CHAPTER 6

Norway: Small State in the Great European Energy Game

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Introduction

Focusing on natural gas, this chapter discusses the scale and scope of the room for political manoeuvre in the energy sector for Norway as member of the EU Single Market (SM). In the 1990s, the Norwegian energy sector was under strong political control. Norway signed the European Economic Area (EEA) Agreement, which entered into force in 1994 and has regulated Norway's relations with the EU after the country decided to reject membership in a referendum in the same year. The Norwegian state was at that time engaged in the energy sector as owner and producer and as a leader of change and development. With its political power, the state could define social goals for the industry and use regulative, legal and

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political measures as a managerial package for achieving these goals. The EEA Agreement made Norway a full participant in the SM in all areas except agriculture and fishery. SM liberal restructuration processes included the energy sector, and special focus was placed upon directives for electricity and natural gas markets and on the application of EU competition law. Norway is a seller of energy—EU countries are buyers. EU energy policy aims at benefiting the whole EEA area, not single member states only—and that poses a double challenge to Norway as an energy-producing and energy-exporting country seeking to pursue its own energy goals while also having to follow EU-imposed rules and regulatory obligations. The Norwegian state activist model was put under strong pressure. Liberal ideological principles for economic activity were promoted, with a concomitant influence on Norwegian norms, institutions and law. Together with simultaneous industrial and market maturity, the EEA Agreement contributed to changing the Norwegian energy model by removing opportunities for policy-making but also creating new policy.

Energy is a strategic sector for most countries and attracts more political attention than most other economic activities, whether in Norway, the EU or elsewhere (O'Sullivan, 2013). Energy-dependent importers—and since 2013 all EU member states belong to this category—are concerned with security of energy supply (preferably at low prices and with easy access), whereas producers like Norway are concerned with security of demand (preferably high prices and easy access to markets). In dealing with the interdependency between exporters and importers, the EU applies the same market principles, rules and regulations to reach its strategic external energy goals as in its internal market rather than bilateral sector-adjusted negotiations. Norway, like most other energy producers, has been far more interventionist in its internal as well as its external energy policy.

How has small-state Norway managed to balance between the need to maintain nationally defined goals and the need to operate within the rule-based SM? Chapter 1 of this volume deals thoroughly with the issue of national political manoeuvring room for states—especially small states—in an international economic integration area, drawing on microeconomics, international trade, convergence and integration theories and the small-state literature. Therefore, the focus of this chapter is on how an activist Norwegian state managed to shape its energy sector and how this activist approach has been challenged by the EEA Agreement and EU energy policy and regulations. This chapter examines also how the Norwegian strategy has shifted from conflict to cooperation and innovative adaptation to EU rules and regulations, through the process of Europeanization of Norwegian energy policy. In addition, Chap. 5 of this volume explores how Norway, a non-member without direct access to EU policy-making, may influence EU energy policy through various policy instruments, comparing the Norwegian approach with the more conflictual one adopted by Russia, the most important external supplier of energy to the EU.

The Norwegian Energy Sector: A National Priority

The politicization of energy markets results from the international nature of these industries, the huge sums involved, the strategic importance of resources and energy as input factor in the economies of importing and exporting countries alike, and the concerns for the environment and climate change. Governments have long had a dominant stake in national energy companies or have owned them directly. Many interventions and/or regulative arrangements have aimed at controlling the activities of state and private actors operating in this sector. After 1945, the world's seven largest oil companies (Exxon, Mobil, Chevron, Texaco, Gulf, Royal Dutch Shell and British Petroleum—the 'Seven Sisters' as the big international oil companies, IOCs, at the time) 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 the Petroleum Exporting Countries (OPEC) in the 1970s challenged their dominant position and increased state participation (James A. Baker III Institute for Public Policy, 2007; Joffé, Stevens, George, Lux, & Searle, 2009; Marcel, 2006). The European gas crisis of the 1980s was as an important part of the Cold War and East–West relations. The Ukrainian gas crises of 2006 and 2009 put the issue of security of supply high on the EU agenda, and the 2014 Euromaidan protests and following conflict between Russia and Ukraine, an important transit country, made the issue even more burning.

In recent decades, climate and environmental concerns and the desire for a greener economy have added to the politicization of the energy sector, creating worldwide pressures and policies for improved energy efficiency, more renewable energy and less dependence on fossil sources (Heubaum & Biermann, 2015; Slominski, 2016; Youngs, 2013). The climate debate has added to the complexity of the energy industry: fossil energy still represents as much as 87 per cent of world energy usage (2016) and is the main source of global CO2 emissions. Fossil energy use must be curbed—as made clear by the Kyoto 1997 and Paris 2015

Agreements and the max. 2 °C target for global climate policy—and renewable energy and energy savings encouraged. In the European context, EU's Energy Union proposal of 2016 addresses various critical issues that markets cannot solve themselves and that thus require political attention (Austvik, 2016, pp. 376–378).

