission issued a green paper on modernised national insurance scheme (NOU 2004: 1). Its mission was to clarify main objectives and principles of a comprehensive pension system, in particular assess strategies for making public pensions sustainable and maintain social security at retirement. Both in the green paper and in the follow-up white paper on pension reform (St. meld. nr 12 (2004-2005)) the role of occupational pensions as an important supplement to the National Insurance Scheme was stressed. In the discussions on the white paper in the Parliament it was concluded that mandatory occupational pensions were to be implemented.
- A green paper on mandatory occupational pensions was submitted in 2005 (NOU 2005: 15). Second pillar pensions became mandatory in 2006. It was decided that the mandatory occupational pensions are to be designed within the framework of defined benefit and defined contribution pension schemes and certain minimum requirements are set forward.
- Finally (so far) a green paper on joint pension funds (NOU 2006: 12) was submitted in 2006 due to a resolution in the Parliament when discussing the proposal to new pension fund act in 2005. On this basis it is now proposed changes that enable a group of independent enterprises to establish a joint pension fund for these enterprises´ occupational pension schemes. The main objective is to reduce management costs for small and medium pension funds and to reinforce competition between pension funds and life insurance companies in the Norwegian market for occupational pensions.

A new framework on life insurance and occupational pensions was implemented in 2006. In addition to these amendments and changes in the legal framework several changes in regulations have also been implemented and there are still several regulatory changes in process due to the new act (e.g. a new asset management regulation). Developing a new framework for life insurance and occupational pensions has been a long process, which has demanded both innovative time-consuming efforts. As director Arne Skauge of FNH puts it:

> *"..regelverksutviklingen de siste tjue årene har vært særdeles krevende både for tilsynet og for finansbedriftene, med en nærmest total omskrivning av all lovgivning og regelverk på finansområdet. Dette har vært nødvendig først og fremst som følge av de stadige strømmen av de nye EU-direktiver, men også som følge av enkelte lovinitiativ ut fra rene nasjonale ønsker og behov, hovedsaklig innenfor området livsforsikring og pensjon" (Skauge 2006: 170-171).*

In sum, European market integration has arguably led to increased competitive dynamics in the Norwegian regime for fund management on occupational pensions. Changes have however not occurred due to considerations about financial industry's competitiveness alone. Pension reforms and other social, economic and political objectives have also been important. Below I elaborate more specifically on the three scopes in my thesis.

5.3.2 Scope of assets

Investments in international equity markets are according to financial theory expected to diminish market risks and give the highest returns in the long run (Davis 1995). This has also been some of the rationale for Norwegian authorities' decision to invest all of the Government Pension Fund – global (Petroleum Fund) assets into international securities markets (of which 40 percent so far has been allocated in equities). As demonstrated in chapter 4, these terms have not been present for life insurance companies and pension funds that hold occupational pension assets at custody. Arguably, I should expect substantial financial industry lobbying to liberate these investment ceilings. Asset management has increasingly become a key activity for these custodians and returns on capital would then represent a key competitive element.

The demand for liberalising equity ceilings has been frequently stressed by the insurance industry (e.g. FNH 2000; Pensjon & Finans 2002; FNH 2005, FNH 2006d). It seems however that the liberalisation of custodians´ portfolio regulation so far has to be put in a more broadly defined economy based adaptation to competitive dynamics. At the end of the 1980s, industry-demand for equity capital to finance investments grew fiercer. The Norwegian banking crisis and a general downturn in Norwegian economy had then dried up the supply of credits for Norwegian industry. At the same time, Norwegian economy became increasingly integrated into the international economy. Norway became a netexporter of capital in 1990 at the time when the EU directive on free movement of capital was incorporated into Norwegian legislation (NOU 1996: 23).

To confront these challenges for Norwegian industry, the role of pension benefits was frequently emphasised in the 1990s. When the government assessed internationalisation of Norwegian financial markets in a 1990 White Paper, it stressed that improving life insurers capacity to act as institutional investors, would strengthen the role of Norwegian equity markets (St. Meld 31 (1989-90): 4). On these grounds, the equity ceiling was risen from 12 to 20 percent. The positive implications this gave for withstanding foreign dominance in the Norwegian economy were also emphasised (ibid).

The 1994 Green Paper on occupational pensions (NOU 1994: 6) and the 1995 White Paper on Welfare (St. meld 35 (1994-95) stressed that tax stimulus to private saving for retirement was not be legitimised in considerations about total level of savings in the society, long-term investments and/or ownership in Norwegian economy.[104] A green paper on savings and equity capital (NOU 1995: 16) issued in 1995 called into attention the low share of financial liabilities held by private sector, in particular institutional investors, compared to other countries.[105] Sustaining competitiveness of Norwegian industry became frequently debated in the second half of the 1990s. The key role of occupational pensions and capital supply for the general competitiveness of Norwegian economy and sustaining Norwegian ownership in industry was further stressed in a serial of governmental documents (NOU 1996: 23; St. meld 61 (1996-97); St. meld. 19 (1997-98); St. meld 40 (1997-98); St. meld 41 (1997-98). The Ministry of Finance (MoF) put however also emphasis on ensuring security of pension benefits. The equity ceiling was therefore not lifted until 1998, when MoF considered that adequate buffer capital was established to confront increased market risk. Even though many hearing instances advocated a total abolishment of equity ceilings, Kredittilsynet and MoF did not support this (St. meld. nr. 19 (1997-98). Lately, the pressure for any increase in capital supply and

[104] Rather, the importance of inducing people to save for retirement age, ensuring stability of the Norwegian regime and achieving social policy objectives embedded in the Norwegian welfare state, were considered vital for granting tax exemption (ibid).
[105] The total Norwegian saving rate did not differ much from the OECD level, but unlike most other countries, a substantial higher share of Norwegian savings took place in public sector. Moreover, most private savings had been a result of investments in own real estate (NOU 1995: 16, 8-9).

investments in the Norwegian economy has primarily been related to the investment strategies of the Government Pension Fund – global.

I consequently argue that liberalisation on the equity exposure in life insurers portfolio regulation did not come as a result of interest-based adaptation due to concerns about the financial industry's competitiveness, but primarily due to strategic considerations about the competitiveness of the Norwegian economy. Moreover, the EEA adapted portfolio regulation for life insurers, cf. chapter 5.2, became applicable to pension funds in 1993. The pension fund association (NPF) disapproved with this harmonisation and argued that the new framework entailed competitive disadvantages for pension funds vis-à-vis life insurers, as it did not sufficiently take into consideration the distinctiveness of pension funds (St. meld no 1 (1994-95): 126). Some of the frustration was due to a greater regulatory complexity in pension funds' asset management. Hence, the general liberalisation on pension funds' assets has to be regarded as a government driven interest-based adaptation. Any significant lobbying for increased asset allocation into international markets to diversify investment risks has not taken place.

5.3.3 Scope of access

One result of the EEA Agreement is that the formal scope of entry to and exit from Norwegian financial markets has been extended. Accordingly, competitive advantages and disadvantages related to the capacity to maintain market shares in domestic markets and to compete on the international arena would arguably trigger strategies of exit and evasion if industry's concerns are not met. One key objective for financial industry has been to promote equal terms of trade for Norwegian-based financial activities and institutions as their foreign competitors. Moreover, Norwegian authorities stated at an early point that a primary task was:

> *"to give the financial industry increased opportunities to take benefit of any comparative advantage in order to increase the export of financial services, and to maintain its market shares in domestic markets" (St.meld no 2 (1989-90): 73).*

Norwegian authorities did however regard the potential for international competition in life insurance as rather modest (St. meld 1 (1995-96): 180). Chapter 4 in this thesis demonstrates that the domestic orientation of both life insurance companies and pension funds are considerable. Moreover, foreign entrance and provision to Norwegian markets have been modest. As stressed in chapter 3, most EU member states have not provided tax-deductibility on benefits held in custody by foreign fund managers. These fiscal provisions and practices, as well as the cross-national variance of complexity in life insurance legislation in general, have arguably led to a continuance of domestic product control, cf. chapter 5.2. Hence, occupational pensions have to a large extent in real terms been non-tradable services. Fiscal provisions have led to a sustained protection of national pension markets, both in Norway and elsewhere. This has consequently put severe constraints on financial industry's capacity to carry out strategies of exit and evasion in order to influence and shape the Norwegian risk management regime. The asset specificity triggered by fiscal provisions has therefore not disconnected capital from national territory.[106]

During the 1990s the competitive dynamics also grew more prevalent in the debate about the importance of sustaining a Norwegian financial industry. Processes of globalisation and European market integration raised concerns from many holds that Norwegian financial institutions being sold to foreigners and hence lead to an impairment of the Norwegian financial sector (e.g. St. meld. no 55 (1997-98); NOU 2000: 9). It became more evident for both financial industry and the authorities that Norwegian financial institutions were small compared to its European competitors, and vulnerable for foreign take-overs. Demands for building internationally competitive financial institutions, so-called national champions, became more evident.[107] Arguments about the necessity of having a Norwegian financial centre due to its importance of contributing with equity capital to Norwegian industry have been stressed. During the last decades mergers and acquisitions within life and pension insurance have primarily led to increased concentration in these markets, cf. chapter 4. Even though the financial industry has called for more lax ownership legislation (NOU 1998: 14; NOU 2000: 9; NOU 2002: 3) changes are primarily explained elsewhere, cf. ch. 5.2.

