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Norway: Small State in Big Energy Play Room for National Political Maneuvering in European Energy Markets

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Ole Gunnar Austvik:

Norway: Small State in Big Energy Play

Room for National Political Maneuvering in European Energy Markets

Summary

This article discusses the scale and scope of the room for political maneuvering in the energy sector available to Norway as member of the Single Market (SM) in the European Union (EU). Norway has deliberately developed its energy resources under strong political control, in order to benefit the “whole Norwegian nation.” The European Economic Area (EEA) agreement, which entered into effect in 1994, made Norway a participant in a liberal economic restructuring processes. As EU policy aims at benefiting purchasers in the whole EEA area, and not individual member states only (outside exporters even less), it clashed with Norwegian energy policy as regards for whom policy should work, and how. The article discusses how small-state Norway managed to achieve nationally defined goals for its energy sector within the rule-based SM, versus EU as the big political player. The main empirical focus is on natural gas. The article argues that the room for national political maneuvering within liberal EU regulations appears to depend as much on national vision and situation, and on comparative advantages in policymaking and choice, as on EU policy itself. In the Norway–EU energy case, nationally defined policy goals were largely retained, with active regulatory and legal interpretation, innovative adaptation and, when necessary, the introduction of new policies and greater direct state participation to compensate for lost opportunities.

Keywords: Norwegian energy policy, EU energy policy, room for national political maneuvering, natural gas.

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Introduction

Although Norway is not a full member of the European Union (EU), through the European Economic Area (EEA) agreement it participates in the EU's Single Market (SM). This article examines the scale and scope of the room available to Norway for political maneuvering in the energy sector, with an emphasis on natural gas. The Norwegian energy sector was already under strong political control when the country entered the 1990s and the EU integration processes. The state was engaged as owner and producer, and as a leader of change and development. Unlike private industries, the Norwegian state could define social goals for the industry and employ regulative, legal, and political measures as a managerial package for achieving these goals. Then the EEA agreement, which entered into effect in 1994, made Norway a full participant in the Single Market in all areas, except for agriculture and fishery. The Single Market liberal restructuring processes included the energy sector. A special focus was placed on directives for electricity and natural gas markets, and on the application of EU competition law. Norway is the seller of energy; EU countries are the buyers. As EU policy aims at benefiting the whole EEA area, and not individual member states only, this clashed with Norwegian energy policy as regard for whom such policy should work, and how. The Norwegian state activist model came under heavy pressure. Liberal ideological principles for economic activity were promoted, influencing Norwegian norms, institutions and law. Together with simultaneous industrial and market maturity, the EEA agreement contributed to changing the Norwegian energy model by removing some opportunities for policy-making, but also creating new policy.

The energy sector is a strategic sector for most countries and thus tends to receive considerable political attention—be it in Norway, the EU, or elsewhere. Energy-dependent importers in the EU have the greatest concerns over the security of supplies (prices and access to supplies), whereas producers like Norway are more concerned with security of demand (prices and access to markets). When dealing with the interdependency between exporters and importers, the EU, as the big political player, applies the same market principles, rules, and regulations to achieve its strategic external energy goals as within its internal market, rather than bilateral sector-adjusted negotiations. Norway, like most other energy producers, has been far more interventionist and case-by-case based in its internal and external energy policy. How, then did small-state Norway manage to retain its nationally defined goals for its energy sector within the rules-based EU Single Market? Drawing on microeconomics, international trade, convergence and integration theories, and small-state literature, this article begins by exploring the scale and scope of the room for national political maneuvering available to small states in an international economic integration area. It then turns to the role(s) of an activist Norwegian state in its energy sector; and how this role was challenged by the EEA agreement and EU energy policy. Next it examines Norway's strategy of shifting from conflict to cooperation and innovative adaptation to EU rules and regulations that sought to Europeanize Norwegian energy policy. Finally, possible lessons to be drawn from the Norwegian–EU energy experiences as regards the future and other relationships are discussed.

1 European economic integration and small-state political maneuvering room

International economic integration makes the nation state subject to regulation and not just the one that regulates activities of others. What previously were national political questions about the rules for policy has become a legal question of what should and could be policy (Arnesen 1995:659). Trade liberalization has reduced each state's freedom to choose policies independently of others. The functioning of the international and European system, in terms of decision-making as well as markets, gains increasing importance in the formulation of national policies. National autonomy to formulate policies based solely on domestic preferences is balanced against and changed in favour of the benefits expected to accrue from trading in larger markets in order to achieve higher economic standards of living. A state's response to this loss of autonomous policymaking may be passive, or even defensive, aggressive and exploitative, or constructive and cooperative. Large states can often be more aggressive and exploitative than small states because of asymmetric relations. From a realist perspective, the larger state as the less dependent actor will not simply let market transactions passively dictate its interdependence with the smaller state, but will demand changes in the terms of operations or "side payments." For the small country, such an asymmetric interdependence may turn into something close to one-sided dependence. Small states have economies that depend on fewer export products than do large states, and they often have no significant share in international or EU markets. Small states are dependent states, heavily reliant on functioning international institutions and legislation shaped mainly by large states (Toje 2010). Small states are generally defensive in their policymaking with a narrower range of interests than large states (Fox 1959:3). Large countries like Germany and France, for example, obviously have more influence over EU policy than do smaller members, and usually seek to shape the rules of the games to their own advantage. When common institutions are established, they constrain and shape the room available for national-level political maneuvering.

Views differ as to how to understand these processes. Neo-functionalists and constructivists argue that, over time, the merging of identities and preferences will lead to increasingly greater political similarities across countries; and that the transfer of power to common institutions works to the benefit of all. By contrast, intergovernmentalists and institutionalists explain the remaining policy differences by the fact that many nation states and domestic institutions resist and undermine the gradual transfer of power out of their domains. Neo-functionalists and constructivists point to the potential for further integration: neo-functionalists, through functional and political spillovers; constructivists, through changes in identities and preferences resulting from longer-term cooperation. Institutionalists and intergovernmentalists are more skeptical to spillovers and to socialization. In their view, institutional and policy integration is unlikely to change in the foreseeable future (Moravcsik 2001:163), and policy will continue to be defined by inter-state processes. Further, they consider the bargaining and consensus-building techniques in international organizations as refinements of intergovernmental diplomacy whereby important domestic political autonomy can be retained, rather than the ultimate transfer of power to a supranational entity.

The compatibility between EU and domestic policy has been increasing with structural convergence between institutions and policy (Cowles, Caporaso, & Risse 2001) but also through dynamic processes of adaptation. In this

context, Europeanization has been defined as “a set of processes through which the EU political, social and economic dynamics become part of the logic of domestic discourse, identities, political structures and public policies” (Ladrech 2001:3). Similarly, globalization has been defined as “the norms, institutions, and laws that support global capital accumulation along neo-liberal principles” (Laxer 1995:288). The processes can lead to “re-evaluation of interests, re-formulation of conflicting issues and adoption of new perspectives or knowledge” (Claes 2002:300). Hence, Europeanization and globalization exert an influence on legal matters, institutions, as well as on norms and ideology as a continuous process.

