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The case of chemicals and Norway

Jørgen Wettestad



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Abstract

An important aspect of changing EU governance is the expanding role of regulatory agencies. These agencies have been held to reduce the role of member states in policy-making, shifting powers to the EU level and the intricate technical processes there. For Norway as an EEA country, there are additional, specific formal barriers, like lack of voting rights and being barred from certain lead positions. EU enlargement and the further diversification of member-state interests have been assumed to complicate matters for Norway even further. However, closer scrutiny of the role of Norway in the chemicals agency ECHA challenges this gloomy picture. Compared to pre-ECHA days, where Norway had to hope that the EU Commission would pick up domestic priorities and act on them, ECHA and the new phase of EU chemicals governance has given Norway room for directly proposing and steering through new legislation. As examined here, the case of mercury regulation is the jewel in the crown for these new possibilities so far.

Key Words

EU, EEA, chemicals regulation, REACH, ECHA, Norway, mercury

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1 Introduction

From the early 2000s on, the focus in EU chemicals policy has centered on making and adopting the REACH regulation: **R**egistration, **E**valuation and **A**uthorization of **C**hemicals (see Selin, 2007). A key aspect of REACH involves shifting the burden of proof as to toxicity/non-toxicity from governments to industry. The regulation has been hailed as a victory for a coalition made up of environmental ministers from Northern member states, Green members of the European Parliament, DG Environment officials within the Commission, as well as representatives of environmental and public health NGOs (Selin, 2007). Norway likes to see itself as a chemicals policy frontrunner in Europe and must be seen as part of this coalition, although the country is not a full EU member but is affiliated through the European Economic Area (EEA) agreement (DIFI, 2008).

With the entry into force of REACH in June 2007, chemicals governance in Europe has entered a new phase. An important development in the wake of REACH has been the establishment of the European Chemicals Agency (ECHA) later in 2007 (see Martens, 2012). ECHA aims to be ‘the driving force among regulatory authorities in implementing the EU’s chemicals legislation [... It] helps companies to comply with the legislation, advances the safe use of chemicals, provides information on chemicals and addresses chemicals of concern’ (ECHA, 2012). This establishment fits into a broader governance change trend in the EU, involving the establishment of several regulatory agencies, in turn leading to debate as to what they mean in terms of new supranational powers (see Andoura and Timmerman, 2008; Busuioac et al. eds., 2012).

In organization theory, it is well established that organizational changes mean changing power relationships (see Egeberg, 2003). Norway’s affiliation to the EU through the EEA agreement provides full access to the EU market, but also meaning that Norway must implement most EU policies without enjoying the corresponding decision-making rights and powers. However, also within the confines of the EEA agreement, there are both formal and informal channels for communication and influence (NOU, 2012). The most important formal channel for Norway into the EU has been participation in expert groups under the European Commission (hereafter: Commission). Increasing concern about decreasing national influence has been voiced in connection with the above-mentioned change in EU governance represented by the establishment of agencies (see Busuioac et al., 2012: 5). Due not least to such organizational features of agencies as lack of formal voting rights and limited access to lead positions for non-EU member Norway, a more complicated position and even more marginalized role for Norway in EU policy-making has been indicated (see NOU, 2012: 176-177).

This report focuses on two main questions: first, has the extent to which Norway is heeded in EU chemicals governance decreased, remained stable, or increased in the wake of the establishment of ECHA? Second, to what extent can the organizational qualities of ECHA shed light on the development of Norway’s standing in this issue-area, or can other

changes in the EU or the wider organizational environment provide a better explanation?

There are of course various other such factors to be examined. I pay specific attention to two developments that may also have acted to complicate the standing of Norway. First, an important development within the EU has been its Eastern enlargement process, with an increase in the number of and interest-range among member states and the related challenges for 'outsider' Norway. Could this be more of a challenge for Norway than the organizational features of ECHA? Second, given the increasing recognition of the importance of viewing EU matters in a broader international perspective, I will briefly examine relevant and central political developments outside the EU, in bodies such as UNEP and the WTO. Has, for instance, the growing global attention to mercury regulation further impacted the EU agenda, weakening the specific voice of Norway in this issue-area?

The report is structured in the following manner: the next section elaborates the theoretical and methodological foundation for this study. Section three discusses the development of Norway's standing in this issue area: has it roughly decreased, stayed quite stable, or increased? Section four discusses the explanatory perspectives, with main attention given to the organizational changes represented by ECHA. Section five sums up and discusses main implications of the study.