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[106] The life insurer Storebrand attempted to challenge this regime in the late 1990s as it co-established (with Swedish Skandia and SPP) the subsidiary Euroben in Ireland. According to Storebrand, Euroben was a response to customer demands about cross-border co-ordination of their occupational pension schemes (Aftenposten 11.04.1999). The business was however not a success and ended a few years later.

[107] Until the late 1980s local and regional considerations were emphasised and any mergers or acquisition entailing the four largest life insurers should be desisted (NOU 1986: 5; St. meld 31 (1989-90).

In sum, European market integration has provided the Norwegian insurance and pension industry with amplified arguments and rhetoric for regulatory change. Strategies of exit and evasion have however been rarely employed. Arguably, industry lobbying for more market-conform regulations has on these grounds been more biased toward sustaining market shares domestically than on improved market opportunities internationally. The implementation of a new pension fund and increased tax harmonisations on the issues of tax-deductibility across Europe may however lead to new competitive dynamics in the SEM regime. National variation in insurance and pension legislation, cultural and traditional relations, as well as well as an organised distribution system and knowledge about national clients, may however still put severe constraints on international competition in these markets.

5.3.4 Scope of authority

When the EEA Agreement was implemented, it became apparent that some of the regulations that prevailed were typical for Norway in order to deal with various types of risk and undesired market behaviour. Some of these special regulations have even come about as a result of adaptational processes to European integration. In chapter 5.2 I argued that many of the capital requirements that was required implemented for banks and credit institutions due to EU directives, were also implemented for life insurance companies and pension funds. Hence, Norwegian authorities implemented a double set of capital requirements, as solvency requirements are also to be fulfilled for life insurers due to the life directives.[108] In spite of considerable financial industry discontent, this Norwegian special regulation has persisted. In the start these regulations also became a risk management tool for the authorities to forestall investors´ capacity to take on investment risks (St. meld. 31 (1989-1990): 20). This should therefore be regarded as government driven interest-based adaptation. Norwegian authorities have frequently considered first-class solidity as one of the most important competition parameters in life insurance (e.g. St. meld. nr. 1 (1995-1996: 176)).

[108] The application of the capital adequacy requirements, which first and foremost are credit risk biased, was arguably due to the role of loans in fund managers' allocation, which at the turn of the 1980s were substantial. This asset category accounted in the early 1990s for about 40 and 30 percent of life insurers and pension funds' investments. The importance of this asset category has been substantially diminished during the 1990s.

Moreover, many of the measures implemented due to the 1988-reforms to enhance consumer protection and security of accrued funds, had unintended implications for the asset management performance. This concerned for example portability rights and annual distribution on returns to customers, etc. Arguably, the effect is that they favour short-term asset management on long-term liabilities by reducing custodians´ capacity to hold equities in cases of low buffers. Hence, financial industry's discontent has in particular been raised on these matters (Kvinge og Langeland 1996; NOU 1998: 14); FNH 2000). These issues became increasingly urgent to address when a situation of volatile stock markets, low levels of buffer capital and low interest rates due to low inflation occurred at the turn of the millennium. This put severe pressure on the custodians' ability to meet its obligations and to make the long-term investments that were required. In the preparation of the new life and pension insurance legislation a key objective has been to avoid these unintended effects on asset management. Some measures are set forward in the new insurance act, while others are still debated.

Persistence of many traditional regulatory instruments and practices may seem paradoxically, when EU provisions are adopted on a market activity. This is however related to directives as regulatory policies. These stress the objectives that are to be attained and not the strategy. Consequently, EU provisions are on many issues rather vaguely expressed and drafted with varying degrees of precision. Some may even indicate conflicting objectives. This makes accurate assessments concerning the obligations imposed on member states difficult and open for national interpretation. Moreover, member states are allowed to invoke host country expectance if legitimised in general good considerations. These are often set forward for consumer protection. Even though the European regulatory framework appears comprehensive and detailed, a judicial vacuum therefore to some extent exists. In this, member states sometimes are left with significant flexibility regarding when and how to implement EU regulations (Selvig 1999).

If a substantial mismatch exists between the Norwegian and the European risk regime, Norwegian authorities might take advantage of the judicial vacuum in the EEA legislation and choose to sustain national regulatory practices. However, this might induce

Norwegian financial industry to submit complaints to the EFTA Surveillance Authority (ESA) and the EFTA Court of Justice. This should in particular be evident if the persistence of national rules and regulations resulted in competitive disadvantages for fund managers. These supranational institutions obtain to some extent an interpretative authority on how the EEA Agreement should be understood. Therefore, EEA and EU regulatory bodies might narrow the judicial vacuum by publishing definitions, precisions and interpretations through legal documents and Court decisions as a result of domestic actors' initiatives.

According to the ESA, the authority has not received any complaint from Norwegian life insurance companies or financial industry on the regulatory framework for life insurance or occupational pensions (comments by ESA officials 2003/2007). Norwegian financial industry has consequently been reluctant to address EU/EEA authorities for strategic reasons. Any hypotheses of replacing national loyalties with European must therefore be rejected. My pension fund inquiry and statements from business informants underpin this implicit loyalty to Norwegian authorities, cf. chapter 5.4. The continuity of national loyalty should be regarded in the context that occupational pensions are an integral part of the national pension system, and that its popularity relies on fiscal provisions that remains within national autonomy. Moreover, the role of the Banking Law Commission as a consensus-biased corporate organ in this public-private nexus, might arguably lead attention into finding solutions nationally rather than making appeals at the European level, which would eventually disturb the "family peace".

Interactions with European authorities due to life insurers' role in the provision of occupational pensions did however occur in 2002. Then the social objectives embedded in the municipal pension regime came under pressure due to increased competition in the municipal pension market. From the late 1990s private sector life insurance companies did increasingly call the municipal pension market into attention. Local governments' mutually owned insurance company, KLP, did for a long time maintain monopoly in municipal pension markets. Recently, this monopoly has been sustained in collective bargaining agreements, which stress that pensions schemes are compelled to be age and gender neutral.[109] Private life insurers were not allowed to provide such pension products due to the insurance legislation.

The ESA started to examine whether the EEA provisions on public procurement prevailed and whether these services should accordingly be marketed in the internal market. Norwegian authorities and Norwegian life insurers argued however that EU-regulations did not apply on this issue, even though at the same time claiming that these should be exposed to competition (Hagen 1999). In Parliament the issue of non-competition in the market for municipal occupational pensions was raised in 2000 and 2002. Both times a majority stressed the importance of introducing competition in this market (St. meld no 5 (2000-01); NOU 2003: 11). More tight budgets for many local governments in the late 1990s pushed at the same time local administrations to expose public services to competition in order to reduce expenses.[110]

In 1999 11 local governments broke out of the agreement with KLP. Due to private insurer's inability to provide age and gender-neutral tariffs as laid down in the wage agreement, these local governments were sued by the municipal employee organisation (NKF), which regarded this as an important breach of the collective bargaining agreement (Økonomisk rapport 2002b). For the trial in the so-called KLP-case, which emerged as the largest and most comprehensive case in the Labour Court's history, the 11 local governments brought in the EEA dimension as an argument for breaking out of KLP's monopoly.[111] For settling the EEA argument, the Labour Court asked the EFTA Court of Justice to give a pronouncement on the interpretation of the EEA Agreement on this issue. The EFTA Court of Justice concluded that certain latitude for wage and labour terms should be accepted, even if these terms have restraining effects on competition. A precondition for allowing this is however that the objective of these terms is to promote

[109] Due to a collective bargaining agreement in 1998 between municipal sector's employer federation (Kommunenes Sentralforbund (KS)) and labour organisation (Norsk Kommuneforbund (NKF)) it was stressed that differences in pension costs should not relate to age and sex profiles of municipalities.

[110] In 1997 more than 20 local governments on own initiative obtained offers from private Norwegian insurance companies (Hagen 1999) Their motive was to examine the potential for cheaper pension insurance in the Norwegian market than offered by the social contribution tariffs of KLP.

[111] The local governments were for the trial financed and supported by their respective private life insurers, and claimed that NKF's interpretation of the wage agreement hampers competition in the market for municipal pension schemes and hence constitute a breach with the EEA-agreement's principle of free movement of capital (DN 31/10-2001).

labour and employment conditions of those comprised by the agreement.[112] The Labour Court put emphasis on the EFTA Court of Justice's considerations and NKF gained support for its case. This gave birth to the introduction of age and gender neutral tariffs in Norwegian insurance legislation, cf. chapter 5.3.1.

In sum, interest based adaptation of scope of authority has on many issues led to a re-regulation characterised by a race to the top rather than to the bottom. Moreover, due to the interaction with the European market regime the principles of social distribution related to genders (paradoxically) have been sustained and even extended in the Norwegian regime. This section has also revealed a lack of financial industry orientation towards European authorities, and demonstrated a continuity of national loyalties.

5.3.5 Concluding remarks on interest-based adaptation

European market integration has led to increased competitive dynamics which have affected the Norwegian regime for occupational pensions. This has provided Norwegian insurance and pension industry with amplified arguments and rhetoric for regulatory change. According to this analysis, financial industry's strategies of lobbyism are limited to the application of voice-mechanisms, which I have categorised as the most modest exercise of the European framework to own means. Nevertheless, the concerns about financial industry's international competitiveness gained increased validity at the end of the 1990s and led to new policy-making processes, which have resulted in a new life insurance act.