Moreover, as politics shape markets, markets shape politics. In some cases, international markets determine the national room for political maneuvering more than supranational regulations do. One example is how global free movement of capital gives countries little room for national regulations (like the introduction of a “Tobin tax” or increased capital/reserve requirements for banks), even if the regulations from the IMF or other bodies are more advisory rather than regulatory, and do not forbid either a tax or increased equity for national banks. The international capital market restrains national credit and monetary policies. The more a country is exposed to international economic competition, the more likely is its policy to converge with that of other countries with the same international exposure, due to market integration and competition; and domestic change can be achieved only via international cooperation. International competition as well as supranational harmonization of laws and regulations push governments to solve common problems through common institutions (Drezner 2001:60). International markets and competition create opportunities for businesses, but they also restrain cost-driving national policymaking.

The basic idea of the EU Single Market is taken from international trade and microeconomic theory, and neoclassical contestable market principles. It assumes full factor mobility (capital and labor) within and across nations and the exploitation of economies of scale (and scope), making firms in absolute terms bigger. Bigger firms often encounter competition at the European and global level, but may become dominant at national levels. Ideally, the EU’s SM is intended to operate as one perfectly competitive market with the same rules and regulations across the Community. This (theoretically) first-best situation exists when markets are unified across borders, and firms adjust production where their respective marginal costs equal a common price, with no national discrimination. With this point of departure, SM policy should be based on competition law and regulation, and (only) correct market distortions (caused by, for example, externalities or monopoly power), so that there will be consistency between companies’ desire to maximize profits and the EU desire to maximize European welfare, as in a perfectly competitive national market.¹ This is the core of regulatory economics for a society to be socially efficient, as defined in economics.² As the EU is a customs union, no traditional trade policy (tariffs, quotas) exists between participating nations. In consequence, to

¹ Under regulation, a “visible hand” is introduced to correct the imperfect market’s “invisible hand.” By regulating the framework and conditions for how firms may operate, the public authorities seek to achieve what is considered optimal for society. The incentives and disincentives given for pricing and production should create mechanisms that lead to efficient allocation of resources and “acceptable” distribution of income. There are many ways of regulating markets and the behavior of firms, which may result, *inter alia*, in principal-agent problems and gaming between the regulator and the regulated (Train 1991, Austvik 2000).

² “Social efficiency” is defined in economics as the optimal distribution of resources in a society, taking into account all external and internal costs and benefits. This occurs when marginal social benefit equals marginal social cost (as opposed to the optimization of private costs and benefits). Social efficiency is closely related to the concept of Pareto optimality, which is a situation where it is impossible to make anyone better off without making someone worse off.

prevent hidden and indirect trade barriers, comprehensive EU-level harmonization of domestic policies affecting competition must be part of the policy package. To prevent “races-to-the-bottom,” minimum standards must also be set. EU rules and regulations narrow the room for national political maneuvering through legal harmonization, and enforces a floor on how far down international competition can push cost-driving regulation.

However, while international economic integration represents a win–win situation on aggregated national levels and has served as the basis for Western international society after WW II, it represents a win–lose situation at domestic sector levels. Internal winners are generally found among investors, and educated and young labor. The losers are typically labor with low education, higher age and firmly-established social affiliations that make it difficult to change profession, industry and/or location. The transition from the losing to the winning sector takes time, and more time is needed for labor than for capital: indeed, and for some labor it is not possible. With varying relevance and strength, policy in most countries is directed to protect the sector losers of trade (mostly importing competing industries), although some policy is also directed to promote sector winners (mostly exporting competing industries). After trade is liberalized, the losers could be compensated by the winners who win more than the losers lose, but this rarely takes place. Usually, the winner takes it all. As national situations and interests are not fully shared within and between countries, a *de facto* common or fully harmonized policy is not in the interest of all. The EU’s common market aims at maximizing the benefits for the whole integration area, not the benefits of each nation state, industrial sector, region, or institution.

Obviously, this causes conflicts. Diverging income distributional and historical situations, levels of economic development, institutional and cultural path-dependencies and identities all indicate that the best overall social outcome might be different from the one deemed socially most efficient in economics (Austvik 2015:117–121). As Lefeber and Vietorisz (2007) note, the economic “efficient pursuit of one particular goal may conflict with the realization of some other, equally or more important social interest. Hence, (economic) efficiency for its own sake cannot be a policy goal.” National interests concerning degrees of autonomy and sovereignty, conflicting interests between and within countries, and inertia in markets and politics contribute to a slowing down of the integration processes, and continuously influence the room for maneuvering room available to each country. The redistribution of costs and benefits stemming from economic integration has social and political spillovers: it may slow down the processes, and create pressures for diverging national policies.

Therefore, rather than aiming for countries becoming equal, the goal of integration is (should be) an *optimal* degree of social and political convergence. This can be defined as when economic, political, social, and cultural institutions and policies tend to become more similar, but not equal, over time (Bennett 1991), appearing as continuous sequences of negotiations, interpretations, and adaptations (Dolowitz & Marsh 2000:15). The outcomes of a convergence process will often be second-best in economic efficiency terms, but may rank better in a long-term social and political context. Accordingly, the understanding of market integration must become dynamic, and further aspects of social science than only economics must be applied. Static economic equilibrium models, as the basic analytical tool for the first-best economic integration area, demonstrate the benefits of free trade and integrated markets in an infinite future. It takes time, sometimes a long time, to restructure an economy; and if time is not permitted, the integration process may

readily become a loss for underdeveloped sectors and economies—and, hence, conflictual, as seen recently in European countries and in the USA. EU policy should not aim only for long-term (infinite) futures using contestable market principles, but also for transitional challenges, and in some cases also for different and modified goals. In the long run, we will all be dead. The scale and scope of changes in policy goals and practices increases with the number of countries and sectors involved (Holzinger & Knill 2005: 778). In complex matters with large differences between member states, policy for integration areas may easily become more concerned with form and process than with hard realities, if implemented at all. If pushed too hard, the integration process may halt or experience long-term set-backs, and countries will find ways of circumventing undesired change. Reactions against overly rapidly market integration (and the resultant unemployment and low wages in losing sectors) are partly of the reason for Brexit and anti-elite reactions in other European countries, and in the election of Donald Trump as president in the U.S.

If, in such situations, rules and regulations stay the same, nation states may see themselves served by changing the real content of the common policy through delays, innovative interpretation and implementation; and/or they may take compensatory domestic steps or put forward new external requirements.³ Even though large countries have a greater say in international affairs and organizations than do small states, small states can achieve their objectives because they often benefit from a “complex interdependence” whereby societies are connected in multiple ways and the hierarchy of issues is absent or weak (Keohane & Nye 1977: 24–29). Peter Katzenstein (1985) has argued that small countries adjust to changes more readily because it is easier for them to reach consensus-oriented decisions in corporate domestic structures—indicating that the small country might be more dynamic than the bigger in decision-making. More corporate and consensus oriented decision-making processes make smaller countries more capable of adjusting to change, even if they have less influence on rules. In an international organization like the EU, formal rules and organizations may curb greater powers—although great powers may also use the system to their own advantage. Both the WTO and EU systems, for example, must continuously reach compromises involving interests across countries, and this may delay and weaken decisions. Despite the evident power imbalances between the international organizations, large states and small states, policy outcomes depend on more than formal economic and political weight alone. Sectoral promotion can be achieved by “hidden” measures and “clever” adaptation to agreed rules, in an attempt to help a specific state’s export and import industries. Diana Panke (2012) notes that in international organizations “small states tend to be most likely to punch above their weight ... if they are selective in negotiations and concentrate their capacities on the most important issues”—rather than attempting to revise the established order (Vital 1967:134). Regulatory translation and interpretation, policy implementation and, if necessary, new policy to compensate for the loss of an old one, may broaden the room available for political maneuvering, to the benefit of a more limited sphere of interests than what often is the case for large states—still within the framework shaped mainly by the large ones.