Norway has been no exception in politically controlling and benefiting from its rich energy-resource endowment. In the electricity industry, the Norwegian state has had strong control and dominant ownership of the management of hydropower resources since the early 1900s. The Energy Act of 1990 resulted in a sweeping liberalization of the electricity market, in line with principles later introduced by the EU. However, almost 90 per cent of Norway's hydropower resources were still owned by the state, the counties or the local municipalities. Legislation was enacted, making the acquisition and lease of waterfalls subject to concessions granted for between 60 and 80 years, after which power plants and all rights revert to the state (*Hjemfallsinstituttet*—the Reversion Institute). When petroleum was discovered in Norwegian territorial waters in the late 1960s, Norway was among the non-OPEC states that wanted to control the revenues, production and management of what was considered a new and potentially economically and politically dominant industry for the country. Long cross-party social-democratic traditions of strong state participation in the hydropower sector as well as in many other economic activities made it possible to formulate consensus-oriented visions and policy goals for an independent Norwegian petroleum administration and industry, with the Norwegian state at the helm to achieve its social goals. The slogan was that 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 fore, as expressed in the ten oil commandments of 1971 (Austvik, 2012).

Petroleum policies included preferential treatment of and regulations favourable to Norwegian companies and the state, together with a strong fiscal regime to ensure that the state received most of the economic rent—and, hence, more revenues from the energy sector than from any other sector. An important element in this 'model' was the establishment of a state-owned oil company, Statoil. At that time, neither the Norwegian state nor Statoil or other Norwegian companies had sufficient expertise to develop petroleum activities on their own. Norway needed to draw on international companies, for their capital as well as their know-how—but it also embarked on an active approach to build own expertise because, as one

Norwegian oil boss put it: 'you can't learn to drive by sitting in the back seat' (Ask, 2006). Companies that were allowed to take part in the development of Norwegian energy resources were selected on the basis of their geological and technological expertise, financial strength and previous experience, intended to be shared. The value of each licence would thus be maximized. The licences also 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 (Ministry of Petroleum and Energy annual). All taxes went to the state, except for local property taxes for terminals built onshore. The Ministry of Finance (FIN) introduced a special tax on petroleum activities to capture most of the rent. Later arrangements with the State's Direct Financial Interest (SDFI) system ensured that the entire rent from these shares went to the state.[1]

Initially, Statoil implemented policy together with the Ministry of Petroleum and Energy (MPE). Later, the MPE's direct engagement was expanded, and ownership of Statoil's oil and gas fields was split, with a larger share going to the SDFI and a smaller one to Statoil. The SDFI invested state budget money directly in the main 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 served as coordinator for gas production and transportation across fields and pipelines. Together, the GFU/FU system, SDFI ownership and Statoil, all under MPE control, 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 (Austvik, 2012, pp. 316–319). The Petroleum Fund, established in 1991 and invested entirely abroad, ensured that annual state 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. In 2018, the value of the Fund stood above €800 billion, the biggest Sovereign Wealth Fund (SWF) in

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

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 manoeuvre for greater oil and gas production, as well as for consumer countries to pressure Norway for higher production. This meant that the win-set for Norway was expanded; with the Fund in place, it became more difficult for Norway to withstand pressures for increased production, for example, from the EU.

Government policy and industrial structures changed as the industry matured. Markets, the international situation and technology changed, and the industry expanded beyond the Norwegian continental shelf (NCS) as an export industry (Austvik, 2012, pp. 322–324). The domestic depoliticization of the sector came gradually, culminating with Statoil's self-initiated privatization in 2001, with the state still holding two-thirds of the 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 are important for understanding why the depoliticization of policy and adjusting to an increasingly more liberal economic model took place. With the alliance with British Petroleum in 1989, Statoil also started to internationalize, expanding into, inter alia, Angola and Azerbaijan. Scaling down the role of the state to that of a regulator of petroleum activities, an actor no longer as strong an industrial participant as before, was encouraged. However, the Norwegian state remained at the helm and continued to reap most of the profits from petroleum activities, encountering little domestic political opposition.