According to my analysis changes have not occurred due to considerations about financial industry's competitiveness alone. Pension reforms and other social, economic and political objectives have also been important catalysts for change in this regime. I have argued that some of the changes came into force primarily due to more strategic considerations about the overall competitiveness of the Norwegian economy. Moreover, I have also found examples of government driven adaptations to European market

[112] EEA provisions are known for promoting competition and the free movement of capital. However, they also set forward principles of equal treatment between genders where the principle of equal wage for equal labour is central. The ECJ Barber-case (C-262/88) has concluded that occupational pension benefits should be considered on equal terms as wage.

integration in order to sustain national objectives. This has legitimised both re-regulatory activities and extension of social objectives on the one hand and financial liberalisation on the other hand. It seems that financial liberalisation and increased exposures to market risks has led to new ways to organise the Norwegian risk management system in order to control undue risk taking. One consequence of this government-driven adaptation has been that pension funds became subject to many EEA adapted life insurance regulations already in the early 1990s, more than a decade prior to the implementation of the pension fund directive.

In sum, a continuity and even extension of national (social and economic) policy objectives has occurred due to forms for strategic adaptations. Hence, changes in Norwegian risk regime are not primarily explained in any triumph of financial market forces, but are rather a result of economy-/government-driven strategic adaptation to increased competitive dynamics.

5.4 IDEA-BASED ADAPTATION

One key effect of European integration arguably is increased cooperation and contact across national borders. This improves opportunities for policy imitation and learning due to the spread of ideas across borders. Prudence and paternalism are two opposing but widely exercised principles or doctrines for risk management organisation across Europe, cf. chapter 2 and 3. While the former rests on a liberal ideology, which emphasises individual rationality, the latter have a general distrust to individuals' capacity to make rational choices and calls on state interventionism to protect the individuals from unintended negative effects of the market. The European Commission has for almost two decades advocated an occupational pension regime that rests on a prudential framework, cf. chapter 3. The debate in Europe has stressed the importance of prudence, risk diversification and less use of quantitative measures in the regulatory framework, as well as called for voluntary tax coordination in order to remove obstacles to corss-border provision of occupational pensions. Prudential principles and practices might therefore be transmitted into the Norwegian regime due to policy imitation of popular and modern ideas at the European level, or by employing European policies and arguments as solution to perceived or experienced domestic problems. In chapter 2 following hypothesis was addressed:

> ***Changes in the Norwegian risk management regime for occupational pensions have mainly occurred due to the impact of ideas embedded in the European market regime***

This section therefore seeks to assess to which extent the key actors in the Norwegian regime has taken a European orientation. In particular I will assess arguments about the principles of risk diversification (assets), free provision of services (access) and the system of risk management organisation. Have idea-based adaptations to the European integration led to a diffusion of the perceived best practices as an inevitable outcome?

5.4.1 Key challenges for welfare states and the role of experts

Most welfare states today experience the challenges of financial liberalisation and economic globalisation on the one hand, and an ongoing demographic shift which challenges the traditional methods of financing pensions on the other. This has led to substantial reform activity across Europe in order to make pensions sustainable and to avert the demographic time-bomb. In chapter 3 I argued that the European initiative for establishing a pan-European prudential framework for occupational pensions has to a large extent been legitimised with the objective to deal with these challenges. Based on my analysis so far, it seems that the Norwegian regime has addressed many similar objectives, which have been primary factors of change. A key question is then if the Norwegian regime has employed European arguments to find solutions on these challenges or imitated popular and prevalent ideas at the European level in its policy making?

Pensions and fund management are complex policy areas, which I argue to a large extent require specific technocratic expertise due to an extensive judicial framework and technical standards. Cooperation on these matters arguably requires a form of expertise, which only experts in very limited agencies possess. Furthermore, while Norwegian politicians are formally excluded from the decision-making processes in Europe, Norwegian experts have the opportunity to participate in EU committees, pan-European business networks, etc, cf. chapter 2.5.3.[113] The opportunity to legitimise the need for change with European arguments and ideas requires however a high density of interaction between the Norwegian level and the European level. Below I assess the European orientation of some experts in the Norwegian occupational pension regimes on this basis.

European orientation of pension funds and NPF

Based on my pension fund inquiry, I find the domestic orientation of these institutional investors quite overwhelming.[114] Any employment of European sources of information to overcome complexity and uncertainty has been rare. Table 5.1 reveals that Norwegian authorities are by far the most common sources of information among Norwegian pension funds. Moreover, Norwegian sources of information were almost seven times more frequent than the application of European sources of information. Only a few pension funds reported that they had been in contact with European authorities and interest organisations.[115]

Table 5.1 Index of national orientation of pension funds[116].

	Norwegian	European
Public authorities	139	14
Journals/literature	90	31
Interest organisations	103	9
Private actors	109	15
Total	**441**	**69**

Except for contact with Norwegian authorities and other business actors, the Norwegian pension fund association (NPF), is reported frequently. NPF is an associated member of the European Federation of Retirement Provision (EFRP), which for more than two decades has advocated a prudential pan-European pension regime. This pan-European interest organisation could also be regarded as an information channel that encourages the

[113] Norway's affiliation with the EU is accordingly represented by supranational sectoral considerations rather than intergovernmental, geographical considerations (Trondal 2001).
[114] Even though carried out some years ago, this was at the height of the pan-European debate on occupational pensions.
[115] About 85 percent of the pension funds that responded considered Norwegian authorities as their most important source of information, while 98 percent of them had Norwegian authorities on its top three list. In contrast, only 7 percent regarded different European sources as one of top-three important sources of information.
[116] The table summarises a score of eight variables in question 2 in my inquiry. The question relates to the application of sources of information to meet the lack of information. Frequent contact is given the value 3, occasional contact the value 2, seldom contacting equalled 1, while the sources never employed get the value 0. Maximum score that one source of information can obtain is 156.

spread of ideas concerning EU issues to the local level. However, any further participation beyond being an associated member has not been a prioritised issue for NPF. Continued membership has occasionally required hard arguing from NPF's side at the organisation's board, due to members' resistance to pay EFRP membership fee. A business informant stressed that *"Norwegian pension funds have been more preoccupied with (actuarial) pension questions than ideas about financial strategies"* (comment by informant). The complexity of rules and regulations and increased multileveled governance are consequently not met by a reorientation to European organs and meeting places by the pension fund industry.

European orientation of life insurance companies and FNH

Compared to pension funds, life insurance companies are large financial institutions, which possess a wide range of knowledge and competencies. Arguably, these institutions have resources and competencies that should make them more adaptive to an international orientation. This is also confirmed to some extent through informal interviews with the largest Norwegian life insurance companies. But even though paying some attention to the pan-European pension debate, their contact with European authorities and interest organisation have been rare (comments by business informants). Moreover, according to their size, traditions and own competencies in Norwegian financial markets, they have arguably the power to act as providers of norms on many issues in the Norwegian policy-making process. As for pension funds, Norwegian authorities and Norwegian business actors are reported as the most frequent employed as sources of information.

Most Norwegian life insurance companies are members of the Norwegian Financial Services Association (FNH), which is the trade association for bank and insurance. FNH enjoys a full membership in the pan-European insurance association, Committé des Europe Assurance (CEA), which is considered as an important source of information for FNH on insurance activities (comment by business informant). FNH have traditionally participated in 3-4 conferences annually on life and pension issues. The pension fund directive and establishing a level playing field on insurance has been on top of the agenda several times. Nonetheless, direct contact with European or EEA authorities has been rare. Mostly employed on these matters are the European Commission's Internet sources.

European orientation of public authorities –MoF and Kredittilsynet

Unlike Norwegian politicians, national officials may participate in the Commission's expert committees. The EU´s Insurance Committee and the Conference of EU Insurance Supervisory Authorities have been the most important EU expert forums on these matters. In these forums national regulatory and supervisory authorities meet and discuss regulation on insurance related activities, their practical implementation and supervisory issues. In 2003 the Committee on European Insurance and Occupational Pensions Supervisors was established (CEIOPS), while a European Insurance and Occupational Pension Committee (EIOPC) was established in 2005. These committees replaced the former committees (Kredittilsynet and Norges Bank 2006). The EEA Agreement establishes Norwegian participation in these forums. Previously, MoF and Kredittilsynet represented Norway interchangeable in the Insurance Committee, which held 3-4 meetings annually. MoF now attends the EIOPC as observer, while Kredittilsynet attends as an adviser for the MoF in this committee. The MoF has delegated further attendance in sub-committees and expert-groups to the EIOPC to Kredittilsynet. Moreover, Kredittilsynet attends in the CEIOPS and its working groups and sub-committees.