³ One example is the euro area, where a single monetary policy appears less appropriate for countries in a rather different situation than a core country like as Germany. As countries in the euro area can no longer devalue/depreciate their currency to counter the loss of competitiveness and overspending, some (e.g. Greece) try internal devaluations (wage and price cuts), strict austerity measures and borrowing money from the surplus-euro economies. The result is destabilizing unemployment and heavy distributional economic effects among persons, regions, governments, and countries in Southern Europe and between the North and the South of the EU.

Accordingly, the struggle between open and restrictive trade may take place as an open debate before an agreement is signed, such as EU or EEA membership, and then continue in more innovative forms after its ratification, as traditional trade barriers (tariffs, quotas) are abolished and regulations affecting domestic policies are introduced. The aim for each country often is, as it also is before trade opens, to reap the benefits of market access for and political influence over, and support of, its industries adapted to their unique national situations, without experiencing retaliation from other member countries. When situations or interests differ, the processes of harmonization between policy form and process will trigger diverging adaptation, creating different actual policy contents. EU rules and regulations have a direct *de facto* harmonizing impact on the formal political practices of all signatories, but same formal rules need not mean the same *de facto* policy and full political convergence across countries. If in the EU a policy is weakly formulated (as in a directive), a state has greater opportunities to be innovative in interpreting and adapting to its formality than when the formulation process is stronger (as in a direct regulation / law). If rules and regulations are weak or opaque, domestic policy can more readily be revised to follow formalities while simultaneously seeking to maintain important national (not EU) goals. Hence, an optimal strategy for an individual country could be as follows: first, enter into economic integration with relevant partners to reap the benefits of free trade; while second, optimizing, formulating, and promoting national sectoral policies whenever relevant and possible, to avoid the disadvantages.

As the conflicts over trade terms continue indefinitely, the *comparative advantage* in policymaking will be decisive in determining who will benefit the most from a process of economic integration. For strategic sectors, the continuous relative national or sectorial political competence, including clear visions and goals, may be as important as industrial competitiveness and formal international rules. This parallels what Michael Posner (1961) identified as, respectively, innovative and imitative countries and industries experiencing technological and commercial change, where the continuous ability to innovate is a force used by the leading country to maintain its advantage and achieve the highest economic standards. As Krugman (1979: 262) put it, a country or a region “has to keep running to stay in the same place.” To which extent and how such a country/region is *de facto* influenced by *de jure* common rules and regulations will depend not only on the rules themselves and whether it can influence policies of integrating countries and superstructure, but also on whether it is on a par with, or ahead of, political understanding and able to undertake advantageous national political adaptation. The dynamic combined technological, commercial, and political ability to innovate will be decisive for the degree of *de facto* policy harmonization and adaptation to maintain advantages and freedom of action, compared to a potentially more passive (imitative) political attitude. Taking this view as the point of departure we can identify and measure impacts from integration processes on the national policy by changes in ability to attain goals, through changes in the room for maneuver and policy options, and to some extent by changes in the goals themselves. If a new policy retains the possibility of achieving the goals of the old policy, no change has actually taken place in the ability to achieve national political priorities.

2 The Norwegian energy sector: A national priority

In the EU, as for the rest of the world, markets for oil, gas, coal, renewables and electricity receive great political attention. The politicization of energy markets has been linked to the long-term and international nature of the industries, the huge sums involved, the strategic importance of resources and energy as input factor in the economies

of importing and exporting countries, and concerns for the environment and climate change. Governments have long had a dominant stake in national energy companies, or they have owned them directly. Regardless of ownership, the number of interventions and/or regulative arrangements to control their activities has been substantial, often in competition with private interests. In the oil market, the Rockefeller family made much of its wealth on a virtually monopolized oil industry in the USA in the early 1900s. In World War I the British began to use oil as fuel for military vehicles and ships. One important goal of Nazi Germany's expansion eastwards in World War II was to gain control of oil production in Azerbaijan, although this was stopped at Stalingrad. After 1945, the world's seven largest oil companies (Exxon, Mobil, Chevron, Texaco, Gulf, Royal Dutch Shell and British Petroleum: the "seven sisters") controlled most oil production in the new oil states of the Middle East and North Africa. The nationalization of the petroleum industries within the Organization of Petroleum Exporting Countries (OPEC) in the 1970s brought a dramatic increase in state participation (see overview in Baker Institute 2007). The European gas crises of the 1980s were an important part of the Cold War and East–West relations. The Ukrainian gas crisis of 2014 contributed to the Euromaidan protests in Kyiv and highlighted the question whether Ukraine belongs to the West or to the East.⁴ In energy-consuming and net energy-importing countries, the establishment of the International Energy Agency (IEA) in 1974 was a direct response to OPEC's attempt to control the oil market. In recent decades, climate and environmental concerns and the desire for a greener economy has added to the politicization of the energy sector, and created worldwide pressures and policies for improved energy efficiency, more renewable energy, and less dependence on fossil sources. The climate debate has added to the complexity of the energy industry, not least since fossil energy, still representing as much as 87 percent of world energy usage (2016), is the main source of global CO₂ emissions and should hence be curbed (note the Kyoto 1997 and Paris 2015 agreements and the degree-target for global climate policy), and renewable energy and energy savings encouraged. The EU's Energy Union proposal of 2016 addresses several critical social issues that markets do not solve themselves and that therefore require political attention (Austvik 2016:376-378).

Norway has been no exception in politically controlling and benefiting from its energy sector. In the electricity industry, the Norwegian state has had strong control and dominant ownership in the management of hydropower resources since the early 1900s. The Energy Act of 1990 resulted in a large-scale liberalization of the electricity market in line with principles later introduced by the EU. However, ownership of Norway's hydropower resources remained with the state, the counties or the municipalities, almost 90 percent. Legislation was enacted so that the acquisition and lease of waterfalls were subject to time-limited concessions (between 60 and 80 years). Thereafter, power plants and all rights are to revert gratuitously to the State (the Reversion Institute or "Hjemfallsinstituttet"). When offshore petroleum resources were discovered, Norway was one of the non-OPEC states that wanted to control the revenues, production and management of what was seen as a new and potentially economically and politically dominant industry for the country. Long social-democratic traditions, shared across party-political lines, of strong state participation in the hydropower sector as well as in many other economic activities made it possible to formulate consensus-oriented

⁴ As a result of the protests, the Ukrainian president fled to Russia; then came the Russian annexation of Crimea and military operations in Ukraine and Western sanctions on Russian individuals, companies, and officials; Russia responded with sanctions on food imports from the West.

visions and policy goals for an independent Norwegian petroleum administration and industry, with the Norwegian state at the helm, to achieve its social goals.⁵ Oil and gas activities should “benefit the whole nation.” Together with the development of international law of the seas since the 1960s, Norwegian sovereignty was put at the forefront, as expressed in the 10 Oil Commandments of 1971 (Austvik 2014: 19).