2 Theory and method

'Measuring' states' success in influencing EU negotiations and outcomes is certainly a complex and tricky order. According to Diana Panke, who has studied 'small states in the European Union', such success can be seen as 'the extent to which a final negotiation outcome reflects the preferences of a state' (Panke, 2010:107). As noted in a 2012 Norwegian White Paper on the developing relationship between the EU and Norway, 'it is notoriously difficult to measure the results and effects of influence efforts [on EU policy] of both Norway and EU member states' (NOU, 2012: 166; my translation). EU decisions are often complex compromises where the influence of single actors and their inputs are very hard to trace. Hence there are good reasons for adopting fairly modest ambitions as regards assessing the development of the specific influence of Norway on EU chemicals policy-making, with particular attention to the changes introduced by the establishment of ECHA.

The approach used here is an explicitly cautionary one, combining several complementary methodological techniques. A first technique is a one of a simple and rather cursory diachronic comparison. The initial step is to establish a rough baseline. What can main studies conducted so far and other empirical evidence tell us about the standing of Norway in EU chemicals policy-making prior to the establishment of ECHA? What were Norway's main policy priorities here, and to what extent do they appear to have been followed up by the EU? The second step is to assess what has happened after ECHA was established. What were Norway's main policy priorities when ECHA was established, and to what extent have

they been followed up? Here a key challenge is that Norwegian priorities often have coincided with positions held by EU member states and bodies, making it hard to single out the specific role played by Norway.

In order to specify the picture somewhat better, I employ a second technique, process tracing (see George and Bennett, 2005). Here this will mean singling one or a few specific issues and then going into detail as regards the main activities conducted by Norway in seeking to influence the EU. This approach will make it easier to check for rival explanations. *Mercury regulation* is the substance and policy issue singled out for detailed scrutiny in this study. This topic has a long history in European chemicals regulation, and is certainly an issue of high toxicity and health concern. However, as this is a political science analysis, the technical complexities of mercury regulation will not be addressed here.

As a third element here, supporting both these approaches, comes evidence from interviews. As influence is very much a cognitive matter, I have collected the perceptions of various relevant actors, inside and outside of Norway (see list of interviews).

Turning to the issue of explanation, let us first explore the focused organizational perspective. As regards the main organizational gateways for Norway into the EU, although Norway is not a formal member, the EEA agreement offers various formal and informal channels for communication and efforts at exerting influence. Importantly, Norwegian experts participate in various expert groups under the European Commission (NOU, 2012). But how can small states have an influence in the EU, up against traditionally powerful states like France, Germany and the UK – and new ‘heavyweights’ like Poland? Here we can draw on the body of literature on this question (see Denti, 2007; Haverland, 2009; Steinmetz and Wivel, eds. 2010; Panke, 2010). For instance, Steinmetz and Wivel emphasize the importance of utilizing means and channels in which the state has a comparative advantage.

For Norway, affiliated to the EU only through the EEA agreement and as a small state, expert knowledge and related normative power become likely candidates for an area involving a comparative advantage. Here we can note the work of Marcus Haverland on the use of an ‘expert strategy’ to exert influence (Haverland, 2009) – not least since Haverland uses the EU REACH process and the role of a small member state, the Netherlands, as main empirical backdrop. Haverland defines an expert strategy as ‘how government officials who possess a high level of “content expertise” are able to advance leader states’ interests in EU policy-making’ (p.2), including ‘the mobilization of experts and deliberation’. He further emphasizes the importance of the experts’ reputation for expertise: that other main actors acknowledge and recognize by other main actors. He also points to the degree of dependency of policy-makers on expertise, ‘which in turn depends on the characteristics of the policy issues at hand’. EU chemicals policy is characterized by both technical complexity and high political salience (ibid.:5, 3). In this perspective, if we find indications of Norwegian influence in ECHA, it will be of interest to see whether this has occurred through the use of an ‘expert strategy’.

As a second channel of exerting influence, Norwegian actors may meet with and put forward viewpoints and positions to Commission officials and Members of the European Parliament (MEPs). Third, Norwegian business actors participate fully in European business associations like CEFIC (the chemicals industry's Euro-federation). Such activity may also serve as a channel for communicating Norwegian actors' positions to the EU policy processes, in this case primarily the business actors. However, the main formal channel is membership in technical expert committees under the Commission. As an EEA country, Norway has basic participation rights, and can voice its opinions on matters under discussion – but without formal voting rights.