This establishment phase, marked by strong state entrepreneurship, represented a radical innovation. The Norwegian model was a mixture between a strong state and private companies and differed from how the petroleum sector was organized in other countries. Although state control was essential to this model, it diverged from models of nationalized oil industries elsewhere, as private companies were invited as partners to acquire capital, expertise and technology to Norwegian actors operating in the nascent energy sector. 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 free-market principles (as in the USA) was unique at the time. Starting from scratch, the state built a new company (Statoil) and protected the Norwegian supply industry by coupling it with international companies. The system of companies, institutions, regulations and politics was intended to provide a 'Porterian' type of dynamisms in the national petroleum cluster. However, direct interventions went far beyond Porter-type policy. The special Norwegian approach was based on a strong desire to control the value chain from the reservoirs and as far as possible onwards to consumers. In practice, this basically meant to the borders of downstream importing countries for natural gas and from export terminals (platform or onshore) for crude oil. Most of these measures were in direct or indirect conflict with the underlying principles for a liberal rule-based SM, in the EU.

The EEA Agreement and EU Energy Policy

The EEA Agreement was signed by Norway in 1992 and became operative on 1 January 1994. The European Free Trade Association (EFTA) Surveillance Authority (ESA) was set up to fill the control function towards EFTA participants in the EEA (today only Liechtenstein 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 SM regulation and law also became Norwegian regulation and law. The EEA Agreement made it possible to participate in the SM in line with EU members. The main sectors exempted were agriculture and fishery. The EEA Agreement involved the transfer of sovereignty from the nation states to the ESA and the EFTA Court, but not formally to the EU, in a two-pillar structure. The three EFTA countries can become involved in preparing cases by participating in the EU committees that propose new rules or changes in rules—but, as the EFTA countries have no voting rights, it is the EU that makes the final decision: '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' (European Union, 2007).

EFTA countries must accept a rule unanimously, which means that each country is entitled to reserve itself by vetoing against its implementation in the EEA Committee (Ministry of Foreign Affairs, Norway, 2002, p. 27). A 'rule' may be a regulation, directive, decision, recommendation or an opinion. While Norway has the right to reserve itself against the domestic implementation of, for example, an energy directive in Norway, it cannot veto its implementation in the EU area. General rules—for example, in the practice and application of competition law—cannot be vetoed, however, and are dealt with by supranational organs such as the ESA and the EFTA Court (Graver, 2000). Thus far, no EFTA country has made use of this veto right. In case of a veto (reservation), the EU may decide to take the entire area in question out of the Agreement, with potentially substantial disadvantages for the EFTA members. The Agreement is dynamic in the sense that new rules for the SM are designed and applied across the entire EEA area. New subject areas can be introduced, and old ones can be taken out. With each EU expansion since 1992, the Agreement has been renegotiated—generally implying that EFTA countries have had to pay more for market access and financially support the poorest EU member states. 'The EEA Agreement is 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, p. 663, author's translation). The three EEA states have taken on board some more than 8000 legal acts of the EU SM regime and implemented them into national law (Ministry of Foreign Affairs, Norway, 2012).

For many of the initial EEA signatories in the early 1990s, it became evident that the EEA Agreement would not be satisfactory, and 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 decided not to apply for EU membership or sign the EEA Agreement. Only Liechtenstein, Iceland and Norway remained. Given the passive character of the EEA Agreement, Norway's influence on EU policy is more limited compared to that of the member states. This has also consequences for how Norway can pursue its energy interests in the EU (see Chap. 5 of this volume). As regards energy field, Norway is thus in a different situation than that of Europe's (and the world's) largest combined oil and natural gas exporter—Russia. Although Norway in general is a small state, it has long been the second largest gas supplier to the EU, after Russia. Besides being competitors, Norway and Russia share interests concerning developments on the natural gas market. Norway has an interest in what Russia does in its domestic energy sector, which is not regulated by the EU, as well as in Russia's relations with the EU in this field. European integration processes, market liberalization and diverging economic interests between producers and consumers, especially as regards natural gas, have provided the Norwegian state with a unique dimension in its relations with Russia and with the EU.

Politically, the EEA Agreement, with its economic, legal and institutional conditions, has never really settled. EFTA lost much of its identity with the Agreement, and the EU has evolved much faster in depth and breadth, within and outside EEA jurisdiction, than expected when the Agreement was drafted. In addition, the Agreement today covers substantially fewer countries than those that negotiated it. The reduction in the number of EFTA countries and the EU expansion to Central and Eastern Europe have made the EEA, in absolute and relative terms, a minor part of the EU's broader European agenda. The three EFTA states in the EEA (Norway, Iceland and Liechtenstein) and Switzerland have adopted thousands of rules and regulations and implemented them in national legislation. The EU has changed with the introduction of the monetary union and new competencies in foreign, security and defence policy, justice and home affairs. The EEA forum is not always the best place for dealing with the new policy areas with differing roles for the Commission, Parliament and the Council (Austvik & Claes, 2011, pp. 49–50). Also Norway must deal with new policy areas outside the EEA (e.g. Schengen) and has signed several other agreements with the EU after the EEA Agreement entered into force, to cover these realities (Ministry of Foreign Affairs, Norway, 2012).