Petroleum policies included preferential treatment of and regulations to the benefit of Norwegian companies and state, and a strong fiscal regime to ensure that the state took most of the economic rent and, hence, more revenues from the energy sector than from any other sector. One important element in the “model” was the establishment of a state oil company, Statoil. To begin with, however, neither the Norwegian state, nor Statoil or other Norwegian companies possessed the expertise required to develop petroleum activities on their own. Norway needed the assistance of international companies’ competence, and also their capital. Through access to advanced technology and knowledge, Norwegian companies should after a learning period, become more independent of the internationals. For example, Mobil was replaced by Statoil after 15 years as operator at the Statfjord field in 1987: “you cannot learn to drive by sitting in the back seat” (Ask 2006, quoting Statoil head Arve Johnsen when the takeover took place).

A system established whereby the oil companies would provide ideas and do the practical work, the government was to (understand and) approve all steps on all levels of activity. In order to promote competition as well as cooperation, licenses were awarded to groups of companies, rather than single companies, and generally Norwegian ownership dominance. Companies were chosen on the basis of geological and technological expertise, financial strength and previous experience. The idea was for them to share ideas and lessons learned, as well as costs and revenues from the license. Through competition and cooperation, the value of each license would be maximized. At the same time, the licensees acted as a controlling system, as each company had an interest in ensuring that the work of the chosen operator was undertaken in the most cost-effective way (MPE annual). All taxes went to the state, except for local property taxes where a terminal was built on land. The Ministry of Finance (FIN) managed to introduce a special tax on petroleum activities to capture most of the rent. Later arrangements with the State’s Direct Financial Interests (SDFI) ensured that the entire rent from these shares went to the state.⁶

Initially, Statoil implemented policy mainly together with the Ministry of Petroleum and Energy (MPE). Later, the MPE’s direct engagement increased at Statoil’s expense. Ownership of Statoil’s oil and gas fields was split, with a greater share to the SDFI and a smaller one to Statoil. The SDFI invested state budget money directly into the biggest production fields. Forsyningsutvalget (FU, the Supply Committee) and Gassforhandlingsutvalget (GFU, the Gas Negotiation Committee), supervised directly by the MPE, replaced and supplemented important Statoil policy functions in the gas sector. The GFU was a Norwegian sales monopoly for gas; the FU acted as coordinator for gas production and transportation across fields and pipelines. Together, the GFU /FU system, SDFI ownership and Statoil,

⁵ Social goals include more long-term concerns for society, and a more comprehensive view on economic and social activity than what single companies are too small and restricted to take; they are hence less willing to internalize such concerns in their decision-making processes.

⁶ In Norway, power plants pay a 34.3% special tax in addition to the regular company tax of 24% (total 58.3% of company profit). Petroleum companies pay a 54% special tax in addition to the regular company tax of 24% (total 78% of company profit). Special depreciation rules apply. For the SDFI, the government pays 100% of its share of investments and operating costs in a field, and takes 100% of its share of profit, as well.

all under the control of the MPE, represented a “Norwegian Gas factory” where national policy instruments made it possible to achieve lower costs through economies of scope, better resource management, and a strengthened market position for Norwegian gas production and sales.

The Petroleum Fund, established in 1991 and entirely invested abroad, ensured that annual public budgets were no longer directly influenced by fluctuations in oil and gas revenues. With the Fund in place, Norway could increase production with less concern over its effects on the domestic economy. For example, when oil prices dropped in 2014, the oil sector was hurt, but the rest of the economy was not nearly as affected as in most other petroleum states. The value of the Fund is in 2017 some 800 billion euro (ca. 1 trillion USD), the largest Sovereign Wealth Fund (SWF) in the world, making the Norwegian state the richest in the world, in per capita terms. The *de facto* removal of production restraints increased the domestic room for maneuvering as regards higher oil and gas production. The win-set for Norway was expanded; with the Fund in place it became more difficult for Norway to reject pressures for increased production, for example from the EU, if the resources were available.

Government policy and industrial structures changed as the industry matured, and markets, international affairs and technology changed, and the industry expanded beyond the Norwegian Continental Shelf (NCS) as an export industry. The domestic de-politicization of the sector came gradually and culminated with Statoil’s self-initiated partial privatization in 2001, with 2/3 continued state holding of shares, simultaneously with EU requirements for regulative change. The coupling between structural changes in the Norwegian petroleum industry, the changed role and maturity of Statoil, and the establishment of the Petroleum Fund is important in understanding the depoliticization of policy and Norway’s adjustment to an increasingly more liberal economic international world.

With the alliance with British Petroleum (BP) in 1989 also Statoil started to internationalize the company in countries like Angola and Azerbaijan. Technological change and international expansion were now expected to bring progress for the company, more so than domestic developments. The scaling-down of the state into more of a regulator of petroleum activities, an actor no longer so strong an industrial participant, was encouraged. However, in contrast to countries like the UK and Canada, the Norwegian state remained at the helm and continued to reap most of the profits from petroleum activities, with scant domestic political opposition. The depoliticization of the role of Statoil came gradually before its partial privatization in 2001, and the company itself took the initiative to become partly privatized. Its main arguments were that it had become a mature enterprise, and wanted to grow more internationally. After the privatization, Statoil was to carry on with what had become an industrial intrapreneurship for the company, with the goal of becoming a strong international oil company. Privatization gave the company greater freedom in its business decisions. The state was to take the back seat as the biggest owner, but with the possibility to intervene in decisions, if it so wished and considered it necessary.

The establishment phase with strong state entrepreneurship had represented a radical innovation. The model was a mixture between a strong state and private companies, and differed from how the petroleum sector was organized in other countries.⁷ Although state control was essential, the Norwegian model differed from models of nationalized oil

⁷ However, state ownership and engagement in the energy sector was not particularly Norwegian or new. Since 1914 a number of states had participated actively in the oil industry as part or full owners of companies. In 1970, however, state-owned companies

industries elsewhere, as private companies were invited as partners to acquire capital, competence and technology. The model was not an imitation of other countries' practices, but an innovation in itself, combining state control with market principles. The innovative solution in-between complete nationalization (as in most OPEC countries) and more or less free market principles (as in the USA) was unique at the time, as an interplay between domestic and international factors and actors. From nothing, the state built a new company (Statoil), and protected the Norwegian supply industry in its interactions with international companies. The system of companies, institutions, regulations, and politics was intended to provide a "Porterian" type of dynamism in the national petroleum cluster (Porter 1990:617–682). However, the direct interventions went far beyond a Porter type of policy. The special Norwegian policy was based on a firm desire to control the value chain from the reservoirs and as far as possible down to consumers; in practical terms this generally meant to the borders of downstream importing countries for natural gas, and from export terminals (platform or onshore) for crude oil. Many of these measures were in direct or indirect conflict with how a liberal rules-based SM should work.