In the case of chemicals, when the REACH process was concluded and ECHA established, the previous expert groups lingered on – but organizational attention now shifted towards developments within ECHA (Interviews, 2013). Literature on the 'agency phenomenon' in the EU (see Busuioc et al., 2012) has pointed to several challenges related to this development, not least whether it means increased supranationalism and powers for the Commission, with powers shifting away from the member states. For Norway this has been combined with a specific concern that the organizational and decision-making powers of such agencies further decrease its possibilities for exerting influence on EU policy-making. In agencies like ECHA Norway does not have voting rights (similar to the situation in previous working groups) and cannot hold lead positions of certain types of working groups.

The first rival perspective addressed here takes as its point of departure that the establishment of ECHA is not the only institutional change in the EU which may have affected the room for Norwegian influence. The EU's Eastern enlargement took at about the same time. In the latter half of the 1990s and first years after 2000 the EU was EU-15, with a significant coalition of green leader states, including Norway's neighbors Denmark and Sweden (Andersen and Liefferink, 1997). This coalition was a key force in putting in place the new REACH EU chemicals policy (Selin, 2007).

The enlargement of the EU in 2004 and 2006 brought in 12 new member states with generally less developed, less ambitious environmental policies. Although more detailed studies indicate that the enlargement has not consistently weakened EU environmental policy (e.g. Skjærseth and Wettestad, 2007), it is clear that the enlargement has made the EU a more complex body for Norway to address, and where Norway is faced with a stronger coalition of less ambitious states. As a 2012 White Paper put it, 'the gate into the EU has become more narrow while at the same time more busy' (NOU, 2012:165; my translation). Hence, it is possible to envisage a co-variation between the establishment of ECHA and the enlargement effects, underpinning a hypothesis of organizational developments leading to a further lessening of Norwegian influence on EU chemicals policy-making.

The second control perspective takes into consideration the increasing attention given to the interplay between EU politics and the external environment (e.g. Skjærseth and Wettestad, 2002). A study of the

relationship between the EU and Norway in the case of emissions trading concluded that factors external to both these actors needed to be given more attention in order to understand the developing relationship between them (Sæverud and Wettestad, 2006). And that means more attention to the issue of institutional interaction (see Oberthur and Gehring eds., 2006).

At the regional level, the release/emissions of chemicals have been targeted by cooperative arrangements concerning emissions to water as well as to air. The Oslo and Paris Conventions, merged into OSPAR in 1992 and interacting with the North Sea Conferences, have targeted emissions to water. The 1995 North Sea Conference adopted a key target of reducing the concentrations of the most dangerous substances to 'natural concentrations' by 2020 (see Skjærseth, 2012). The Convention on Long-range Transboundary Air Pollution (CLRTAP) was established in 1979, followed by a succession of regulatory protocols (Wettestad, 2002, 2012). As regards chemicals governance, two particularly relevant protocols were established in 1998: the Århus Protocols on heavy metals and on persistent organic pollutants (POPs) (Selin 2000, 2010).

At the global level, several international forums and organizations have addressed the chemicals issue. Important international treaties include the Basel Convention on hazardous waste in 1989, the Rotterdam Convention signed in 1998 and the Stockholm Convention on Persistent Organic Pollutants (POPs) signed in 2001. As regards mercury, in 2003 front-runners like Switzerland and Norway called for negotiations to be started on a convention to limit global mercury emissions. But this met with resistance, and it was not until 2009 that agreement could be reached on starting negotiations on a global mercury convention (see UNEP, 2009). Given these central political developments outside of the EU, we may ask: has the increasing global attention to mercury regulation further crowded the EU's agenda and weakened the specific voice of Norway in this issue area?

The present report is a qualitative case study, based on scrutiny of relevant official chemicals policy documents from the EU and Norway. In addition, I draw on relevant books, journal articles and articles from news agencies such as *ENDS Daily*. Finally, interviews have been conducted with central Norwegian participants in and observers of the processes in focus here, and with relevant ECHA personnel, based on the principle of anonymity as regards specific referencing (see list of interviews).