While competitive principles and economic regulations of imperfect markets continue to make competition law fundamental for SM policy, policy development in the energy sector has been slow. The energy sector was excluded when the EU/EC introduced the Single European Act in 1985 as a foundation for the SM established in 1993. At the time, national interests and energy monopolies in member states were considered too strong to be coordinated into a common, integrated policy. 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 (Birchfield & Duffield, 2011; Buchan, 2014; Gouardères, 2016; Matlary, 1997; Pollak, Schubert, & Kreutler, 2016).

The First Energy Package (1998) allowed the opening of the electricity and gas markets, the gradual introduction of competition, and imposed broad unbundling requirements on integrated companies. The Second Energy Package (2003) focused on the concepts of unbundling and third-party access, TPA, defined the need for independent regulatory authorities and set deadlines for the liberalization of electricity and gas retail markets (2004 and 2007, respectively). With the Third Energy

Package, TEP (2008), more and other types of policies were added. The core elements of the TEP are 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 (Eikeland, 2011). The TEP has yet to deliver fully, and a major aim of the later Energy Union (EU 2016) has become the realization of general EU energy and environmental policies established in the energy packages and environmental regulations (European Commission, 2017; Szulecki, Fischer, Gullberg, & Sartor, 2016).

Despite all efforts—and due to the mainly confederative structure of the EU and diverging national energy situations, political positions and interests—important energy policy decisions have often remained at national levels (Austvik, 2016, p. 378). Without greater EU power (federalism) accompanied by institutional and organizational change, stronger power and market tools, and financial strengthening, it will be difficult for the EU to design and implement a truly common energy policy. Moreover, in the natural gas sector, the EU lacks authority over the entire value chain (from producer to burner tip), in contrast to the USA and the UK after these countries liberalized/deregulated their energy markets. The EU has authority mostly over the downstream part of the market, whereas major upstream activity remains outside SM regulations, as exemplified in the ongoing debate on the future of the Nord Stream 2 pipeline and the possible application of EU regulations to this partly controversial project (Lang & Westphal, 2017; Lissek, 2016; Vihma & Wigell, 2016). In a situation where the EU is unable to speak and act as a unitary actor, the room for strategic and political manoeuvre for companies and countries on the national and EU levels may increase, supported by several 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 & Sitter, 2009). Regulatory innovation is gradually gaining recognition as an important tool used by the increasingly networked state (Black, Lodge, & Thatcher, 2006).

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 & van der Linde, 2006), with a focus on realizing existing EU energy and environmental policies in a continued regulative manner. Implementation of the 2009 TEP and environmental policies has seen slow progress and partly renationalization rather than a common EU approach to energy and climate policy. The Energy Union proposals of the Eastern European member states (2014) and then the EU (2016) revealed conflicts of interest between the priorities of Western and Eastern European countries (Andersen, Goldthau, & Sitter, 2017; Austvik, 2016). For many countries in Central and Eastern Europe, the one-sided dependency on Russian gas is a security problem that tops the political agenda and is an important element in their relations with Russia. For EU members in the West, the problem of energy security is less acute. The question is still open whether the EU system, and member states in the East and the West, will be able to agree and de facto implement policies to reach internal and external goals. In the EU, when common principles are implemented in a non-politicized regulatory manner based on the open method of coordination (Eberlein, 2010; Sabel & Zeitlin, 2011, 2012; Zeitlin, 2016), the convergence pressure towards greater policy harmonization does not always result into the same policy. EU rules and regulations often become incorporated into national legislation only after long lead times; they may be nationally translated, interpreted and implemented in differing ways; and compensatory policies may be introduced when national interests diverge with the common policy goals set. Also the EU itself may come under pressure for change. Brexit and other EU internal tensions pose challenges not only to the unity of the EU: they may also force the EU to change its way of operating. That may in turn expand the political room for manoeuvre for members and non-members alike.

EU bilateral and geopolitical energy interests—such as political relations with Norway and Russia or how SM rules and regulation interact 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 concern basically the question of whether EU internal rules and regulations can be extended to areas beyond EU borders. The EU sees Russian gas policy mainly as a market failure (Austvik & Lembo, 2017). External dimensions of EU energy policy are dealt with only marginally in the Common Foreign and Security Policy (CFSP) although member states and key external suppliers of energy often view them in security terms. Although energy security has gained importance in the CFSP, member states have often rejected any deepening of cooperation (Youngs, 2009, p. 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' (Renssen, 2015, interview with Jean Michel Glachant).