Kredittilsynet has according to itself played an active part in the CEIOPS (Kredittilsynet 2005). According to Kredittilsynet (comment by informant) *"Norwegian authorities have been just as active in these meeting as EU member states"*, but due to its status as a non-EU member, Norwegian delegates have to leave when the Committee adopts resolutions or makes amendments. Kredittilsynet regards attendance in these European bodies as important for Norway, since this is where it has the greatest opportunity to influence the EU´s legislative process (Kredittilsynets 2007). Participation has consequently been prioritised. The frequency of Kredittilsynets attendance in international meetings has doubled from 2000 to 2005, when Kredittilsynet attended in about 300 international meetings. The recent growth is mostly related to the growth in EU/EEA meetings, conferences and working groups (ibid).[117]

In sum, national orientation seems to be more important than any European orientation for most Norwegian experts on this area. Any high density of contact between the national and European level has not taken place. The Kredittilsynet has increased its activities on the European arena substantially, but primarily this has been prioritised due to strategic considerations and to attain Norwegian influence on the legislative processes in the EU, cf. above. Moreover, the Norwegian tradition with reliance on consensus-biased corporatist structures in the public-private nexus, such as the Banking Law Commission might strengthen the persistence of national orientation on these aspects. These institutions are not only organs for interest organisation representation, but also important meeting-places for experts, which are key actors in the Norwegian legislative processes on e.g. financial regulation and pension issues. One important role is to make interpretations on the implementation of EEA-relevant regulations into Norwegian legislation, including interpretations on the constraints and incitements embedded in the regime. As noted before, occupational pensions have also traditionally been regarded as regulatory aspects subject to national authority.

5.4.2 Scope of assets

Technological innovations and increased knowledge about statistical and mathematical methods have improved the ability to define, isolate and control sources of uncertainty. Risk management and modern financial theory has now emerged as a science on its own (Bernstein 1992; Holter 2002), which is in particular significant within activities related to demographics and financial markets. Modern risk management theory claims that risks on investments are substantially reduced if diversified across different nationalities, sectors and assets.[118]

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[117] Nordic supervisory authorities have also established institutional arrangements for cooperation on supervision and exchange of information concerning pan-Nordic financial institutions. Other international associations (e.g. the International Associations of Insurance Supervisors; IAIS, and within the OECD) are also established, but of minor importance on the pension. In 2004 OECD took the initiative to set up a new international body on occupational pensions, the International Organisation of Pension Supervisors (IOPS), which Kredittilsynet has joined. Apart from this bilateral meetings and cross-border visits are also included in statistics.

[118] Diversification of assets can eliminate any idiosyncratic risk from holding one individual asset, e.g. a company stock. Moreover, if national cycles and markets are imperfectly correlated, international investments will actually reduce otherwise undiversifiable or systematic risk (Davies 1995). An analysis examined in 1995 annual returns of broad portfolios in equities in the hundred-year

The European Commission has for long maintained diversification into European equity markets as a necessary strategy for reducing risk and increasing returns in times of substantial demographic challenges, cf. ch. 3. The principle of risk diversification is closely related to a prudential risk regime. Risk diversification is however a general trend, which is generally advocated on a global scale, both intellectually and commercially. The breakthrough of risk management as an academic discipline occurred at American universities in the 1950s (Bernstein 1992), and was introduced in Norwegian business schools during the 1980s (Holter 2002). As noted above, the principle of risk diversification was incorporated into the Norwegian regime in the late 1980s, i.e. years prior to SEM implementation. Furthermore, the EU is by far the not only international organisation favouring and disseminating risk diversification as necessary principle and strategy for asset allocation. OECD and the World Bank have also carried out substantial research on this area, and promoted these strategies for custodians' asset allocation.

The diffusion of risk diversification is part of a global equity culture, where custodians are moving from fixed income assets to equities and from domestic to foreign exposure. This has also occurred in Norway, as demonstrated in chapter 4. However, compared to more liberal market economies the exposure in equities is still rather modest. Moreover, the overall continued importance of national denominated assets has arguably by far exceeded the argument of risk diversification in its real terms. This particular concerns the concentration of listed firms at the Oslo Stock Exchange which in real prudential terms would put severe constraints on custodians' capacity to perform risk diversification in Norwegian markets (Norman 2001).[119]

period 1880-1995. Average annual return of equities then was 4 percent better than for governmental bonds. Moreover, it became evident that equities did not have negative returns if investment period was more than 20 years (St. meld 2 (1996-97):78).

[119] Norwegian capital markets are small both in absolute and relative terms. Even though more than 200 companies were listed at the Oslo Stock Exchange (OSE) by the end of 2006, the five largest listed companies accounted for 55 percent of market value, while the top ten listed companies accounted for more than 2/3 of total market value at OSE (www.oslobors.no/ob). Moreover, Norwegian industry specialisation is much more concentrated than in most other EU countries. Large parts of Norwegian companies are related to the oil industry, and its importance is also evident at the Oslo Stock Exchange (OSE). Norwegian economy and financial markets are therefore closely related to the world prices of these commodities (oil and gas) in particular and to the conjunctures of these industries in general. OSE therefore demonstrates larger and more frequent volatility in stock prices than foreign stock markets.

Compared to the asset allocation of the Norwegian Government Pension Fund – Global (Petroleum Fund), there are striking disparities in how to deal with risks. By the end of 2006 the fund was worth NOK 1 784 billions. Since its first asset allocations in the late 1990s it has been bound to invest all of its assets in global securities markets, of which 40 percent in equities and 60 percent in bonds. Due to a recent reassessment of the fund's attitude towards risk, new guidelines which objective is to increase its global risks further (increase its equity exposure to 60 percent) are proposed (St meld. nr 24 (2006-2007)). Since its establishment there has been much debate on the allocation strategy of the fund. This has been related to domestic issues concerning finances to improve the standard of life in Norway, but also related to concerns that the fund is too riskily managed. Minister of Finance Kristin Halvorsen have however recently expressed that:

> *"We believe this represents an appropriate trade-off between expected risk and return. Since the first equity investments were made in 1998 we have gained experience and shown that we can handle volatility without it undermining the fund's investment strategy or fiscal policy" (Financial Times April 14 2007).*

Moreover, ethical guidelines related to human rights and environmental issues have been laid down for investments carried out by this fund since 2004. The objective is to induce corporate social responsibility in asset allocation.[120] Such standards are not laid down for 2nd pillar pensions, but some insurance companies have established funds on own initiative that offer such investment strategies on a voluntary basis.

Also, my pension funds inquiry demonstrated that only a few fund managers have attached great significance to the internal market concerning outcomes of a prudential framework. Considering the role of the internal market for own activities:

- Only 13,5 percent regards it as very important concerning increased investment opportunities
- Only 11,5 percent considers it very significant for reducing long term risk in cases of foreign investments
- Only 5,8 percent regards this market as very important for improved expected returns
- an average of about 1/5 was uncertain about the role of the internal market on these aspects.
- 51,9 percent assigned little importance to the internal market for any changed investment strategy, while only 5,8 percent assigned this great importance

[120] Companies that do not meet these standards may risk exclusion from the fund's investment universe.

Hence, it seems that Norwegian pension funds are rather pessimistically biased to SEM effects for own asset allocation activities. Moreover, quantitative restrictions have remained in Norwegian portfolio regulation, something which is incompatible with a prudential framework in its real terms (Commission 1997). Lifting equity ceilings have also largely been primarily been legitimised in over-all economy considerations, not prudential standards, cf. chapter 5.3. In sum, I argue that the ideas and principles of risk diversification and increased exposure in international equities markets can primarily not be ascribed to European market integration.

5.4.3 Scope of access

Another principle laid down in the European Commission's prudential approach is to establish the free provision of services to pension funds, in particular investment management and asset custody, as well as establish the freedom of cross-border membership in these funded plans. In this thesis I have argued that the adaptation to European principles on this scope has mostly taken the form of rule-based adaptation, cf. chapter 5.2. The value-based arguments for restricting tax-deductibility on occupational pension to Norwegian-based providers of these services have however changed. When the 1988 reforms were elaborated, a green paper on competition in Norwegian financial markets stressed the following when considering customers' opportunities to obtain life and pension insurance in a foreign financial institution:

> *"Arbeidsutvalget går ut fra at disse ordningene og deres skattemessige fordeler er sosialt begrunnet….En adgang til å tegne slike forsikringer i utenlandske selskaper ville svekke tilsynsmyndighetenes kontroll og tilsyn. Av juridiske, sosiale, sikkerhetsmessige og kontrollmessig hensyn finner en ikke å ville anbefale at en åpner for å tegne private TPES i utenlandske selskaper. Den økte trygghet en må anta ligger ved plassering i norske selskaper (sikkerhet, kontroll, språk rettsspørsmål, osv.) bør tilsi at en verner om enkeltpersoners sikkerhet (NOU 1986: 5, p 167-168).*

Clearly, this statement proves that discriminatory practices are legitimised in paternalistic arguments. Paternalistic and social arguments were carried on in the Green Paper on Private pension schemes (NOU 1994: 6) and in the White Paper on Welfare (St. meld. no 35 (1994-95) respectively. In the late 1990s, however, when a new legal framework for supplementary pensions was assessed, the non-discriminatory principles of the EEA Agreement were called into attention. Norwegian lawmakers now assessed the principle of non-discrimination as embedded in the SEM provisions. Restrictions on cross-border activities were maintained, but this time legitimised with to more functional considerations about tax control.