3 Norwegian influence: decreasing, stable, or increasing?

3.1 Baseline: the situation prior to the establishment of ECHA

Prior to REACH and the establishment of ECHA, several sources (independent observers as well as interviewees) agree that Norway was well

regarded in the chemicals expert groups. To a large extent, this was based on the development of solid issue-specific knowledge, in turn rooted in perceptions in Norway as of being on the receiving end of (long-range) transboundary pollution – ‘acid rain’ in particular, but also chemicals and marine pollution (see Norwegian White Paper 58 1996-97; Wettestad, 2002, 2012). From the 1970s on, Norway sought to apply a strategy towards European pollution-exporting countries very similar to what Haverland (2009) has called an ‘expert strategy’. Main elements here were the development of solid national issue-specific knowledge and contributions to the creation of international monitoring systems such as the EMEP system in the case of acid rain. As noted by Reinvang (2003:32), ‘Norwegian expertise has been called upon by the European Commission and Norwegian experts have contributed positively to the development of EU/EEA chemicals policy in the working groups’ (my translation).

In the 1990s Norway saw itself as a chemicals frontrunner vis-à-vis the EU, not least as regards the basic principles for policy-making on chemicals. Norway based its chemicals regulations on the principles of ‘precaution’ (taking action even before effects were scientifically ‘proven’) and ‘substitution’ (authorization for the use of dangerous substances should not be given if other and less dangerous substances are available on the market). At that time, these principles were not embraced by EU policies in this issue-area (Dahl, 1999:134). As to the more specific relationship between EU and Norwegian policies, prior to the negotiations on the European Economic Area (EEA), Norway adjusted its rules and regulations to EU regulations on matters where the EU had stronger regulations and a better protection level. In other areas (like the regulation of cancer-inducing substances, heavy metals, asbestos) Norway considered its rules to be more ambitious rules than those of the EU, and the main solution was to transfer period arrangements and exemptions.

From the late 1990s on, pressure was building within the EU for developing a new policy framework for chemicals regulation, with Nordic countries like Sweden acting as frontrunners. As noted by Henrik Selin, ‘what resulted in REACH began as a joint initiative between a few Northern member states in the late 1990s, sharing an interest in strengthening EU chemicals legislation and harmonizing chemicals assessment and regulation across all member states’ (Selin, 2007: 70). At the time, the Norwegian authorities stated their intention to ‘further develop and intensify the efforts to influence EU chemicals policy’ (Norwegian White Paper 22, 2000: 83). So it is reasonable to assume that Norway actively supported and hailed the initiatives and activities of the Northern member states referred to by Selin above, thereby helping to launch the process of developing new EU chemicals policy which came to be known as the ‘REACH’ process – the Registration, Evaluation and Authorization of Chemicals.

As only an ‘associated party’ to the EU and not a formal member, Norway could play only a limited role in this process. On the other hand, REACH was recognized as an important political measure from the beginning, and Norway focused on paying attention to the process (and

possibilities for influence) wherever possible. The Norwegian government formulated several statements and provided the EU with input and information, aimed at influencing the outcome and securing an ambitious REACH agreement (Norwegian White Paper 14, 2006; Ministry of Foreign Affairs, 2009; EU Norge, 2009).

Norway sought to give support to Nordic frontrunners and policy activists like Sweden. Naturally enough, Norwegian representatives had meetings with the REACH Parliamentary Rapporteur, Lena Eek of Sweden (Interviews, 2010). The REACH outcome meant an increasing match between EU and Norwegian chemicals policies, particularly the more central role of the precautionary principle and shifting the burden of proof over to industry. However, REACH did not embrace the substitution principle favored by Norway.

Summing up, prior to the establishment of ECHA, the influence of Norway on EU chemicals policy-making cannot be put at zero. As a member of expert groups, and a country recognized for solid issue-specific knowledge, Norway was listened to – both in the expert groups and by representatives of EU bodies such as the Parliament. But as a non-member and primarily outside the main processes in the development of the REACH regulation, its overall influence was clearly on the moderate side.

3.2 Post-REACH and the establishment of ECHA: has Norwegian influence changed?

How have then things developed since REACH? As a key ingredient in the follow-up of REACH, ECHA was established in mid-2007, intended to serve as ‘the driving force among regulatory authorities in implementing the EU’s groundbreaking chemicals legislation for the benefit of human health and the environment as well as for innovation and competitiveness... [aspiring] to become the world’s leading regulatory agency on the safety of chemicals’ (ECHA, 2012). The agency became fully operational in mid-2008. This did not mean that the old chemicals policy development system was abolished – for instance, the working groups under the Commission lingered on. But the organizational focus shifted towards developments within ECHA (Interviews, 2013).