3 The EEA agreement and EU energy policy

The EEA agreement was signed by Norway in 1992 and became operative on January 1, 1994. The European Free Trade Area (EFTA) Surveillance Authority (ESA) was set up to fill control functions towards EFTA participants in the EEA area (today only Lichtenstein and Iceland, in addition to Norway), similar to the control function of the EU Commission in relation to EU member countries. From this point onwards, EU Single Market regulations and law also became Norwegian regulations and law. The agreement made it possible for Norway to participate in the Single Market in line with full EU members. The main sectors exempted were, as noted, agriculture and fishery. The EEA agreement involved transferring sovereignty from the nation state to ESA and the EFTA court—but not formally to the EU—in a two-pillar structure. EFTA countries can be involved in preparing cases by participating in the EU committees that propose new rules or changes in rules. However, it is the EU that makes the final decision without their involvement: the EFTA countries have no voting rights. "The Agreement gives them the right to be consulted by the Commission during the formulation of Community legislation, but not the right to a voice in decision-making, which is reserved exclusively for Member States" (EU 2007).

EFTA countries must accept a rule unanimously, which means that each country has the right to reserve itself by vetoing against its implementation in the EEA committee (Report to the Storting 2001/2002: 27). A "rule" may be a regulation, directive, decision, recommendation, or an opinion.⁸ While Norway has the right to reserve itself against

represented only 6% of international oil trade. The nationalization of the petroleum industries in OPEC countries in the 1970s brought a dramatic increase in state participation in the oil companies in most producing countries. Nationalization made it difficult for the outside world to criticize Norway in building its own national oil company. However, with the establishment of Statoil, the control mechanisms became so strong that "the limits for what a capitalist state can do if it wants to remain capitalistic" were approached (Olsen 1989:104, my translation).

⁸ According to the Treaty on the Functioning of the European Union (Article 288), EU institutions shall adopt various forms of enactments as the legal basis for the implementation of EU policies: regulations, directives, decisions, recommendations, and opinions:

- A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States.

domestic implementation of, for example, an energy directive in Norway, it cannot veto its implementation in the EU area. General rules, as in the practice and application of competition law, cannot be vetoed, and are to be handled by supranational organs such as the ESA and the EFTA court (Graver 2000). As yet, no EFTA country has made use of the veto right. This is partly due to the fact that, in case of a veto (reservation), the EU can take the entire area in question out of the agreement, which may entail substantial disadvantages for EFTA countries. The agreement is dynamic in the sense that new rules for the Single Market are designed and applied across the entire EEA area. New subject areas can be introduced, and old ones can be taken out. When the EU has expanded to include new member countries, the agreement has been renegotiated; this has generally meant that the EFTA countries have had to pay more for market access, and to financially support the poorest countries in the EU. “The EEA agreement is such a fragile construction which probably is more important for Norway and the other EFTA countries to keep alive than it is for the other signatories” (Arnesen 1995:663, my translation). The three EEA states have taken on board some 7000–8000 legal acts of the EU Single Market regime and have implemented them into national law (Europautredningen 2011).

For many of the initial EEA signatories in the early 1990s it became evident that the EEA agreement would not be satisfactory: they regarded it as a stepping-stone to full EU membership, rather than as a permanent alternative. Finland, Sweden, and Austria joined the EU as full members in 1994, while Switzerland chose neither to become an EU member nor to sign the EEA agreement. Only Liechtenstein, Iceland, and Norway remained. In view of the passive character of the EEA agreement, for Norway this means it has a position where its influence on EU policy is more limited compared to that of member states. In the energy sphere, Norway has thus also placed itself in a different situation than that of Europe’s (and the world’s) largest combined oil and natural gas exporter, Russia. While Norway in general is a small state, it has long been the biggest gas supplier to the EU, together with Russia. Norway and Russia share interests in natural gas market developments, besides being competitors. Norway has an interest in what the Russians do domestically in the energy sector, which is not regulated by the EU, as well as in its energy relations with the EU. European integration processes, market liberalization, and diverging economic interests between producers and consumers (especially in natural gas) have offered the Norwegian state a new dimension in relations with Russia.

Politically, the EEA Agreement in its economic, legal and institutional conditions has never really become settled. EFTA lost much of its identity with the agreement, while the EU has evolved much faster in depth and breadth, in and outside EEA jurisdiction, than expected when the agreement was drafted.⁹ In addition, the agreement covers today substantially fewer countries than the ones that negotiated it. The reduction in the number of EFTA countries and the large expansion in the number of EU members from Central and Eastern Europe have made the EEA, in absolute and relative terms, a minor part of the EU’s broader European agenda. Moreover, the EU itself has changed with the introduction of the monetary union and new competencies in foreign, security, and defense policy, justice and home affairs. The EEA forum is not always the right place for dealing with the new policy areas, with separate roles for the Commission, Parliament, and the Council (Austvik & Claes 2011: 49-50). Norway must also deal with new policy

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- A directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods.
 - A decision shall be binding in its entirety upon those to whom it is addressed.
 - Recommendations and opinions shall have no binding force.

⁹ One option for the UK after Brexit and outside the EU is, however, to revitalize EFTA in some way.

areas outside the EEA (e.g. Schengen) and has concluded more than 15 other agreements with the EU after the EEA agreement was signed (Europautredningen 2011).

The energy sector was excluded when the EU / EC introduced the Single European Act in 1985 as a foundation for the Single Market, established in 1993. National interests, as defined, and energy monopolies in member states were deemed too strong to be coordinated into a common, integrated policy at the time. In 1988 the EC Commission nevertheless proposed policies also for energy, in line with other sectors. These proposals were gradually pushed forward by general internal market processes. The idea of an integrated European energy system characterized by competition was the basis for the Commission's involvement, with corporate and national neutrality across the EU. While competitive principles and economic regulations of imperfect markets still make competition law fundamental for SM policy, sectorial energy policy developments have been slow. The First Energy Package (1998) allowed the opening of the electricity and gas markets, the gradual introduction of competition, and imposed broad unbundling requirements to integrated companies. The Second Energy Package (2003) focused on the concepts of unbundling and third-party access, defined the need for independent regulatory authorities, and set deadlines for the liberalization of electricity and gas retail markets in 2004 and 2007. With the Third Energy Package, TEP (2008), more and other types of policies than merely more competition have been added. The core elements of the TEP were ownership unbundling to separate companies' generation and sale operations from their transmission networks, the establishment of a national regulatory authority (NRA) for each member state, and the establishment of an Agency for the Cooperation of Energy Regulators (ACER) to provide a forum for NRAs to work together. The TEP has yet to deliver fully, and the later Energy Union (EU 2016) has turned out to have as a major purpose to realize general EU energy and environmental policies established in the Energy Packages and environmental regulations.¹⁰

In spite of all the efforts, and due to the mainly confederative structure of the EU and diverging national energy situations, political positions and interests, important areas of energy policy have often remained at the national level. Without more EU power (federalism) with the ensuing institutional and organizational change, stronger power and market tools, and financial strengthening, it is difficult for the EU to realize a truly common energy policy to the full extent. Another problem in the natural gas sector is that the EU does not have authority over the whole value chain (from producer to the burner-tip), in contrast to the USA and the UK, when these countries liberalized their energy markets. The EU has authority mostly over the downstream part of the market, whereas major upstream activity, as in Russia, lies beyond SM regulations. In a situation where the EU is unable to act fully, there is increased room for strategic and political maneuvering for companies and countries on the national as well as the EU levels. This is intensified by various downstream impediments on the Continent compared to the purposes of the gas directives and EU competition law (Austvik 2009). The regulations generally represent changes where “‘fuzzy liberalization’—universal free-market rules that are open to a wide range of interpretations by governments, companies and the courts—is becoming the norm, even when there is broad agreement on liberal market principles” (Andersen and Sitter 2009). Regulatory innovation is gradually gaining recognition as an important tool used by the increasingly networked state (Black, Lodge, & Thatcher 2006).