The external dimension of EU energy policy (discussed in detail in Chaps. 2, 3 and 4 of this volume) is viewed basically as the question of extending EU internal rules and regulations. It tends to deal only marginally with strategic questions, such as the future of EU relations with increasingly challenging Russia (Godzimirski, 2015) or the 'hard security' risks involved in the EU's relations with suppliers in the Middle East and North Africa who have to deal with terrorism and intra-regional instability and conflicts. 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 (Bressand, 2012).

Future developments in EU energy policy may follow the 'normal' path of EU integration conflicts: the Commission may compel member states to agree on it as a principle and then develop a pragmatic and non-politicized regulatory progress for its implementation. Member states may resist the convergence pressures and policy harmonization and try to meet the requirements formally but not in reality. Buchan and Keay (2016) argue that EU energy policy falls short of a comprehensive approach: it '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'. They see EU governance as inadequate and the Commission as reluctant to take a firm stance when faced with the Euroscepticism of some member state governments. As a result, only a few countries actually follow the rules fully, and one of those apparently close to the EU ideal is, paradoxically, a non-member and the second biggest supplier of energy to the EU—Norway. In the following section, we examine how Norway has become among the best students in the EU class in following the rules of the game defined by Brussels while largely maintaining its own defined national energy policy goals.

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. It was designed not to defend petroleum interests but the interests of the whole Norwegian economy. Strictly speaking, Norway did not need any EEA agreement to sell oil and gas to the EU, and hydropower was mostly for domestic purposes. It was the rest of the economy that has had major economic interests in securing market access and rules of fair competition. Besides EU competition law, the legal acts Norway had to adapt to were mostly directives requiring member states to achieve a specific result, without dictating how that result was to be achieved. Directives normally give member states some freedom to determine how to go about achieving results, as various legislative procedures may be used, depending on the subject (Archer, 2005; Claes & Tranøy, 1999).

Beyond the EU–Norway integration processes, several other factors have induced policy change, making the picture less clear and the possibility of measuring results more difficult. The ways in which Norway and what was to become the EU defined their interests and formulated their energy policies in the 1970s and 1980s were 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. 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 economically and politically integrated. Political systems changed, and international affairs and trade relations became more globalized and fluid.

The factors were not only political. By the 1990s, neither EU energy markets nor the Norwegian petroleum industry were in their infancy, and new policies were needed for both. Another aspect was changes in the profitability of the petroleum industry, which, besides costs, depend heavily on the price of oil. Relatively low oil prices in the period 1986–2001 led to low attention to security-of-supply and competitiveness-related issues in the EU and elsewhere. Higher prices after 2001 have refocused attention to the profitability of the industry and long-term supply, as was also the case in the period 1973–1985. Higher prices bring more income for producer countries and boost their influence while also providing incentives for the EU to think more comprehensively about its energy policy and the need to secure stable supplies of energy at prices that will not undermine its competitiveness.

Part of the challenge is to isolate the impacts of economic, political and regulatory integration processes on Norwegian policy from other forces and factors. In some situations, changes from one force can be discrete and substantial in scope and/or strength or induce dynamic processes for incremental change. In other situations, other forces may have stronger impact, with accompanying changed constraints and opportunities for action for the parties involved.

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 were challenged. However, the EU Concession Directive (EU 1994) appeared rather uncontroversial for the industry. At the time, much of the supply industry had become competitive internationally, and the industry itself no longer saw continued domestic protection as an important issue—access to markets abroad was considered more important.

Developments in the 1990s affected 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. Here Norway argued that 'free competition' in production and sale between companies might contribute to weaker resource management, a larger supply of gas in the market, and put pressure upon prices, particularly in the short and medium terms. The impaired possibility of exploiting economies of scope by opening Norwegian pipelines through a third-party access arrangement might make things more complicated technically and more 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.