Norway’s main priorities around the time ECHA was established were expressed in White Paper14 (2006-2007). The Paper gave special emphasis to some particular issues: first, the threat represented by heavy metals – mercury in particular – was highlighted, as was the work on establishing a global treaty that would target these substances (see p.5). Furthermore, the Paper stated as a national target that the emissions of 25 specifically dangerous and targeted hazardous substance should be halted or at least significantly reduced by 2020 (see annex 1). In addition to mercury, special attention was paid to perfluorooctane sulfonate (PFOS) and brominated flame retardants. The Paper also stressed the importance of having good monitoring systems in place. My interviewees confirm that these issues can be seen as key priorities for Norway at the time (Interviews, 2012).

How then has the work within ECHA proceeded? The initial task of ECHA was the 'R' in REACH: Registration. Key in this work was putting together a first list of Substances of Very High Concern (SVHC), providing for their subsequent inclusion in a Candidate List for eventual inclusion on the Annex XIV list of REACH (the 'Authorization List'), followed by inclusion on the list of restricted chemicals (Annex XVII). The first candidate list was rather short: 16 substances (Euractiv 2008). The list, updated and expanded in several rounds, included 84 substances as of the end of 2012. By end of 2012, six substances had been added to Annex XIV.

What about the main Norwegian priorities summed up above: have ECHA and the EU responded to them? First, as regards mercury, Norway started preparing a dossier for ECHA in 2008. This was taken up by the Committee for Socio-Economic Analysis (SEAC) and led up to the adoption of scientific opinions on mercury and phenylmercuries in September 2011. ECHA recommended 'measures to further reduce mercury emissions and protect against exposure' (ECHA 2011). Second, as regards brominated flame retardants, industry producers submitted a list of selected such retardants in June 2008. The substance HBCD featured on this list and was included on the ECHA candidate list in October 2008, following a proposal from Sweden. This was then sent to the Commission for authorization (BSEF 2012). Third, as regards PFOS, these substances have been banned by the EU since June 2008 under the Marketing&Use Directive 2006/122/EC, with certain exemptions. Norway has as yet played no specific driving role in this particular process.

As noted in the theory section, assessing 'influence' entails a substantial cognitive dimension. How then do various actors inside and outside of Norway perceive the development of Norwegian influence? Are perceptions similar among different Norwegian actors? Do actors within and outside of Norway assess power relationships similarly? My study finds that the various Norwegian official actors primarily stress continuity in the room for and actual influence of Norway – they do not paint a picture of a 'hill' that has become very much steeper, at least not in the area of chemicals policy. To the contrary, the perception is more that the room for influence, as well as and actual influence, may have increased, as further elaborated in section 4.1. below. The case of mercury is the prime evidence so far for this view. External observers basically confirm this perception of continuity and more increased room for Norway, although they also point out that both REACH and ECHA are fairly new and that caution is required in assessing influence and power relationships (Interviews, 2012, 2013).

Summing up, both more 'material' and cognitive indicators seem to indicate continuity in the moderate, but not zero, influence of Norway on EU chemicals policy-making. If there has been a change after the establishment of ECHA, this seems in fact to have been in a positive direction, with one specific key priority issue for Norway being responded to by ECHA and the EU as the prime example so far. Let us examine this development by zooming more directly in on main organizational changes that have taken place.

4 The establishment of ECHA and other changes in Norway's environment: not so threatening?

4.1 The changing organizational access: new possibilities more than barriers?

The baseline here is Norway's main formal channels into the EU in the time before ECHA. As noted, Norway was included as a member of technical expert committees under the Commission. As an EEA country, Norway had basic participation rights and the possibility to voice its opinions on matters under discussion – but no formal voting rights. Furthermore, we should recognize that the 'route' of getting Norwegian concerns and priorities into the EU system was an indirect and rather cumbersome one that proceeded via the Commission. Norway had to develop a national knowledge base and a regulation, and then hope that this would trigger the Commission into turning this into a proposal for an EU measure (Interviews, 2012). As the official 2012 assessment noted, 'it is only in a very few cases where Norwegian participation in expert committees provides the opportunity for any actual influence on EU policy-shaping' (NOU 2012: 174). Well-informed interviewees also voice a quite sobering perspective on Norway's possibilities for influencing the development of EU chemicals policy in the expert groups (Interviews, 2012).

A more informal channel involved providing inputs to and having meetings with EU officials, such as Commission personnel and MEPs. In the course of the REACH process, Norway provided written inputs to Commissioners and Parliament Environment Committee representatives in several rounds, combined with meetings at various stages in the decision-making process (EU/EEA Handbook 2009: 46-49).