¹⁰ See EU 2017 for an overview of EU energy market legislation.

Accordingly, EU energy policy has largely remained focused on a non-politicized “markets and institutions” approach, rather than establishing a political “regions and empires” view (Correlje and van der Linde 2006), with a continued focus on realizing existing EU energy, and environmental policy in a regulative manner. Implementation of the TEP of 2009 and environmental policies have progressed slowly, and there has been a part-renationalization rather than a joint elaboration of EU energy and climate policy. The Energy Union proposals by Eastern European member states and the EU in 2014 and in 2016, respectively, showed a conflict of interests between the priorities of Western and Eastern European members. Many CEEC countries see their one-sided dependency on Russian gas as a security problem that tops the political agenda and is a major element in their relations to Russia. For EU members in the West, the problem of energy security is less acute. Challenges remain as to whether the EU system, and member states in the East and the West will be able to agree and *de facto* implement policies for reaching internal and external goals. In the EU, when common principles are implemented in a non-politicized regulatory progress, the ensuring pressure on member states for convergence and policy harmonization does not always lead to the same policy. Often, EU rules and regulations become part of national legislation only after long lead-times; they may be translated, interpreted, and implemented in different national ways; and compensatory policies may be introduced when national interests clash with set common policy goals.

Moreover, the EU itself may also be under pressure for change. The Brexit and other possible exit processes are not only about how the UK and other nation states are to adapt. Equally relevant is how such developments may change the EU, perhaps to a clearer formal inter-governmental organization for some time, with possible increased room for political maneuvering for individual states.

EU bilateral and geopolitical energy interests—such as political relations with Norway and with Russia, or how SM rules and regulation are at interplay with these interests—are not addressed in the Energy Packages or in the Energy Union. Current court and arbitration cases between Gazprom and the EU basically concern the possible extension of EU internal rules and regulations. The EU sees Russian gas policy mainly as a market failure. The external dimensions of EU energy policy are not part of the Common Foreign and Security Policy (CFSP), and have failed to consider energy policy as part of a broader degree of stability, in member states or in supplier nations. Even though energy security has gained importance within the CFSP, member states have often rejected deepening cooperation (Youngs 2009:4). When countries negotiate “tariffs, investments, rules of access etc., they are doing EU external energy policy but they do it on a national basis. It’s the case everywhere in EU” (Glachant 2015). The external dimensions of EU energy policy are basically a question of extending EU-internal rules and regulations; they do not include strategic partnerships, e.g. with Russia or other suppliers (in the Middle East and North Africa) as part of a broader degree of stability. This lack of a holistic internal and external policy is reflected in the relationship between environmental concerns, climate change, and market efficiency on the one side, and foreign and security policy objectives on the other. Future developments of EU energy policy may follow the “normal” path of EU integration conflicts: the Commission may compel member states to agree as a principle, and then develop a pragmatic and non-politicized regulatory progress for implementation. Member states will resist convergence pressures, and policy harmonization may become more about formality than reality. Buchanan and Keay (2015) argue that EU policy falls short of a comprehensive energy policy and “appears as much about preventing the EU’s current 28 governments from sliding

further backwards into national policies as about forward leaps in the Europeanisation of energy policy.” Governance is inadequate and the Commission is reluctant “to take a strong position in the face of Eurosceptic governments in member states like the UK and the CEEC.” Actually, few countries merely “follow the rules”—rather, countries’ policies converge in various scale and scope towards one another over time.

4 Norway and the EU: From conflict to cooperation and innovative adaptation

The impact of the EEA agreement on the Norwegian petroleum industry represents a broader political change. The agreement aimed at bringing the petroleum sector more in line with how other sectors are managed politically. The EEA agreement was for Norway not designed to defend petroleum interests, but for the interests of the rest of its economy. Strictly speaking, Norway did not need an EEA agreement to sell oil and gas to the EU, and hydropower is produced mostly for domestic purposes. It was the rest of the economy that had/has a major economic interest in securing market access and rules of fair competition.

What were the results? Several forces for policy change other than the EU–Norway integration processes confuse the picture. The way Norway and the EU defined interests and formulated energy policies in the 1970s and 1980s was conditioned and affected by the internal and external economic and political factors and actors at the time. Gradually, and in some important cases radically, these factors have changed. For example, with the 1991 collapse of the Soviet Union and the end of the bipolar world and diverging economic and political systems, the world became more politically integrated. Political systems changed and international affairs and trade relations became more globalized and in a situation of flux, also in the field of energy (Overland 2016: 25). Furthermore, not only political factors influenced the situation. EU energy markets and the Norwegian petroleum industry were no longer in their infancy in the 1990s and beyond. Different policies were needed for both as compared to in the 1970s and 1980s. In addition, there were changes in the profitability of the petroleum industry, which besides costs depends heavily on the price of oil. Relatively low oil prices in the period 1986 to 2001 led to low attention to security-of-supply issues in the EU and elsewhere. Higher prices after 2001 have brought back the attention to the profitability of the industry and long-term supply and prices, as in the period 1973 to 1985. Higher prices are the source of more income for producing countries and have political spillovers that increase their influence, as well as providing an incentive for the EU to think more comprehensively about its own energy policy. Hence, in measuring the impacts of the EEA agreement, part of the challenge is to isolate other forces and factors.

The first Norwegian adjustments to EU non-discriminatory competition principles came in the petroleum sector in the early 1990s, when the established preferential arrangements for Norwegian supplies to the sector was challenged. The EU Concession Directive (EU 1994) appeared rather uncontroversial for the industry. At the time, most of the supply industry had become internationally competitive and the industry itself no longer saw continued domestic protection as a major issue. Access to markets in other countries was deemed more important.