> *"Å nekte fradrag til innbetalt premie til et EØS-selskap som har filial her i landet, må etter utvalgets syn i utgangspunktet anses å være i strid med EØS-avtalen…Ved vurderingen av disse spørsmål, har utvalget tatt utgangspunkt i Bachmann-dommen, som innebærer at grensekryssende virksomhet står i en annen stilling enn virksomhet gjennom filial. Utvalget viser til hensynet til effektiv skattekontroll….Ettersom det ikke finnes adekvate sanksjoner ved eventuell overtredelse av opplysningsplikt, vil skattekontrollen kunne bli svekket" (NOU 1998: 1, p 43-44).*

Some years later the question about tax-deductibility to cross-border provision was raised again due to the general legal development in Europe and a letter of formal notice from the ESA, cf. chapter 5.2. In the proposition to the legal amendments it was stressed that:

> *"Rettsutviklingen i EU innebærer en tiltakende usikkerhet med hensyn til om de norske vilkårene om at utenlandske foretak som vil tilby skatefavoriserte kollektive pensjonsordninger må være etablert i Norge, er i tråd med EØS avtalen….Etter departementets syn er den usikkerhet som er knyttet til om de norske reglene på området er i tråd med EØS-avtalen uheldig" (Ot. prp. nr 1 (2004-2005), kap. 24.1).*

Nonetheless, the complexity and specifity of the regulatory framework across Europe on these matters, has arguably led to a domestic orientation of fund managers operations, cf. chapter 4. It seems, however, that this orientation goes beyond what can be legitimised in tax regulations alone. Provision of financial and judicial services related to asset custody and actuarial operations has for example not been constrained by Norwegian tax provisions. Still, less than 2 percent of Norwegian pension funds purchased all, or to some extent, of their asset custody services from a foreign financial institution, according to my pension fund inquiry (see appendix). The pension fund inquiry also demonstrated that only 7,7 percent of the pension fund assigned great importance to the internal market for increased competition on actuarial and investment services. About 65 percent of the respondents were either uncertain or assigned little significance to the internal market on these matters. Furthermore, most Norwegian life insurers are part of mixed financial institutions with own asset management arms.

5.4.4 Scope of authority

As this thesis has demonstrated, occupational pensions hold both important social and financial functions. Insurance legislation and tax regulations have shaped the Norwegian pension regime in accordance with some key social objectives since early 20th century. The development of supervisory authorities has therefore primarily been motivated by social policy objectives (Knutsen & Ecklund 2000). Financial aspects have however become more important during the last decades as life insurance companies and pension funds have emerged as major financial institutions. This section calls into attention the scope of cross-border learning at the EU level on pension systems and capital market organisation.

Even though the responsibility of social policy remains within welfare states' authority, the EU has increasingly put emphasis on the sustainability of member states' pensions systems in order to avert the old-age crisis. When the Lisbon strategy was adopted, the EU launched an open method coordination (OMC), which objective is to attain (non-binding) agreements on objectives and guidelines that are not subject to EU regulatory authority. A systematic comparison of national policies by funding reports and finding key indicators that are subject to bench-marking evaluations is often a part of this method. Its purpose is to establish a platform for discussion and learning across borders and to influence policy-making in a certain direction. Norway is not attached to this cooperation, but issues on an annual basis a report that summarises Norway's development compared to that of the EU on some key indicators (Nærings- og handelsdepartementet 2006).

A typical modern way of thinking pensions, which also is reflected in the EU and other international agencies (World Bank 1994; 2001), is to consider the pension system as three pillars. This method, which divides pensions into social security, occupational pensions and individual pension agreements, has also been transposed into the Norwegian regime. How a pension system is understood and organised is important because it might express certain policy choices. On the one hand it enables public authorities to legitimise that pensions is a shared responsibility between the authorities, the employers and the individual. Increased reliance on market-based supplementary pensions would relieve fiscal budgets and put less stress on tax-financed social security. On the other hand, this three pillar system would also commit public authorities to provide tax stimuli in order to encourage individual saving for retirement. This became recently apparent when the Norwegian government withdrew tax-deductibility for individual pension agreements due to the introduction of mandatory occupational pensions (FNH 2007). The importance of a three pillar pension system was raised from several sources and it was referred to the commonness of a three-pillar system across Europe. (e.g. FNH 2006). A parliamentary agreement on the pension reform in 2007 re-introduced the third-pillar into the Norwegian regime.

Concerning financial regulation, the Norwegian regulatory and supervisory framework became re-organised in the late 1980s. In 1986 a new comprehensive framework for financial supervision was established in Norway, which integrated supervision of banking and insurance activities under one supervisory authority. This way of organising its supervisory authorities was then unprecedented in Europe. The initiative was based on national considerations related to improvement and coordination of national supervisory authorities, and to meet market tendencies of desegmentation and blurring of traditional financial activities (Aamo 2001). This organisation was backed-up with a new comprehensive framework for financial institutions in 1988. This framework represented a breach with the previously framework, which was institution-biased like the EU directives. Norwegian authorities have however regarded the new comprehensive framework as modern and have consequently found its own solutions on problems related maintaining the scope of authority in times of financial liberalisation, cf. ch. 5.3.

Lately, the application of stress-tests and a more risk-based supervision has been a trend within asset management regulation and orientation, cf. chapter 4. Risk-based supervision is characterised by supervisory techniques where the objective is to identify the primary risks that a financial institution is exposed to and how these risks can be managed. Kredittilsynet has recently transposed its supervisory techniques in this direction (Iversen 2006).[121] According to Kredittilsynet the development of a risk-based supervision largely occurred due to own efforts:

> *"Utviklingen av risikobasert tilsyn kunne i utgangspunktet skjer på ulike måter. Det var mulig å benytte konsulentselskaper, kopiere opplegg fra andre lands tilsynsmyndigheter eller man kunne gå den lange veien og utvikle det risikobaserte tilsyn på egen hånd. Det ble besluttet å utvikle det risikobaserte tilsyn ved å benytte egne krefter….Nytt styringsverktøy skulle ikke fremstå som en revolusjon, og det som var bra med det tidligere tilsynsarbeidet skulle tas med i det nye opplegget" (ibid: 154-155).*

Moreover, according to the chairman of the Banking Law Commission, it is often difficult to determine the exact understanding of the European financial framework at any time (Selvig 2002). Hence, interpretation of how SEM provisions should be understood becomes crucial when Norway is addressing pension and market-related reforms and changes. For financial industry, the frequent regulatory processes have implied great uncertainty about the development of the Norwegian risk regime. According to a financial industry informant, the Norwegian regulatory framework is very complex, stating that: *"there is only a handful that can fully pledge that they obtain a comprehensive knowledge of the Norwegian regulatory framework on this issue"* (comment by informant). In my pension fund inquiry 90 percent of the respondents agreed, wholly or in part, with the statement that *"rules come so quickly that it is difficult to keep informed"*. Moreover, 81 percent disagreed with the statement that *"changes in rules and regulations are largely simple and clearly set out"*. Compared to pension funds, life insurance companies might draw on larger judicial competencies, which enable them to better keep updated on the regulatory flow. But life insurers also acknowledge the complexity of the Norwegian regime, and that the continuously regulatory flow from Norwegian authorities curbs substantial competencies.

Hence, it seems that SEM integration contributes to uncertainty rather than social learning and policy imitation to deal with uncertainty. The European debate on occupational pensions has until recently rarely been an issue in public and governmental papers, even though this has been on the agenda for almost two decades. Aspects of learning and policy imitation have arguably been more important among the Nordic countries than calling the European level into attention.

5.4.5 Concluding remarks on idea-based adaptation

Most welfare states today experience similar challenges when it comes to financial liberalisation and ageing of populations. This makes it difficult to distinguish between European impulses and demographic changes that encourage national pension reforms in similar patterns across Europe.

[121] Due to these developments on risk management supervision and techniques, Kredittilsynet now advocates a total abolishment of the investment ceilings in equities (Kredittilsynet 2006). The MoF (2006) takes however a more sceptical attitude to these aspects, which yet remain unclarified.

Increased cooperation and contact across national borders due to e.g. European integration have improved the opportunities for policy imitation and learning across borders concerning how to deal with these challenges. My analysis demonstrates however that the European orientation among key actors in the Norwegian regime have been rather modest compared with the expectations set forward. Most fund managers hold Norwegian authorities as their most important sources of information and few assign great significance to the SEM regime in asset allocation strategies, etc. Obviously technocratic learning across borders occurs. Much of risk management theory and techniques are not Norwegian innovations. However, I argue that the international networks in which such ideas and wisdom are spread, are by no means limited to European bodies. OECD, the World Bank, the Basle Committee, academic institutions, business networks, etc are also important agencies for the diffusion of ideas.

Further, this analysis has illustrated that the Norwegian regime came into being almost a century ago. The consolidation of this regime, which is based on several domestic compromises, economic structures and considerations about fairness embedded in the Norwegian welfare state, has made any policy imitation difficult. Arguably, cross-border learning primarily proceeds as a process where welfare states evaluate other welfare states' reform experiences and how these initiatives do not fit in the respective risk management regimes (Hagen 2003b: 19). In the processes of finding solutions to domestic challenges, the regime's own experiences (both good and bad) are generally the ones considered mostly, which in turn form the basis of path dependence.

5.5 SUMMARY – EUROPE MATTERS, BUT….

In this chapter I have examined continuity and change in the Norwegian regime for occupational pensions in the context of the incitements and constraints that European integration poses. The complex and multifaceted processes of Europeanisation have been revealed in this analysis. In order to make these processes more clear-cut I distinguished between a rule-based, an interest-based and an idea-based approach to examine Norwegian adaptation to European integration.