Turning to the main relevant organizational changes in the aftermath of REACH, we must first note that the overall organizational context has shifted, from a policy-making focus to more weight given to more technical follow-up and implementation of REACH. This in itself probably means an institutional landscape where the 'expert strategies' of Norway and others thrive better than in the more heated REACH days. On the other hand, the pre-REACH technical working groups under the Commission have lingered on, now as the CARACAC group (ECHA review 2012). Hence, the establishment of ECHA meant a more complex organizational machinery in the field of chemicals. Although much of the focus of practical, day-to-day chemicals policy-making has changed from the Commission expert groups to ECHA, ECHA is focused primarily on REACH implementation, while 'new' EU chemicals policy-making takes place in other EU bodies (Interviews, 2012).

As noted earlier, Norwegian assessments of the establishment of agencies such as ECHA have emphasized how such agencies may represent new organizational barriers for Norway. ECHA is organized as follows: it is headed by an Executive Director, who reports to a Management Board. There is a Secretariat that gives support to three main committees responsible for scientific and technical advice in the implementation of

REACH and the related, but independent, system on classification and labeling (CLP): the Member State Committee, the Risk Assessment Committee (RAC), and the Committee for Socio-economic Analysis (SEAC). In addition, the Forum, a network of competent authorities from member states, has been established. As we have seen, Norway, as an EEA country, cannot hold certain lead positions in the agency: it is barred from taking on a formal lead position in the Management Board and the Forum. Norway is represented in all committees, but its delegates are formally 'experts', not country representatives (Interviews, 2012). So there are certain formal barriers, but interviewees emphasize that there were similar barriers in the old system as well, so this does not really mean a worsened situation in practice (ibid.)

Furthermore, what has been largely overlooked so far is the governance change as regards agenda-setting possibilities in ECHA. As described above, pre-ECHA the Commission had sole agenda-setting powers regarding chemicals. With ECHA, significant agenda-setting power has been transferred to the participating countries, including Norway. This has to do with the participating countries' possibilities and rights to prepare dossiers on specific substances and matters to be considered by ECHA. Norway has indeed exploited this new opportunity, with the case of mercury regulation as the prime example.

As mentioned, soon after the establishment of ECHA Norway started preparing a dossier proposing a ban on five phenylmercury substances.¹ This led to the adoption of final supporting opinions from the RAC and SEAC committees in autumn 2011. RAC stated that a phenylmercury restriction would 'contribute to the reduction of exposure to mercury ... be beneficial for human health and the environment ... and a restriction is necessary and appropriate'. SEAC stated that a restriction 'is the most appropriate Community-wide measure to address the identified risks' (ECHA, 2011a, b). Subsequently, in autumn 2012, ECHA put forward a report proposing restrictions on both phenylmercury substances and mercury in measuring devices; in the phenylmercury case it explicitly based its proposal on a report from Norway (ECHA, 2012).

Interviewees point out that only a few EU countries have taken similar initiatives, most notably France (Interviews, 2012, 2013). Hence, this has contributed to bolster Norway's general position in ECHA and can be seen as the continued constructive use of an 'expert strategy' to exert influence in EU processes (see Haverland 2009; Interviews, 2012).

Summing up, in addition to marking the shift towards more focus on implementation in EU chemicals policy, the adoption of REACH and the establishment of ECHA have certainly meant changes in EU chemicals governance. However, the organizational barriers for Norway in ECHA were present also in the previous organizational set-up. Most importantly, the new governance structure has given EU/EEA countries new agenda-

¹ Phenylmercury substances are mainly used as catalysts in the production of polyurethane coatings, adhesives, sealants and elastomers (ECHA 2012).

setting powers, and Norway has taken advantage of these quite successfully.

4.2 Influencing an enlarged EU: generally complicated, but issue-specific differences?

With regard to the situation prior to 2007, accounts of EU chemicals policy-making mention certain main coalitions and ‘camps’. For instance, in the REACH decision-making process, Henrik Selin noted ‘what resulted in REACH began as a joint initiative between a few northern member states in the late 1990s, sharing an interest in strengthening EU chemicals legislation and harmonizing chemicals assessment and regulation across all member states’ (Selin 2007: 70). Hence, as regards the member-state picture, the pro-REACH coalition was dominated by environmental ministers from Northern EU member states. In this process, Norway sought to give support to Nordic frontrunners and policy activists like Sweden. The Scandinavian countries agreed that chemicals policy should give weight to the principles of precaution and substitution.