More followed later in the 1990s, affecting the electricity and gas sectors in particular. The First Energy Package threatened the special arrangements with the GFU and the FU which were long defended by Norway. Norwegian arguments were that “free competition” in production and sale between companies might lead to weaker resource management, greater supply of gas in the market and put pressure upon prices, particularly in the short and medium term. The impaired possibility of exploiting economies of scope by opening the Norwegian pipelines through a third-party access (TPA) arrangement might make things technically more complicated and expensive. The advantages of scope between Norway as a gas seller and the large transmission companies on the Continent, expressed through the long-term Take-or-Pay (TOP) contracts, were also pointed out. Norway eventually shifted its stance from conflict to adaptation, and agreed to abolish the GFU and FU arrangements according to the interpretation of the first gas directive and EU competition law. It was not obvious that the GFU maintained in its old shape was an organ that was sufficiently dynamic to safeguard Norwegian interests when many smaller and more short-term contracts were evolving in the market. The market had been undergoing fundamental changes for some time, through extensive growth and infrastructural developments. A changed role for the GFU could be in Norwegian interests anyway. Both market developments and political efforts seemed to indicate that producers should increasingly sell gas directly to the customers. The buyers of “new” Norwegian gas (new contracts) would not (only) be the same as before (the transmission companies), but would include the transmission companies’ customers (distribution companies, the industry and gas power plants) as well. In sum, future gas contracts were to be made on a more fragmented basis than before. The argument about maintaining market power through the GFU was clearly contrary to the principles of a liberalized gas market, as well as the direct interests of consumer countries (EU member states). On the other hand, the principles for how FU worked were not automatically at variance with the EU Single Market principles, as long as the ministry did not discriminate between who was to receive licenses on the NCS. Optimal resource management and the exploitation of economics of scope should be important also in a liberalized market environment.

Within this new framework, combined with Statoil privatization, the Norwegian government showed competence in implementation of the first gas directive. To take care of the SDFI, a new, fully state-owned company, *Petoro*, was created. The company assumed responsibility for the ownership interests of the state, monitoring Statoil’s production, sales and accounts for the SDFI. In order to secure open access for transportation of gas on the NCS, another new fully state-owned company, *Gassco*, was established. Gassco took over Statoil’s role as operator for transmission systems to the Continent and the UK. Previously, these systems had had different tariff practices and had been organized as separate companies, where each could deny third-party access to their systems. The *Gassled* system established at the same time offered in principle equal tariffs for everyone using the system, as an adjustment to the directive. Together, the policy package translated EU unbundling and competition principles and regulatory requirements in a way that made it possible to maintain Norway’s chief energy policy goals. The negotiating position towards the buyers was weakened, but not fundamentally. Statoil continued as the single seller of the SDFI / Petoro oil and gas, representing some 70–80% of all Norwegian gas exports (close to a continued monopoly). The links between state and company remained strong, as the state maintained its position as majority owner with some two-thirds of the shares. The adjustments brought Norwegian petroleum policy in line with the later Second and Third Energy Packages, and the Energy Union, with no requirements for further institutional or legal change. The Norwegian state gained a more

regulative role at the expense of an interventionist one in its energy sector, but it could remain at the helm as the main rent collector.

The Norwegian electricity market (which in Norway is overwhelmingly based on hydropower) was liberalized earlier than in the EU through its Energy Law of 1990. EU directives for this market had no impact on Norwegian energy policy. However, the state waterfall ownership arrangement was, according to the EU, not in line with EU rules. In 2000, the ESA argued that the Norwegian Concession Law of 1917 and the establishing of the Reversion Institute, violated Articles 31 and 40 in the EEA Agreement, as only Norwegian state institutions could receive a perpetual license. Again Norway refused to change the arrangement, and here the matter went all the way to the EFTA court. In 2007, the court ruled that the difference in the regulation between public and private owners of hydroelectric power was an indirect discriminatory restriction on EEA rules. Thus, Norway basically lost the case and the conflict, but again the government found a solution regarding implementation. The problem that the EEA court had dealt with was not the Reversion Institute and state ownership as such, nor did the scheme involve national restrictions. Rather, the problem was that "the system of public ownership must be uniform and consistent to justify restrictions" (Stortinget, 2007-08: 60, author translation). As private owners could not avoid the Reversion Institute, the Norwegian government found a solution: simply make all hydropower production public. The state created what was called the "Consolidation Model," enhancing public ownership compared to previous schemes. In the new model, private companies were not to be granted new independent concessions at all (with the exception of small power plants), and the hydropower resources that were still under private ownership were to be transferred to public ownership in line with the Reversion Institute. Up to one third of hydro companies could be sold to private owners, but they should remain with majority ownership by the state. Taken together, the EFTA court judgment resulted in the opposite effect of what some lobbyists in Brussels had anticipated. The Reversion Institute was not removed: instead, state public ownership and control were increased through the compensatory policy of the Norwegian state.

Rearrangement of the Reversion Institute for hydropower resources, and changes in the petroleum regimes, in response to EU requirements, changed Norwegian energy policy to become more similar to the EU system in policy form and process, but with a relatively lesser degree of political convergence (real political similarity). Although strongly focused on the role of the Norwegian state as an explanation for market imperfections in its petroleum sector, the EEA agreement did not challenge the dominance of the state. The heavy taxation systems were maintained, as was the arrangement with the SDFI to capture a maximum share of the economic rent for the state. The experience was that Single Market regulations set limits for the content of normative political measures; non-discriminatory restrictions are allowed, while discrimination between firms and persons is not allowed, regardless of whether it is a state or a private firm that runs the business. What changed was that national goals could no longer be reached by normative political means alone, but would have to be complemented by the state as an actor and regulator, respectively. More decisions are made by independent market actors, amid more state ownership and regulatory intervention in markets and private actors' behavior.

However, the EEA agreement affected the policy of choosing development concepts and materials specifically designed to fit the Norwegian supply industry (Arnesen 1995:343–393), which actually was a *de facto* protectionist

measure in favor of Norwegian suppliers. The agreement also contributed to changing constellations of domestic actors relevant for the formulation of petroleum policy. Within the government, the Ministry of Foreign Affairs (MFA) returned as a more important entity, as it had been in the 1960s and 1970s when the processes around the law of the sea were in focus. That was one reason for appointing a special minister for EU/EEA affairs within the MFA in the cabinet in 2013. In the areas where the EEA agreement applies, the Ministry of Justice and its sub-organs have gone from being domestic law-makers to external law-takers, and in relevant cases may override what the MPE otherwise would have done in the petroleum sector. Before the EEA agreement came into effect, the MPE would rather ask the Ministry of Justice to make laws that supported its policy objectives. The process of integration with the EU, together with global liberal trends, also strengthened liberal ideology and an emphasis on New Public Management (NPM) type of policy. While the OPEC revolution gave strong support for independent national energy policy making in the 1970s, the liberal sphere of the 1990s and onwards provided disincentives.

Although Norway managed to maintain control of its energy industry in the mature phase of its petroleum industry, market integration with the EU might have caused problems in building a national petroleum industry from scratch, if the offshore resources had been discovered in the 2000s, and not in the 1960s/1970s. Many of the state entrepreneurial efforts from the 1970s and 1980s would today be in conflict with current international trade regulations (EU and the WTO). Strong state activities would have been possible, but discriminatory interventions aimed at favoring Norwegian companies and companies would have been difficult. Norway, as many other resource-rich countries, could have lost control of its resources and, especially in the petroleum sector, fallen victim to the “resource curse paradox” (Auty 1993). It would under the EEA agreement be difficult to give Statoil the best licenses and not to (then) more efficient foreign competitors. In particular it would be difficult to discriminate to the advantage of the Norwegian supply industry. A government can no longer direct support towards specific companies, unlike the situation in the 1970s. Political measures must be neutral as regards individual companies. Under such counterfactual circumstances, the companies with the most competence and capital at the time—the International Oil Companies (IOCs), could possibly have dominated the sector. Today, the possibility of the state following an innovative industrial policy within the EU economic paradigm appears to apply to the case of “normal” industries and is not equally applicable to a situation when the economy experiences an exogenous shock, as through the discovery of the huge petroleum reserves, or for the control and maintenance of an economically strategic important sector.