I have found examples on adaptational impact on all the three approaches. In contrast to many other European countries, which have kept fund management of occupational pensions under separate institutional arrangements, life insurance companies have a major role in the fund management of Norwegian occupational pensions. These institutions have been subject to EU regulations prior to Norwegian implementation of the EEA Agreement. Consequently, Norway has been exposed to integrative dynamics at an earlier stage on this issue than many other European countries, which first and foremost have faced these dynamics with the recent implementation of the pension fund directive.

European integration has contributed to the frequent regulatory activities and amendments in Norwegian regulations. Lately, this has increasingly concerned changes on key aspects in the Norwegian regime. None of the adaptational processes have however produced constraints and incitements in such a manner that the hypotheses that I have set forward can be verified. It seems that the relative significance of the different variables varies both in relation to each other and over time. I find for example that the legal-institutional pressures have grown in strength lately due to recent developments on the European level. Moreover, the data ascribe the least significance to idea-based adaptation. Interest-based adaptation gains first and foremost explanatory significance if put more broadly defined than to concern financial industry lobbying for improved terms of trade alone. I have found that government-driven adaptation to European integration might explain several changes related to both financial liberalisation and re-regulation. It should however also be noted that processes of liberalisation and re-regulation started in the late 1980s, several years prior to the EEA implementation.

To conclude, even though European integration matters, none of these adaptational processes can fully explain all the changes that have occurred. National authorities have in policy-making processes on these aspects rather attempted to manoeuvre between and balance several considerations and objectives related to e.g. demographic changes and how to make pensions sustainable, European integration, financial industry concerns, and other social political and economic aspects that interact with regime development. Some key empirical findings on these aspects are summarised in a matrix in chapter 6.

6 CONCLUSION

"..regelverksutviklingen de siste tjue årene har vært særdeles krevende både for tilsynet og for finansbedriftene, med en nærmest total omskrivning av all lovgivning og regelverk på finansområdet. Dette har vært nødvendig først og fremst som følge av de stadige strømmen av de nye EU-direktiver, men også som følge av enkelte lovinitiativ ut fra rene nasjonale ønsker og behov, hovedsaklig innenfor området livsforsikring og pensjon" (Director Arne Skauge of FNH (2006: 170-171).

6.1 INTRODUCTION

The scope of this thesis has been to detect the European impact on a policy area, which once was a key element in the establishment of the Norwegian welfare state (pensions). National pension systems are usually categorised into three pillars; a public social security, occupational pension schemes and individual savings. In this thesis attention has been given to the impact of European financial integration on the Norwegian regime for occupational pensions. In Norway most occupational pensions are organised on funded basis, in contrast to public pensions that are tax-financed. When pensions are established on a funded basis, these are inherent to the risks of the capital markets. How to ensure safe fund management and to deal with these markets risks is then crucial.

The ambition for my work has been to provide new knowledge about the relation between Norwegian pensions and European capital markets. My research problem is consequently positioned in two large debates within political science; the relationship between states and markets on the one hand and the relationship between European and national policy-making on the other hand. Moreover, I have also called into attention the complexity of regulating financial markets in an era of globalisation. Issues related to which extent regulatory capacity remains on the financial area and which regulatory level that possesses these competencies have been illuminated. Modern welfare states have taken great interest in how capital markets are regulated and how pension systems are organised. This thesis has also addressed the different regulatory philosophies that prevail on this issue. Two divergent styles of regulation has been evident, one based on the prudent man principle, the other more paternalistic. These philosophies are related to the extent of ideological confidence in markets, but also how market norms are institutionalised into rules and regulations. Finally, I have called into attention key aspects of pension reforms and how welfare states deal with the challenges (and risks) related to the ongoing demographic shift. The research question I set forward in chapter 1 was:

> ***To what extent have changes in the Norwegian risk management regime for occupational pensions implied a regime shift, and to what extent are these changes (if any) explained by constraints and incitements produced by European market integration?***

In Europe the debate on a pan-European regulatory regime for occupational pensions has been on the agenda for almost two decades. The European Commission has in particular advocated a pension regime based on a prudential framework. This has been regarded as important to complete the internal market (including to improve the free movement of capital, services and labour), to enhance economic growth and to make pensions sustainable. The Commission has faced substantial difficulties with achieving a political agreement at the European level on this issue. These difficulties are to a large extent explained with the substantial diversity that exists across Europe when it comes to pension system organisation, capital market regulation, taxation, supervision, etc. A pension fund directive was eventually adopted in 2003 and the European Commission has recently strengthened its judicial efforts in order to remove what it considers as discriminatory tax regulations on cross-border provision of supplementary pensions.

The Norwegian welfare state has also taken great interest in how capital markets are regulated, and how pension systems are organised. Moreover, this form of welfare provision rests on long traditions. A Norwegian regime on occupational pensions came into force in the early 20th century, about 50 years prior to the establishment of the National Insurance Scheme. I have in this thesis argued that this regime at an early point of time took a national, paternalistic orientation. This regime proved to be stable for a long time and any substantial changes did not occur until the late 1980s. This enabled a regime institutionalisation where earning-related, insurance-based, defined benefit pension schemes became standardised. Only Norwegian life insurance companies and pension funds were made eligible to provide such pensions on a tax-deductible basis.

Consequently, most occupational pension assets today are held in custody by life insurance companies and pension funds. The last decades there has been a considerable growth of assets held in custody by these financial institutions. By the end of 2006 their assets accounted for about NOK 790 billion. These assets are mostly based on assets from occupational pension schemes. In comparison, equivalent numbers for 1980 was NOK 43 billion. How assets are invested, by whom these are managed, and in which framework benefits are embedded, should therefore be of increasing importance.

6.2 EMPIRICAL FINDINGS

Since the late 1980s, there have been frequent and substantial regulatory activities in the Norwegian regime for occupational pensions. At the same time, European market integration has been extended and grown deeper. In accordance with my research question this analysis has been structured as followed; first I assessed if changes in the Norwegian risk management regime for occupational pensions have implied a regime shift, and thereafter I analysed what explanatory significance processes of European market integration have for any changes in the Norwegian regime.

In order to enable a solid assessment of regime change (or denote any pattern of change) concerning how risk management regulation and market performance are carried out, I developed three dimensions which have helped me make this task achievable. These dimensions were related to how assets are invested (scope of assets), by whom these are managed (scope of access) and in which framework benefits are embedded (scope of authority). These were chosen with care as they indicate core policy fields of fund management for occupational pensions. They also relate to how different risks are dealt with and what risks are politically acceptable. I have argued that these three dimensions also allow me to analyse changes along the prudential-paternalism continuum. Moreover, processes of Europeanisation are complex and multi-faceted. In order to make these more clear-cut I have distinguished for analytical purposes between three different mechanisms of national adaptation to European integration; rule-based, interest-based and idea-based adaptations.

Below this framework is structured into a matrix where some key empirical findings in my analysis are summarised. These findings should be related to the expectations that were developed in chapter 2 (expressed in italics below) in order to assess if changes have moved in a prudential direction and to consider the significance of European market integration on the changes observed.

Table 6.1 Matrix over theoretical framework and some key empirical findings

	Rule-based *Changes have mainly occurred as a direct result of legal and institutional developments at the European level*	**Interest-based** *Changes have mainly occurred as a result of competitive dynamics introduced by the SEM, where a international oriented Norwegian financial industry has gained support for regulatory reforms*	**Idea-based** *Changes have mainly occurred due to the impact of ideas embedded in the European market regime*
Scope of assets *Norwegian portfolio regulation and asset allocation has become more oriented towards risk diversification into European equity markets rather than Norwegian markets*	• Frequent re-regulatory activities in the 1990s in order to implement minimum requirements on assets and investments set forward by the SEM-regime. • These activities led to a more judicial detailed, complex and comprehensive framework for asset management. As a result, a new asset management regulation was implemented in 1997. • Quantitative restrictions for allocations in equities and abroad (currency-matching regulations) remain. A new asset management regulation is expected in 2008 that will lift the investment ceilings on equities substantially in accordance with the minimum requirements of the pension fund directive. In sum: Legal developments at the European level have so far not constituted a breach or substantial change on the scope of assets. A more prudential framework should however be expected when a new asset management regulation is implemented in 2008.	• European market integration has led to increased competitive dynamics in the Norwegian regime for occupational pensions. Financial industry has lobbied for the liberalisation of equity ceilings. • Step-by-step liberalisation of equity ceilings in the 1990s primarily due to economy-based considerations to confront Norwegian industry's demand for equity capital. • The EEA-adapted portfolio regulation for life insurers became applicable to pension funds in 1993, 10 years prior to the adoption of pension fund directive in the EU – Government-driven adaptation in order to establish a level playing field for domestic fund managers, which led to a liberalisation of investments for pension funds. • Any significant lobbying for increased asset allocation into international markets to diversify investments risks has not taken place. In sum: The general liberalisation of fund managers' assets has mainly occurred due to a government-driven adaptation and due to strategic considerations about the competitiveness of the Norwegian economy.	• Principles of risk diversification implemented into Norwegian legislation in the late 1980s. Stress-tests increasingly applied recently to examine fund managers´ risk capacity in asset allocation. • Technocratic learning across borders on risk management occurs but this takes place in many international networks. • Many fund managers are rather pessimistically biased to the SEM significance for own asset management activities. A national orientation among fund managers has been revealed. • Even though investments into international markets have increased there seems to be a home-bias in asset allocation. Assets mostly allocated into Norwegian markets and in bonds in particular In sum: The ideas and principles of risk management and increased exposure in international equities markets cannot be ascribed to European integration alone. Moreover, compared to the principles of risk diversification it seems yet to be a way to go before acting fully in accordance with a prudent man approach.
Scope of access *Liberalisation of Norwegian licensing regulations and ownership legislation so that national borders are transparent and characterised by substantial cross-border activities*	• The EEA commitments about one single licence for life insurance companies were implemented in 1994. • The effects have been modest partly due to restrictions on nationality in tax provisions concerning who are eligible to provide tax-deductible pension schemes. • Lately, there has been a step-by-step liberalisation of tax provisions concerning eligibility of foreign fund managers due to legal processes at the European level (ECJ-rulings). • Compelled to replace ownership regulations that limited maximum	• Any competitive disadvantages have not triggered strategies of exit and evasion among Norwegian fund managers. Due to the cross-national variance in pensions systems, fiscal regulations and life insurance legislation, occupational pensions have to a large extent been non-tradable services in real terms. • Concerns about foreign acquisitions have grown more prevalent, but mergers and acquisitions within life and pension insurance have mostly been carried out within Norwegian borders. In sum: Financial industry lobbying has been biased towards sustaining market shares	• Changes the in principles for restricting tax-deductibility on occupational pensions to Norwegian-based providers – from putting emphasis on national paternalistic arguments to functional considerations about tax control. • A home-bias among fund managers remains concerning the purchase of asset management related services. In sum: Changes in the Norwegian regime must be explained elsewhere.