The enlargements of the EU in 2004 and 2006 brought in a group of Central and Eastern European Countries (CEECs) that gave different and often less weight to environmental concerns in policy-making (Skjørseth and Wettestad, 2007). What has this meant for post-REACH chemicals policy-making in the EU, and particularly the dynamics within ECHA? Let us first note that REACH meant a system change in EU chemicals governance, closing much of the gap between the policy-making approaches and priorities of the EU and Norway and its Scandinavian allies (Boasson, 2011). Still, post-enlargement, it is clear that Norway is facing a somewhat different EU. A main actor among the CEECs is Poland. Even though production in Central and Eastern Europe fell dramatically after the collapse of the Soviet Union, Poland has still a substantial chemicals industry, making up 10% of all manufacturing companies and 14% of total industrial output in 2009 (Polish Chamber 2009). Also interviewees note that that Poland has much ‘dirty industry’ (Interviews, 2012).

So Norwegian officials acknowledge generally that the balance in EU chemicals policy has indeed been changed somewhat. The EU has become more complex as regards the span of interests and positions. Generally, my interviewees noted that the CEECs have not been in the forefront in pushing for stricter chemicals regulation within ECHA (Interviews, 2012). But in the work on issues and substances given most priority by Norway – mercury in particular – the CEECs have not stood out as main opponents or laggards: indeed, these countries have acted quite constructively (Interviews, 2012, 2013). It is interesting to note that interviewees emphasize that it is in fact slightly misleading to talk about ‘opponents’ and ‘laggards’ in a technical agency such as ECHA. Interviewees indicate that ‘activism’, like asking questions and requiring clarifications, may slow down processes just as much as more classic opposition (Interviews, 2012). So the main conclusion here is clear: although an enlarged EU generally raises new challenges, the specific member-state dynamics within ECHA thus far cannot be said to have proven very complicating for Norway.

4.3 Interplay with the external environment: packing the EU's agenda and giving Norway headwind?

First, we should note that EU chemicals policy-making has long interacted with broader regional and global policy-making. At the regional level, the Convention on Long-range Transboundary Air Pollution (CLRTAP) was established in 1979, with a succession of regulatory protocols established since (Wettestad 2002, 2011). Two CLRTAP protocols particularly relevant in this context of chemicals governance context were established in 1998: the Århus Protocols on heavy metals and on persistent organic pollutants (POPs). With regard to heavy metals, the parties undertook to cut emissions to the 1990 level (or any year between 1985 and 1990), although the deadline was unspecified. Together with lead and cadmium, mercury was one of three substances initially and specifically targeted in the protocol (Selin, 2010).

It is reasonable to assume that these protocols contributed to the growing drive within the EU for a new chemicals policy. The Commission's 2001 White Paper on chemicals noted that 'the global nature of the chemicals industry and trans-boundary impact of certain chemical substances have made chemical safety an international issue', making 'integration with international efforts' important (European Commission 2001: 7, 9–10).

Further, having a forum like CLRTAP meant a different relationship between Norway and the EU than within the EEA context. In CLRTAP Norway is a separate contracting party, free to put forward its own proposals and inputs. The EU is represented by both the member states and the European Commission, and there is a regular need for internal coordination in the 'EU camp'. Interviewees generally emphasized that Norway's standing in broader regional and global fora has added weight to Norway's work vis-à-vis the EU and its bodies (Interviews, 2012).

At the global level, several international forums and organizations have addressed chemicals. A key early event was the 1972 UN Conference on the Human Environment, with the Stockholm Action Plan adopted there dealing with the issue of hazardous substances. UNEP was created in 1972, and quickly became a central node for much of the international political, legal and technical cooperation on hazardous substances (Selin 2010). Important international treaties include the 1989 Basel Convention on hazardous waste, the 1998 Rotterdam Convention, and the Stockholm Convention on Persistent Organic Pollutants (POPs) signed in 2001 (European Commission 2009).

The Johannesburg Plan for Implementation further expressed support for efforts to develop a strategic approach to international management of chemicals. During the REACH initiation phase there were also intense discussions among world governments with regard to agreeing on a new global treaty designed to improve chemicals management. International efforts to achieve the goals set in the Johannesburg World Summit on Sustainable Development (WSSD) finally led to the adoption of a global chemical management regime in 2006. The Strategic Approach to

Chemicals Management (SAICM) was adopted in February 2006 at the first international conference on chemicals management (ICCM) ²(*ENDS Daily*, February 9, 2006). The EU played an important role in the launch and establishment of SAICM, and has been actively implementing it through its legislation and policies in order to meet the 2020 goal. It further supports the declared goal that by the year 2020 chemicals are to be produced and used in ways that minimize significant adverse impacts on human health and the environment (European Commission 2009, Saicm 2009).