However, it was not obvious that the GFU, retained in its old shape, was sufficiently dynamic to safeguard Norwegian interests when many smaller and more short-term contracts were evolving. The market had been undergoing fundamental changes for some time, through extensive growth and infrastructural developments—in which also Norway played an active part by developing its own energy infrastructure. A changed role for the GFU might be in the Norwegian interest. Both market developments and political efforts were pushing producers to sell gas directly to customers. The buyers of 'new' Norwegian gas (new contracts) would not (only) be the same as before (the transmission companies) but also the transmission companies' customers (distribution companies, the industry and gas power plants). This all indicated that future gas contracts would 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 (in this case, the EU member states). On the other hand, the principles defining how FU worked did not differ greatly from the principles of the EU SM, as long as the Ministry of Petroleum and Energy did not discriminate on who was to receive licences on the Norwegian continental shelf. Optimal resource management and the exploitation of economics of scope are important also in a liberalized market environment. Eventually, having been close to vetoing the directive (i.e. refusing to transpose it into Norwegian law), Norway changed its position from conflict to adaptation and agreed to abolish the GFU and FU arrangements according to EU interpretation of the directive and EU competition law.

Within this new framework—combined with the privatization of Statoil—the Norwegian government managed to implement the directive without compromising national interests. To take care of the SDFI, a new fully state-owned company—Petoro—was created in May 2001. The company assumed responsibility for the ownership interests of the state, monitoring Statoil's production and sales activities and keeping the accounts for the SDFI. To secure open access for transportation of gas on the Norwegian continental shelf, another new fully state-owned company was established—Gassco—which took over Statoil's role as operator for transmission systems to the continent and the UK. These systems had different tariff practices and were organized as separate companies, where each could deny third-party access to their systems, now changed to an open-access system. The new Gassled partnership system offered in principle equal tariffs for everyone using the system, as an adjustment to the directive.

Together, these elements of policy change translated EU unbundling and competition principles and regulatory requirements into a policy package that made it possible to maintain important Norwegian energy policy goals. Government policy and structures changed with industrial and market maturation, in addition to the impacts of Norway–EU integration. The negotiating position towards buyers was weakened but not in a fundamental way. Downstream markets had also become more open than before—a positive development, from the Norwegian perspective. Statoil continued as the single seller of the SDFI/Petoro oil and gas, representing some 70–80 per cent of all Norwegian gas exports. The links between state and company remained strong, partly because 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 EU's later Second and Third Energy Packages, and the Energy Union, necessitating no further institutional or legal changes. The Norwegian state achieved a more regulative role at the expense of an interventionist one in its energy sector but remained at the wheel and as the main rent collector.

The Norwegian electricity market (based mainly on hydropower, which generates 99 per cent of the electricity used in the country and covers some 40 per cent of domestic energy needs) was liberalized ahead of the EU through the Energy Law of 1990. EU directives for this market have had no impact on Norwegian energy policy. However, the EU held that Norway's government waterfall ownership arrangement was not in line with EU rules (i.e. state, county or municipal ownerships). In 2000, the ESA argued that the Norwegian Concession Law of 1917 and the establishment of the Reversion Institute were in violation of Articles 31 and 40 in the EEA Agreement, as only Norwegian government institutions could receive a perpetual licence. Again Norway refused to change the arrangement, this time taking it all the way to the EFTA Court. The Court ruled in 2007 that the difference in the regulation between public and private owners of hydroelectric power represented an indirect discriminatory restriction on EEA rules. Norway basically lost the case—but again the government found a working solution in the implementation and change of domestic policy. The issue addressed by the EEA Court was not the Reversion Institute and government ownership as such nor whether the scheme involved national restrictions: rather it was that 'the system of public ownership must be uniform and consistent, in order to justify restrictions' (Stortinget, 2007, p. 60, author's translation). As private owners could not avoid the Reversion Institute, the Norwegian government simply decided to transfer *all* hydropower production to the government. It created what was called the 'Consolidation Model', enhancing government ownership. In the new model, private companies were not to be granted new independent concessions at all (with the exception of small power plants), and any hydropower resources still under private ownership were to be transferred to government ownership in line with the Reversion Institute. Up to a third of the shares in a hydro company could be sold to private interests, but the government must remain the majority owner. Taken together, the EFTA Court's judgment had the opposite effect of what some lobbyists in Brussels had anticipated. Norway's Reversion Institute was not abolished—instead, government ownership was strengthened through compensatory policies on the part of the state.

This rearrangement of the Reversion Institute for hydropower resources, and changes in the petroleum regimes, in response to EU requirements, made Norwegian energy policy more similar to the EU system in policy form and process—without leading to any considerable degree of political convergence (real political similarity). Although strongly focused on the role of the Norwegian state in dealing with problems caused by market imperfections in its petroleum sector, the EEA Agreement did not challenge the dominance of the state. The heavy taxation systems were retained, as was the arrangement with the SDFI for capturing a maximum share of the economic rent for the state.