	ownership in a Norwegian financial institution to a 10 percent share, with a system of more approximate judgements. This occurred due to infringement procedures carried out by the ESA. **In sum:** Institutional pressures at the European level have increased the formal scope of access substantially, in particular during the last 5-6 years. The extent of transnational activities are however very modest.	domestically rather than increase market opportunities internationally. National variations in fiscal provisions, insurance and pension legislation have put constraints on transnational activities.	
Scope of authority *A few market-conform regulations has become more important than a regulatory framework that put emphasis on social objectives and fund security*	• The organisation of occupational pensions remains within welfare states' authority. This also concerns the social objectives that have to be attained in order to achieve tax-deductibility, including respecting social and labour legislation and the outcomes of collective bargaining agreements. • The EU regulatory framework rests on the principle of home country control and implementation of some minimum requirements, e.g. concerning solvency requirements. • Norwegian authorities have on several issues implemented more strict (and extensive) regulations than laid down in EU-regulations. Hence, several special regulations persist due the role of fiscal provision and considerations about the general good (consumer protection, solidity of fund managers, etc.) for the provision of these services. **In sum:** The national scope of authority both on pensions and financial activities are more broadly defined than set forward by the EU.	• Considerable financial industry disapproval with the so-called Norwegian special regulations, which several have been established as a result government-driven adaptation, where minimum requirements have been implemented more strictly or broadly than set forward in the EU directives • Life insurance companies and pension funds have for example been subject to capital adequacy requirements set forward for banks and credit institutions since the early 1990s. • Financial industry lobbying in the late 1990s led to increased focus on fund managers' terms of trade vis-à-vis international competitor and a new life insurance act is implemented. Several special regulations persist. Industry loyalty on these matters seems however to remain with national not European authorities. • Extension of social policy objectives has primarily occurred due to national strategic considerations, but elements of interest-based adaptation has also been prevalent, e.g. the case of gender and age neutral pensions. **In sum:** Several examples of re-regulation due to both European adaptation and other domestic concerns and objectives.	• Few examples on policy imitation and cross-border learning concerning pension system organisation. It has however become more usual to consider the pensions system as three pillars. • Financial regulation and supervision became integrated in the late 1980s, This comprehensive framework was unprecedented in Europe. • Kredittilsynet has increasingly engaged in international activities at the EU level and elsewhere. This should encourage cross-border learning. When developing a risk-based supervision, however, own experiences and efforts were emphasised. • SEM integration has largely contributed to uncertainty and complexity about the policy development among key actors in the Norwegian regime. **In sum:** In the process of finding solutions to domestic challenges, the regime's own experiences (good and bad) are generally the ones emphasised.

A step-by-step liberalisation of portfolio regulation (scope of assets) and deregulation of licensing and ownership legislation (scope of access) have indicated a gradual move in prudential direction on these matters. The introduction of defined contribution pension schemes also represents a major liberalisation on risk management policies on pensions, as market risks are individualised in these schemes. A fully prudential framework is however yet to be implemented. Quantitative investment ceilings have remained on the traditional defined benefit pension schemes, while the actual scope of asset allocation and transnational activities performed by fund managers have been much more modest than expected. Moreover, there have been several examples of re-regulation to ensure and strengthen consumer protection, solidity and fund security on the on hand and to maintain and extend the social principles embedded in the Norwegian regime on the other hand.

In sum, the data I have observed for assessing regime change do not provide a clear-cut conclusion on this question. It seems that the Norwegian risk management regime for occupational pensions has increasingly emerged as a hybrid model, between paternalism and prudence, between continuity and change.

European market integration has produced constraints and incitements for Norwegian authorities on several fund management issues. In contrast to many other European countries, which have kept fund management of occupational pensions under separate institutional arrangements, life insurance companies have a major role in the fund management of Norwegian occupational pensions. These institutions have been subject to EU regulations prior to Norwegian implementation of the EEA Agreement. Consequently, Norway has been exposed to integrative dynamics at an earlier stage on this issue than many other European countries, which first and foremost have faced these dynamics with the recent implementation of the pension fund directive. I have found examples on European impact on the Norwegian regime in all three mechanisms for national adaptation which have been analysed. None have however produced constraints and incitements in such a manner that the hypotheses that I have set forward can be verified.

It seems that the relative significance of the different variables varies both on relations to each other and over time. I find for example that the legal-institutional pressures have grown in strength lately due to recent developments on the European level. Moreover, the data ascribe the least significance to idea-based adaptation. Interest-based adaptation gains first and foremost explanatory significance if put more broadly defined than to concern financial industry lobbying for improved terms of trade alone. I have found that government-driven adaptation to European integration might explain several changes in the Norwegian regime. It should however also be noted that processes of liberalisation and re-regulation started in the late 1980s, several years prior to the EEA implementation. This is exemplified on all the tree scopes (assets, access and authority).

To conclude, even though European integration has produced constraints and incitements on the Norwegian regime, one cannot fully grasp the big picture of continuity and change unless a more broadly explanatory approach is chosen. National pension reforms and other policy objectives have been at least as important as European integration. In sum, national authorities have in policy-making processes on these aspects continuously attempted to manoeuvre between and balance several considerations and objectives related to e.g. demographic changes and how to make pensions sustainable, European integration, financial industry concerns and other social, political and economic aspects that interact with regime development.

6.3 LESSONS FOR FUTURE RESEARCH

The theme of this paper has been positioned between social policy (pensions) and Europeanisation of the welfare state, but where emphasis is put on financial markets and how to regulate these. With a few exceptions there has been a general lack of studies that focus on regimes for markets and finance and how states and markets interact on these matters. My study has been an empirical contribution to this research area and the key discourses that prevail in this context, cf. chapter 1.2.

Firstly, contrary to the vast amount of statements on the *state-markets* issues, where a general claim is that more markets imply less politics, this thesis demonstrates a more profound relationship between states and markets. I find that public authorities in many cases have induced financial liberalisation in order to achieve key economic, social and political objectives. Hence, freer markets have occurred a result of state-driven policy-making. At the same time, processes of financial liberalisation and re-regulation have proceeded combined during the last decades. Re-regulation has consequently been a state response to financial liberalisation and to cope with the challenges related to increased market exposure. Scholars of political science should in the future therefore to a larger extent look into the complementarities of state and markets and how market behaviour is shaped by public regulation and policy-making.

Secondly, this thesis has provided new knowledge about the relationship between *Norwegian pensions and European capital markets*. In general, the authority of social policies rests within the national domain, while market-making rests within the domain of the EU. Occupational pensions, which are important for both welfare states´ pension systems and European markets, have however been a contested issue between these levels. Recently, several ECJ decisions have challenged welfare states´ autonomy on taxation and social policy issues. Future research on social policy should therefore focus on the legal and judical development in the EU and how this affects welfare states´ welfare provision.

At the same time, this thesis has illustrated that even though the EU has established considerable regulatory competencies on the financial area, it seems that there still remains a considerable scope of national manoeuvrability. This has to some extent caused domestic adaptation with national colours and elements of path dependence in the Norwegian financial regulation (so-called Norwegian special regulations). Studies that examine the impact of Europeanisation on the nation state should consequently put emphasis on a more broadly defined approach than changes in national jurisdiction due to implementation of EU directives. Examining continuity and change in the public-private mix should also call into attention the constraints and incitements embedded in the national regime and how these interact with the constraints and incitements at the EU level. This concerns in particular to what extent national institutions such as the Banking Law Commission transpose special interests and ideas into policy preferences.

Thirdly, since the late 1980s the *national abdication on the financial area* has to a large extent been taken for granted by many scholars due to processes of globalisation and financial liberalisation. An almost unison conviction has been evident, stating that capital is global, that financial institutions operate on a transnational basis, and that nation states experience reduced capacity to enforce social regulations on the financial area. Based on the findings in this case study on the Norwegian pension industry this general conviction should be modified substantially. The EU initiatives on this area indicate that Norway is not a deviant case on these matters. As this industry has a growing importance in global finance, scholars should consequently take the growing pension fund industry into account before making their conclusions on the globalisation thesis.