As regards mercury, Switzerland, Sweden and Norway have been among the most keen on establishing a ban on mercury emissions. Already in 2001, Switzerland and Norway supported the call within the UNEP for a global assessment of mercury. Based on the findings from this call, in 2003 they called for negotiations to be started on a convention to limit global mercury emissions. As with other international environmental negotiations, the idea of a mercury convention entailed intense lobbying among governments and close coordination of viewpoints from pro-convention actors. But international heavyweights like Canada, Australia, the USA, India and China were opposed to such a convention.

International chemicals policy discussions in recent years have focused largely on mercury and the push for a new mercury convention. At the end of 2008, the key ‘heavyweights’ mentioned above were still against a global convention. However, with the election of Barack Obama in 2008, the winds blowing from Washington changed dramatically. After intense discussions and negotiations, 147 countries, among them the USA and India, agreed at the UNEP Governing Council meeting in 2009 that negotiations on a convention on mercury were to be commenced (Euractiv 2009; Andresen et al. 2012). In January 2013, after five rounds of negotiations, the convention was adopted, banning mercury in thermometers, batteries and energy-saving bulbs by 2020 (Swissinfo 2013).

Has this global development given Norway ‘headwind’ or ‘tailwind’ in its relationships with ECHA and the EU? Apparently more the latter than the former. Interviewees underscores how Norway’s independent and good standing globally means a certain tailwind in more specific processes as regards the EU – although the interaction between the dynamics within the global and EU processes should not be exaggerated, as these fora are rather different (Interviews, 2012, 2013).

5 Summary and Conclusions

An important aspect of changing EU governance is the growing role of regulatory agencies. In the field of chemicals, the establishment of ECHA as the main implementing agency of the 2007 REACH regulation is in line with this trend. It has been claimed that these agencies undercut the

² This is part of the Global Ministerial Environment Forum, a regular gathering held by the UNEP (see *ENDS daily*, February 9, 2006)

role of member states in policy-making, shifting powers to the supra-national EU level. For non-member Norway, affiliated only through the EEA agreement, there are additional, specific formal barriers, like the lack of voting rights and not being allowed to hold certain lead positions. Furthermore, EU enlargement, with the further diversification of member-states interests and the ensuing complexity of decision-making, has been held to complicate matters for Norway even more, reducing its potential to influence the EU.

However, closer examination of the role of Norway in ECHA challenges this gloomy picture somewhat. Compared to pre-ECHA days, when Norway had first to develop solid national knowledge on prioritized issues and substances and then hope for the EU Commission to pick up the ball and run with it, ECHA and the new phase of EU chemicals governance have given Norway room for proposing and steering new legislation. The case of mercury regulation is the jewel in the crown for these new possibilities so far.

Another change expected to worsen the situation for Norway – EU enlargement – has proven less significant than expected, at least in the case of mercury regulation. While interviewees generally acknowledge the possible complicating effects of an enlargement that added several new member countries where environmental issues featured rather low on the agenda, in the case of mercury these countries have not stood out as major impediments.

Also a third factor that might have complicated the position of Norway – the interaction between EU and broader regional or global chemicals policy, with further diversion of EU attention away from Norwegian interests and positions – has proven insignificant. We may even note a slight positive effect, as Norway's generally good standing in other relevant regional and global fora has provided it with additional tailwind in ECHA. Norway has emerged as a frontrunner and pusher for international mercury regulation, a position apparently bolstered in the work on the new global mercury treaty.

How special is then the case of ECHA and mercury regulation. Is it typical or atypical? How good is the good news? As noted by Trondal et al. (2012: 3), EU regulatory agencies differ, with 'various legal standings and formal powers'. The dynamic within ECHA is based on the specific regulatory set-up of REACH, with its step-wise, technical approach. Also the issue-areas differ. In the case of chemicals pollution, Norway – being on the receiving end of European and global atmospheric pollution – has built up a position as a solid knowledge provider and policy frontrunner, perhaps making this issue-area a relatively 'easy case' where it can exert external influence.

In other words, the news put forward in this report is surely good – but it should be recognized as only one piece in a far more complicated and encompassing research puzzle and challenge.

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