The main lesson learned was that SM regulations set limits for the content of normative political measures: non-discriminatory restrictions are allowed, but not 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 achieved by normative political means alone but would have to be addressed in a complementary manner, with the state acting as both an actor and regulator. More decisions would be made by independent market actors, amid greater state ownership and regulatory interventions in markets and the activities of private actors.

However, the EEA Agreement did affect the policy of choosing development concepts and materials specifically designed to fit the Norwegian supply industry (Arnesen, 1995, pp. 343–393)—which was a de facto protectionist measure that favoured Norwegian suppliers. It also contributed to changing the constellations of domestic actors relevant for petroleum policy formation. Within the government, the Ministry of Foreign Affairs (MFA) regained much of the prominent role it had in the 1960s and 1970s when the processes concerning the law of the sea were in focus. That was an important reason for appointing a special minister for EU/EEA affairs within the MFA in 2013. Further, in the areas where the EEA Agreement applies, the Ministry of Justice, with its sub-organs, has gone from being a domestic law-maker to an external law-taker, sometimes even overriding what the MPE otherwise would have done in the petroleum sector. Before the EEA Agreement came into effect, the MPE had tended to request 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 a New Public Management (NPM) type of policy. Whereas the OPEC revolution gave strong support for independent national energy policy-making in the 1970s, the liberal turn of the 1990s and onwards provided disincentives for greater state engagement.

Norway managed to retain control of its energy industry—by that time, the petroleum industry had reached a mature phase. If, however, the resources had been discovered not in the 1960s/1970s but in the 2000s, market integration with the EU might have caused problems when Norway found itself having to build a national petroleum industry from scratch. Many of the state entrepreneurial measures of the 1970s and 1980s would today be in direct conflict with current international trade regulations (the EU, the WTO). Strong state involvement would have been possible, but discriminatory interventions favouring Norwegian companies would have been difficult. Norway might have gone the same way as many other resource-rich countries, losing control of resources and, especially in the petroleum sector, falling victim to the resource curse paradox (Auty, 1993). Under the EEA Agreement, it would have been far more difficult, perhaps impossible, to award the best licences to Statoil and not to more efficient foreign competitors. Moreover, any preferential treatment of the Norwegian supply industry would probably have been prohibited.

Under the current legal and regulatory conditions shaped by the EEA Agreement and a more liberal approach, a government cannot support specific companies—in contrast to the situation in the 1970s. Politically motivated actions, decisions and measures must remain neutral when various types of actors are to be dealt with, be they national or international. In these circumstances, the companies with the most competence and capital at the time—the big IOCs—might possibly have dominated the sector. Today, the Norwegian state has been able to pursue an innovative industrial policy, within the EU economic paradigm, to address the problems of 'normal' industries. However, such an approach would not work in a situation when the economy experiences an exogenous shock—for instance, the discovery of massive petroleum reserves—or when there is a need to control and maintain a sector of strategic economic importance, such as the energy sector.

Conclusions and Policy Recommendations

The EEA Agreement has entailed the transfer of sovereignty from Norway as EFTA country to the EFTA Surveillance Authority (ESA) and the EFTA Court and thereby de facto to the EU. The main difference between full-fledged EU members and the EFTA countries is that the latter cannot participate in final EU decision-making, and the development of the EU in other areas, unless specifically agreed. The EU is the rule-maker and the EFTA countries are the rule-takers. However, as argued sometimes rule-takers can remain national policy-makers, able to shape their policies in line with their national interests. By applying national interpretation and innovative implementation of EU rules and regulations, and policy packages to compensate for lost policy options, nationally defined goals can often be retained. Powerful state companies and institutions can increase the ability to reach these goals.

The most important point in relations with 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 enter a trade agreement similar to the one negotiated by Switzerland, it could try to get energy policy excluded from the overall framework agreement. Both EU membership and a trade agreement like that of Switzerland may seem feasible options, as they provide better opportunities for national political manoeuvring than under the EEA Agreement.

However, regardless of affiliation, much policy will have 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 at least as important as the overarching formal affiliation between the two. In the Great European Energy Game, it is crucial to understand and remain ahead of the political ambitions and actions of the EU and its member states—and not merely to copy laws, directives and regulations in a passive way. Maintaining a comparative advantage in policy-making is important for achieving strategic economic goals. The dynamics in relative technological, commercial and political abilities is central to the actual national room for political manoeuvre and, hence, the effects of SM 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 as regards political content and purpose.