5 Conclusions

The EEA agreement entails the transfer of sovereignty from Norway, as an EFTA country, to the ESA and the EFTA Court, and through these *de facto* to the EU. The difference between this and full EU membership is that the EFTA countries do not participate in final EU decision-making or in the development of the EU in other areas, unless so agreed. The EU is the rule-maker and the EFTA countries are the rule-takers—but, as this article has argued, sometimes the rule-takers can still be national policymakers, to some extent. Through national interpretation and innovative implementation of EU rules and regulations, and policy packages to compensate for lost policy options, nationally defined goals may be retained. Powerful state companies and institutions can boost the ability to reach strategic economic goals.

For Norway today, the most important issue in relation to the EU is not to break with its non-discriminatory competition principles. This resembles the situation of full EU member states. If Norway were to become a full EU member, it could also influence EU policy. If Norway were to enter into a trade agreement similar to that of Switzerland, it could try more explicitly to exclude energy policy from the relationship as far as possible. Both full EU membership and a trade agreement à la the Swiss model would appear to offer better political frameworks for Norway's room for national political maneuvering than the EEA agreement. However, regardless of affiliation, much policy has to be handled in interaction with the EU and its member states. The Norwegian–EU energy experience indicates that an active and insightful relationship with the EU can be as important as (indeed, sometimes more important than) formal affiliation between the two. In the big European energy game, it is crucial to understand and stay ahead of the EU and its member-states' political ambitions and actions—and not just passively copy laws, directives, and regulations. It is important to have a comparative advantage in policymaking in order to maintain or reach strategic economic goals. The dynamics of relative technological, commercial, and political capabilities are central to actual room for national political maneuvering—and, hence, the effects of Single Market rules and regulations on national policy outcomes. In EU–Norway energy relations to date, EU regulations have ended up being more about form than substance in political content and purpose.

The making of EU rules and regulations is predominately the privilege of the larger member states. The passive nature of the EEA Agreement minimizes small state Norway's influence on EU policy as compared to other small single-market participants. Beyond lobbying, Norway has little general political influence over the EU, because of its non-membership and its small-state status. In general, concerted action will be the main possibility for small states to influence supranational rules. However, in the petroleum sector, Norwegian interests are not shared with any small (or big) EU member state, and intra-EU alliance-building is difficult. Moreover, Norway is a significant petroleum exporter on which the EU, depends as much as it depends on Russia, especially as regards natural gas. The EU–Norway energy interdependency may provide Norway with some leverage on EU energy policy, and may have increased tolerance for the Norwegian way of adaptation to rules and regulations. Legal opaqueness opens up for interpretations on both sides: “The complexity of the petroleum sector implies that when a judicial review of whether a measure is necessary to take care of the concerns in which it is anchored, is unlikely to be very intense.” The “ESA is highly unlikely to be able to deal with other than glaring violation of rules” (Arnesen 1995: 662, my translation). When Norway continues to look for ways of maintaining state control over profits, infrastructure, and gas sales, its large market share may further its room for political maneuvering, but the outcome will still hinge on good understanding of the EU system as a second-best economic integration area, and competent policymaking within the system.

Realist-liberalist Joseph Nye (2015: 3–14) argues that, also under a liberal international trade system, states must protect themselves against other states, forces, and preferences and, as much as possible, maintain power dominance, under which order may persist. As an alternative to a one-sided adaptation where EU exports its legal framework and ways of doing things unilaterally, the EU could address the demands of the one and the other, working on a case-by-case basis to find common ground for bilateral agreements. In the Norway–EU energy relationship, the EU could consider dropping its usual method of regulatory embrace and focus instead on core market-access issues, strong dispute settlement, and the adoption of international standards for regulation in business and industry (Dreyer &

Hindley 2008). However, in the EU the relationship between SM policy and foreign policy is still not well defined. EU bilateral and geopolitical energy interests are not addressed in the Energy Packages or in the Energy Union. When external suppliers' industrial and trade organizations and behavior are not in line with EU rules and regulations, the EU has tended to see this as market failures, not as a foreign policy issue or part of the CFSP. In the EU view, external non-compliance with the *acquis*¹¹ must be fixed by (or forced to) compliance as an extension of EU internal rules and regulations.

Current court and arbitration cases between Gazprom and the EU, based on EU and WTO law, show a more conflictual approach by Russia in its EU relations than Norway has chosen (Austvik & Lembo 2017). One example of such assertion is the recurrent request for re-examination of long-term take-or-pay (TOP) contracts, and a possible compromise, as seen in the antitrust case initiated by the European Commission against Gazprom. As a large state, Russia is part of European high politics and may have more chance to create cooperation with the EU on an equal basis by challenging the system through conflict, as opposed to small-state Norway. Following the Norwegian example, if Russia should eventually *de jure* accept WTO/EU types of law in its energy sector, it might not necessarily *de facto* change its policy goals, even if it formally changes its domestic energy and natural gas export policy. The Russian energy sector may not become a mirror of how the West regulates its own economy and society in its simplest "non-politicized" regulatory form of unbundling and privatization schemes, regardless of the outcome of the legal conflicts. Most likely it will somehow maintain a centralized governance structure. However, adjusted to the Russian situation, such an approach might entail pragmatic changes that could also benefit Russian society and the state.

More explicit clarification is needed of the relationships between intra-EU concerns over energy and the environment, climate change and market efficiency on the one hand, and external-EU concerns over foreign and security policy objectives on the other. Continuing pressures for policy convergence on the European scale make the interplay between national and European preferences and priorities central. The scale and scope of conflict, cooperation, and adaptation varies, but national comparative advantages in policymaking remain central to rule formulation and implementation. The more complex the situation becomes, the more difficult is it to achieve *de facto* comprehensive supranational arrangements in the EU—so the room for maneuvering as regards national adaptation expands. Demands about the harmonization of political form and process, but not necessarily about political convergence, make it possible for countries to have the same policy in terms of rules and regulations, but with rather different political content. With a passive state, infant industries may not be developed, as domestic companies may lose to better foreign companies from the outset. In a mature industrial phase the control of strategic sectors may be lost or weakened through mergers and acquisitions by foreign companies, which have other concerns than those of the host nation's well-being.

As the case of Norway–EU energy has shown, it is possible to achieve many nationally defined policy goals in a strategic sector within liberal EU regulations, by means of active regulatory and legal interpretation, innovative adaptation and, when necessary, the introduction of new policies and greater direct state participation, to compensate for lost opportunities.

¹¹ The *acquis communautaire*, often referred to as *EU acquis* or just *acquis*, is the accumulated legislation and juridical decisions that constitute the body of EU law.

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