Fourthly, this thesis indicates that different regimes are characterised by *different regulatory philosophies*. These philosophies are obviously related to the extent of a fundamental ideological confidence in the markets. As illustrated in this context, the regulatory philosophy is also closely related to how welfare states organise its risk management systems. Hence, different regulatory philosophies largely define the conditions under which the transaction occur and shape market behaviour. In order to address what market risks that are political acceptable, future research should address how and what kind of market norms that are institutionalised into rules and regulations. This would be of particular importance in reform periods, when financial liberalisation and re-regulation could be understood as a re-organisation of welfare states´ risk management systems.

Finally, this thesis has addressed key aspects of *pension reforms* and how welfare states deal with the challenges (and risks) related to the ongoing demographic shift. A key objective is how to make pensions sustainable. In countries such as Norway and Sweden the national reforms in first pillar social security pensions are now to a large extent adopted. It remains however unclarified how the regime for second pillar occupational pensions should be accommodated to social security. A key objective on the political agenda is to make second pillar pensions complementary with a modernised social security. Increased reliance on markets puts less stress on public expenditure for future welfare provision and reduces the political risks related to the maintenance of fiscal budgets. The risks would then become increasingly related to the returns of the markets. Future research should consequently take into consideration how increased market-reliance and the individualisation of market risks affect future welfare provisions (distribution of costs and income) between different social and economic actors. Who wins and who loses would apparently have political implications, perhaps also for the Norwegian social model.

When accounting for these lessons it seems however that the challenges of the twin pressure (characterised by financial liberalisation and demographic shift) that most welfare states experience today are closely inter-related and also appear as a part of the solution to the problems caused by the ageing populations.

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APPENDIX 1 – PENSION FUND INQUIRY

Vi ber Dem markere svarene Deres med ett kryss i de aktuelle svarkategoriene, om annet ikke er nevnt.[122]

1) I hvilken grad opplever De at norske myndigheter dekker Deres informasjonsbehov om nytt regelverk vedrørende pensjonskassens virksomhet?

	Svært godt	Bra	Passe	Dårlig	Svært dårlig	Usikker	Missing
Norske regler	7,7	44,2	28,8	19,2	0	0	0
EU-/EØS-regler	1,9	5,8	19,2	26,9	28,8	11,5	5,8

2) Vi vil også gjerne vite om hvilke andre informasjonskilder De benytter.

	Ofte	Av og til	Sjelden	Aldri	Missing
Offentlige myndigheter (Kredittilsynet, Finansdepartementet, osv)	69,2	28,8	1,9	0	0
Norske bransjetidsskrifter/- litteratur	21,2	38,5	32,7	5,8	1,9
Norske interesseorganisasjoner	34,6	40,4	13,5	9,6	1,9
Kontakt med norske private aktører (f.eks kolleger og venner)	38,5	36,5	21,2	3,8	0
EU-/EØS-organer og institusjoner	0	3,8	19,2	73,1	3,8
Utenlandske bransjetidsskrifter/ -litteratur	1,9	5,8	42,3	46,2	3,8
Utenlandske interesseorganisasjoner	0	3,8	9,6	82,7	3,8
Kontakt med utenlandske private aktører	0	9,6	9,6	78,8	1,9

3) Hvilke av disse informasjonskildene oppfatter De som viktigst? Marker den viktigste med 1. Marker den nest viktigste med 2, og eventuelt den tredje viktigste med 3.

	Rangering	Missing
Offentlige myndigheter (Kredittilsynet, Finansdepartementet, osv)	1=84,6/ 2=9,6	1,9
Norske bransjetidsskrifter/- litteratur	3=25,0/ 4=15,4	44,2
Norske interesseorganisasjoner	2=53,8/ 3=17,3	17,3
Kontakt med norske private aktører (f.eks kolleger og venner)	2=26,9/ 3=28,8	28,8
EU-/EØS-organer og institusjoner	5=3,8/ 6=5,8	86,5
Utenlandske bransjetidsskrifter/ -litteratur	6=5,8/ 7=3,8	84,6
Utenlandske interesseorganisasjoner	5=5,8/ 7=3,8	86,5
Kontakt med utenlandske private aktører	3=5,8/ 8=5,8	82,7

4) I løpet av de siste årene har det kommet flere endringer i regelverket for bedriftspensjoner og pensjonskasser. I hvilken grad er De enig i følgende påstander?

	Helt enig	Delvis enig	Uenig	Usikker	Missing
Reglene kommer så fort at det er vanskelig å være oppdatert	44,2	46,2	9,6	0	0
Regelendringene er stort sett enkle og oversiktlige	0	15,4	82,7	1,9	0

[122] Fordelingene er gjengitt i prosent.

5) EU-kommisjonen la i oktober 2000 frem et forslag om nytt regelverk for pensjonskassers virksomhet. Dette vil bli en del av EØS-avtalen dersom det blir vedtatt. I hvilken grad opplever De at norske myndigheter har informert om dette direktivet?

I stor grad	Nokså stor grad	Mindre grad	Liten grad	Usikker	Missing
0	1,9	21,2	73,1	3,8	0

6) Opplever De at dette direktivet vil ha betydning for Deres virksomhet?

I stor grad	Nokså stor grad	Mindre grad	Liten grad	Usikker	Missing
7,7	15,4	21,2	5,8	50,0	0

7) Blant noen medlemsland er det motstand mot felles EU-regler for pensjonskasser. I hvilken grad vil De si at De kjenner til denne debatten?

I stor grad	Nokså stor grad	Mindre grad	Liten grad	Ukjent	Missing
0	3,8	11,5	42,3	40,4	1,9

8) Gjennom EØS-avtalen gjelder reglene for det indre kapitalmarkedet også for Norge. Hvilken betydning har dette for Deres virksomhet?

	Stor grad	Viss grad	Liten grad	Usikker	Missing
Et større tilfavn av plasseringsmuligheter	13,5	42,3	25,0	15,4	3,8
Lavere langsiktig risiko ved utlandsplasseringer	11,5	46,2	19,2	19,2	3,8
Bedre forventet avkastning	5,8	40,4	26,9	23,1	3,8
Mindre usikkerhet rundt norske særregler	13,5	25,0	25,0	32,7	3,8
Økt konkurranse om aktuar- og plasseringstjenester	7,7	23,1	46,2	19,2	3,8
Økende problemer med manglende informasjon	19,2	34,6	21,2	21,2	3,8
Endret investeringsstrategi for vår pensjonskasse	5,8	21,2	51,9	17,3	3,8

9) Har det vært diskutert å flytte pensjonskassen til et annet EØS-land?

Nei	100
Ja, for å komme inn under et mer fordelaktig regelverk	0
Ja, andre grunner	0

10) Til slutt følger noen spørsmål om pensjonskassen. Først, hvor gammel er pensjonskassen?

Antall år	Gjennomsnitt på 44 år	Missing=1

11) Kan De angi pensjonskassens samlede forvaltningskapital (gi et anslag avrundet til nærmeste 10 millioner kroner)?

Beløp	SUM=50.5 mrd = 990 mill i gjennomsnitt	Missing=1

12) Hvordan foregår forvaltningen av pensjonskassens midler?

Kjøper alle tjenestene av eksterne forvaltere	Kjøper noen tjenester eksternt	Forvalter alt selv	Missing
38,5	32,7	26,9	1,9

13) Har det etter Deres oppfatning skjedd større endringer i investeringsstrategien til pensjonskassen de siste fem årene?

Nei	13,5
Ja, noen få endringer av mindre betydning	46,2
Ja, hyppige og relativt omfattende endringer	40,4

14) I hvor stor grad kjøper pensjonskassen eksterne finansielle og juridiske tjenester som ledd iden løpende virksomheten?

	I stor grad	Nokså stor grad	Liten grad	Usikker	Missing
Fra hovedsakelig norske forbindelser	38,5	28,8	30,8	0	1,9
Fra hovedsakelig utenlandske firmaer	0	1,9	55,8	5,8	36,5

15) I hvilken grad deltar medlemmene (fagorganisasjonene, etc.) i beslutninger om forvaltning av pensjonskapital?

Høy grad	Noen grad	Liten grad	Aldri	Missing
17,3	34,6	32,7	15,4	0

15) Kan De angi den omtrentlige andelen (i %) av ulike plasseringer nå?

Bankinnskudd	Obligasjoner	Aksjer/aksjefond	Utlån	Fast eiendom	Missing
14,5	54,9	20,9	8,2	1,5	2 stk

16) Hvordan vil De karakterisere pensjonskassens investeringer i aksjer de siste fem årene?

	Økt betydelig	Økt Moderat	Uendret	Sunket	Missing
Andelen plassert i norske selskaper har	7,7	48,1	19,2	21,2	3,8
Andelen plassert i utenlandske selskaper har	34,6	36,5	19,2	3,8	5,8

17) Helt til slutt vil vi be Dem angi hvordan de ulike plasseringsformene er geografisk fordelt. Vi spør kun om omtrentlige andeler (i %).[123]

	Norge	Norden	Andre EU-land	Andre land
Bankinnskudd				
Obligasjoner				
Aksjer/aksjefond				
Utlån				
Fast eiendom				

[123] Mangelfulle og ufullstendige svar medførte vanskeligheter med å gjengi valide svar på dette spørsmålet.