The making of EU rules and regulations is the privilege of large, rather than small, EU member states. The passive character of the EEA Agreement minimizes small-state Norway's influence on EU policy as compared to other small SM participants. Beyond lobbying and use of other instruments, as discussed in Chap. 5 of this volume, Norway has little general political influence over the EU—due both to its non-membership and its small-state status. Concerted action will in general be the 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. That being said, some options do exist. Norway has embarked on successful cooperation with Lithuania to reduce the latter's gas dependence on Russia, as discussed in Chap. 9 of this book. Poland—whose energy policy is examined in Chap. 8 of this volume—has repeatedly signalled that an 'energy alliance' with Norway could benefit both countries and help them to coordinate their own, and EU, energy policies more efficiently. The fact that Norway is a significant petroleum exporter on which the EU depends as much as it depends on Russia (especially in the case of natural gas) gives Norway some additional clout for influencing the energy policies of the EU and its member states.

In other words, the EU–Norway energy interdependency may give Norway some leverage on EU energy policy and may lead to greater understanding of the Norwegian interest in testing how to best adapt 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 unlikely to be able to deal with other issues than outright violation of rules' (Arnesen, 1995, p. 662, author's translation). As 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 manoeuvre—but this will require a clear understanding of the EU system as a second-best economic integration area and competent policy-making within the system.

Realist-liberalist Joseph Nye (2015) 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 unilaterally exports its legal framework and ways of doings things, the EU could address the demands of one and then the other, acting on a case-by-case basis by finding common ground for bilateral agreements. 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, the relationship between SM policy, foreign policy and other policy areas remains poorly defined in the EU. If all agreements were clear, with only one single consensus-based understanding of what is agreed upon, there would be no need for dispute settlement arrangements or courts to decide what is right or wrong. The Energy Packages and the Energy Union have failed to address EU bilateral and geopolitical energy interests. When the industrial and trade organizations and actions of external suppliers are not in line with EU rules and regulations, this is mainly seen as market failures—and not recognized as a foreign policy issue involving the CFSP or the European External Action Service (EEAS).

In the EU view, external non-compliance with the acquis must be fixed as an extension of EU internal rules and regulations. The EU seeks to impose its conditions and preferences without taking into account the interests of external suppliers. Current court and arbitration cases between Gazprom and the EU, based on EU and WTO law, show that Russia has taken a more conflictual approach to its relations with the EU than has Norway (Austvik & Lembo, 2017). Russia argues against EU impositions and demands to be considered as an equal partner that wishes to continue to develop and manage its resources independently (with some room for negotiation and common agreement as to some EU requirements).

As a (very) large state, Russia is part of European high politics and may have better chances for creating cooperation with the EU on an equal basis by challenging its system through conflict, unlike small-state Norway. Exporting the Norwegian model to other countries is difficult, although lessons can be drawn. Norway serves as a European powerhouse and is in many respects a quite special case: a small state and country with high competence and a broad set of capabilities and options. Following the Norwegian example, if Russia eventually nevertheless should de jure accept WTO/EU types of law in its energy sector, that might not necessarily de facto change its policy goals, even if it formally changes its domestic energy and natural gas export policies. The way Russia organizes its energy sector cannot mirror Western solutions, because it operates under different legal, social, economic and political conditions that make comparison impossible. However, adjusted to the Russian situation, such an approach might entail elements of pragmatic changes that could also benefit Russian society and state.

This is definitely not the case with Norway, which shares most norms and values with its EU partners. Indeed, that may also explain, at least partly, why Norway has been able—and willing—to adapt to the EU-imposed set of rules and regulations.

The continuing pressures for European convergence make the interplay between national and European preferences and priorities central, despite variation in the overarching formal relations. The scale and scope of conflict, cooperation and adaptation vary, but national and supranational comparative advantages in policy-making remain central to both rule formulation and implementation. The more complex the situation becomes, the more difficult will it be to achieve de facto comprehensive supranational arrangements in the EU. As a result, the room for manoeuvring regarding national adaptation expands. Demands for harmonization of political form and process, but not necessarily political convergence, make it possible for countries to have the same policy in terms of rules and regulations but with differing political content. Relative advantages in policy-making are especially important in the energy industry, with its strategic and economic implications for each nation state. If a state limits itself to following an industrial and innovation policy for 'normal' commercial industries, strategic policy goals will be formulated by someone else, perhaps strong private entrepreneurs, businesses, other countries, international trends and others. That in turn may lead producers into a resource curse situation and consumers into security-of-supply problems—unless the EU can achieve a common and truly functional energy policy.

Nevertheless, the Norway–EU energy case has shown that many nationally defined policy goals can be maintained in a strategic sector, also within liberal EU regulations. We have seen how nationally defined policy goals may be achieved by means of active regulatory and legal interpretation, innovative adaptation and, as necessary, the introduction of new policies and greater direct state participation to compensate for lost opportunities.

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